

JUDGE KATHLEEN CARDONE

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WESTERN DISTRICT OF TEXAS
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UNITED STATES COURT
FOR THE WESTERN DISTRICT OF TEXAS

FILED

February 13, 2026
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: Elizabeth Y. Martinez
DEPUTY

Rafael Carlos Barrios,

A# 

Petitioner,

v.

Pam Bondi, ATTORNEY GENERAL,
Kristi Noem, SECRETARY OF THE
DEPARTMENT OF HOMELAND
SECURITY, Maria Deandra Ybara,
U.S. ICE FIELD OFFICE DIRECTOR,

Respondents

EP 26CV0430

Civil Action No.
PETITION FOR A WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. §2241, BY A
PERSON SUBJECT TO
INDEFINITE IMMIGRATION
DETENTION.

BACKGROUND

1. Petitioner, Rafael Carlos Barrios, a 70 year old Cuban national, hereby petition this Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents, and to enjoin Petitioner's continued unlawful detention by the Respondent. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows.

CUSTODY

2. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement ("ICE"). Petitioner is detained at the El Paso Processing Center in El Paso, Texas. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

3. This action arises under the Constitution of the United States, 28 U.S.C. §2241(c)(1), and the Immigration and Nationality Act ("INA"), 8 U.S.C. §1101 et seq. This Court has subject matter jurisdiction under 28 U.S.C. §2241, Art.I §9, cl. 2 of the United States Constitution ("Suspension Clause"); and 28 U.S.C. §1331, as Petitioner is presently in custody under color of the authority of the United States., and such custody is in violation of the Constitution, laws, or treaties of the United States. See *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) ("We conclude that §2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention."); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) ("at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest.") *Clark v. Martinez*, 543 U.S. 371 (2005) (holding that *Zadvydas* applies to aliens found inadmissible as well as removable).

VENUE

4. Venue lies in the Western District of Texas, because Petitioner is currently detained in the territorial jurisdiction of this Court, at the El Paso Processing Center. 28 U.S. C. §1391.

EXHAUSTION OF REMEDIES

5. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action. After the Supreme Court decision in *Zadvydas*, the Department of Justice issued regulations governing the custody of aliens removed. See 8 C.F.R. §241.4. Petitioner received a final order of removal in the year of 2005. Upon his release in the year of 2006, ICE placed him on Order of Supervision (OSUP). The decision was based upon the Petitioner not being removable in the foreseeable future to the country of Cuba. On July 16th, 2025 ICE detained Petitioner at his home. They did not give any cause for his detention. There were not any violations of his Order of Supervision and ICE did not obtain travel documents.

6. For further clarity, the Petitioner was denied travel documents from Cuba and the Petitioner was on OSUP when he was detained without cause. The Petitioner has now been detained for almost seven (7) months and ICE has not obtained any travel documents.

8. No statutory exhaustion requirements apply to Petitioner's claim of unlawful detention.

PARTIES

9. Petitioner is a native of Cuba and received a final order of removal in 2005 ICE placed the Petitioner on Order of Supervision in 2006. The Petitioner was detained without cause on July 16th, 2025 and has remained in ICE custody continuously since that date. Petitioner is currently detained at the El Paso Processing Center.

10. Respondent Pam Bondi is the Attorney General of the United States and is responsible for the administration of ICE and the implementation and enforcement of the Immigration and Naturalization Act (INA). As such, Pam Bondi has ultimate custodial authority over Petitioner.

11. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the administration of ICE and the implementation and enforcement of the INA.

As such, Kristi Noem is the legal custodian of Petitioner.

12. Respondent Maria Deanda Ybara is the ICE Field Office Director of the EOIR Field Office of ICE and is Petitioner's immediate custodian. *See Vasquez v. Reno*, 233 F.3d 688, 690 (1st Cir. 2000), cert. Denied, 122 S. Ct. 43 (2001).

STATEMENT OF THE FACTS

13. I, Rafael Carlos Barrios, Petitioner was born on [REDACTED] 1955, I am currently 70 years old. I was born in Cuba and immigrated to the United States in the year of 1998.

14. When I was in Cuba I was a Naval Officer and I was very distraught by the political atmosphere. I did not see any change for the positive in Cuba and I did not see any future in my native country.

15. My journey to the United States first took me from Cuba to Mexico where I then defected and entered the United States through the border in Texas. The United States government (at that time it was the INS) gave me parole into the United States and advised me that I qualify for Political Asylum. The INS authorities at that time explained to me that I will be contacted by them in the near future and would be given a court hearing to plea my Asylum case. I was never contacted by anyone and remained in the U.S. on parole.

16. I worked for the Port of Miami where I was responsible for loading and