

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

FRANK MARRERO RIVERA,

Petitioner,

v.

Pamela BONDI, U.S. Attorney General; Kristi
NOEM, Secretary, U.S. Department of
Homeland Security, Mary De ANDA-
YBARRA, El Paso Field Office Director of
Enforcement and Removal Operations, El Paso
Field Office, Immigration and Customs
Enforcement; U.S. Department Of Homeland
Security; Executive Office For Immigration
Review; Warden of ERO EL PASO CAMP
EAST MONTANA ,

Respondents.

Case No. **3:26-cv-180**


**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Frank Rivera Marrero, , respectfully submits this Petition for Writ of Habeas Corpus challenging his continued detention by the United States Department of Homeland Security, Immigration and Customs Enforcement ("ICE").

2. Petitioner was admitted into the United States on January 20, 1991 as a refugee from Cuba, at Key West, Florida, and has resided continuously in the United States since that time.

3. On June 21, 2005, an Immigration Judge entered a final order of removal against Petitioner.

4. After ICE was unable to effectuate removal, Petitioner was released from custody on February 21, 2006, under an Order of Supervision pursuant to INA § 241(a)(3), 8 U.S.C. § 1231(a)(3), which he has faithfully complied with for nearly nineteen years. He was then put on OSUP since 2006 which was recently revoked without due process safeguards and placed in detention by the respondents.

5. On December 2, 2025, nearly two decades after his release on supervision, ICE re-detained Petitioner without alleging or establishing any violation of the Order of Supervision.

6. Removal is not reasonably foreseeable, and ICE has not demonstrated a significant likelihood of effectuating Petitioner's removal in the reasonably foreseeable future.

7. Petitioner's continued detention is therefore unauthorized under INA § 241(a)(6), exceeds statutory authority, and violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

8. Petitioner seeks immediate relief from this unlawful detention, including release under the existing Order of Supervision or under reasonable conditions of supervision.

1 9. There have been no changed circumstances to justify Petitioner's re-detention and no
2 evidence that removal to Cuba is likely to occur in the reasonably foreseeable future.

3 JURISDICTION

4 10. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
5 ERO El Paso Camp East Montana in El Paso, Texas.

6 1. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. §
7 1331 (federal question), and Article I, section 9, clause 2 of the United States
8 Constitution (the Suspension Clause) and the Administrative Procedure Act (APA),
9 5 U.S.C. §§ 701, *et seq.*

10 11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory
11 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

12 VENUE

13 12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
14 500 (1973), venue lies in the United States District Court for the Western District of Texas, the
15 judicial district in which Petitioner currently is detained.

16 13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
17 Respondents are employees, officers, and agencies of the United States, and because a
18 substantial part of the events or omissions giving rise to the claims occurred in the Western
19 District of Texas.

20 REQUIREMENTS OF 28 U.S.C. § 2243

21 14. This Petition for Writ of Habeas Corpus is brought pursuant to 28 U.S.C. § 2243
22 to challenge the Respondent's unlawful detention of Petitioner, who has been subject to an Order
23
24

1 of Supervision for nearly twenty years, has complied with all its terms, and whose detention
2 bears no reasonable relation to a likelihood of removal..

3 15. Habeas corpus is “perhaps the most important writ known to the constitutional
4 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
5 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the
6 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
7 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208
8 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

9 PARTIES

10 16. Petitioner Frank Marrero Rivera is a citizen of Cuba who has been in
11 immigration detention since December 2, 2025. After Petitioner was detained while attempting a
12 domestic flight to return to his home in Florida. The Petitioner is a commercial truck driver,
13 married to a United States citizen and has two minor United States citizen children.

14 17. Respondent Garrett J. Ripa is the Director of the Miami Field Office of ICE’s
15 Enforcement and Removal Operations division. As such, Garrett J. Ripa is Petitioner’s
16 immediate custodian and is responsible for Petitioner’s detention and removal. He is named in
17 his official capacity.

18 18. Respondent Kristi Noem is the Secretary of the Department of Homeland
19 Security. She is responsible for the implementation and enforcement of the Immigration and
20 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms.
21 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

1 19. Respondent Department of Homeland Security (DHS) is the federal agency
2 responsible for implementing and enforcing the INA, including the detention and removal of
3 noncitizens.

4 20. Respondent Pamela Bondi is the Attorney General of the United States. She is
5 responsible for the Department of Justice, of which the Executive Office for Immigration Review
6 and the immigration court system it operates is a component agency. She is sued in her official
7 capacity.

8 21. Respondent Executive Office for Immigration Review (EOIR) is the federal
9 agency responsible for implementing and enforcing the INA in removal proceedings, including
10 for custody redeterminations in bond hearings.

11 22. Respondent Warden of Ero El Paso Camp East Montana is employed by a private
12 corporation as Warden of Ero El Paso Camp East Montana, where Petitioner is detained. He has
13 immediate physical custody of Petitioner. He is sued in his official capacity.

14 **CLAIM FOR RELIEF**

15 **COUNT I**

16 **Unlawful Post-Order Immigration Detention in Violation of the Due Process Clause
and 28 U.S.C. § 2243**

17
18 23. Petitioner is in the custody of Respondents pursuant to post-order immigration
19 detention, despite having lived under an Order of Supervision for nearly twenty years and having
20 fully complied with all terms and conditions imposed by the Department of Homeland Security.

21 24. Petitioner was detained without any allegation or finding that he violated the
22 Order of Supervision, failed to report, or posed a danger to the community or a flight risk.

23 25. Immigration detention following a final order of removal is civil in nature and is
24 constitutionally permissible only so long as it is reasonably related to the government's purpose
of effectuating removal.

1 v. *30th Judicial Dist. Court*, 410 U.S. 484, 489-90 (1973). "A court considering a habeas petition
2 must 'determine the facts, and the issue of...justice require.'" Id. (quoting 28 U.S.C. § 2243).

3 35. As in *Salgar v. Noem*, Petitioner challenges his detention on two principal grounds:
4 (1) ICE violated due process by failing to follow its own procedures and regulations in revoking
5 her OSUP; and (2) the detention violates *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150
6 L.Ed.2d 653 (2001), and the Immigration and Nationality Act because he is held indefinitely
7 without a reasonably foreseeable removal date.

8 36. Petitioner's detention violates due process because ICE failed to follow the procedural
9 requirements in its own regulations when revoking his OSUP.

10 37. Petitioner has been on supervised release since February 2006, following a
11 determination that he was nonviolent, posed no danger, was unlikely to violate release conditions,
12 and did not present a flight risk. See 8 C.F.R. § 241.4(d)(1), (e).

13 38. Under governing regulations, an OSUP may be revoked if the noncitizen violates its
14 conditions. See 8 C.F.R. § 241.4(d)(1), (2)(i).

15 39. In addition, an OSUP "may be revoked when it is appropriate to enforce a removal
16 order or [if] the conduct of the alien, or any other circumstance, indicates that release would no
17 longer be appropriate." 8 C.F.R. § 241.4(d)(2)(ii), (iii).

18 40. Revocation authority is limited to the Executive Associate Commissioner of ICE or,
19 when referral to that official is impracticable, a district director of ICE. 8 C.F.R. § 241.4(c)(2).

20 41. Upon revocation, the noncitizen must "be notified of the reasons for revocation of his
21 or her release" and afforded a "prompt 'initial informal interview'" to allow the noncitizen an
22 opportunity to respond to and contest the reasons for revocation. 8 C.F.R. § 241.4(d)(1)(iii)(A),
23 (iv).

24 42. These procedures and safeguards provide protection "where the detention or re-
detention of noncitizens is necessarily an action that results in the loss of personal liberty that

1 requires due process protections." *Santamaria Orellana v. Baker*, No. CV-25-1788-TDC, 2025
2 WL 2444087, at *6 (D. Md. Aug. 25, 2025).

3 43. Here, Petitioner contends he was given no explanation for his re-detention, no informal
4 interview, and no opportunity to contest the grounds for revoking his supervision—as the
5 regulations expressly require.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 8 a. Assume jurisdiction over this matter;
9 b. Issue a writ of habeas corpus requiring that within one day, Respondents release
10 Petitioner;
11 c. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
12 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under
13 law; and
14 d. Grant any other and further relief that this Court deems just and proper.

15 DATED this 27th of January, 2026.

16 /s/Bonnie Smerdon

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**VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

I, Bonnie Smerdon, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney. I am acting on behalf of the petitioner, Frank Marrero-Rivera, based on discussions with his attorney. On the basis of these discussions and reviewing the record, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 27, 2026

/s/Bonnie Smerdon

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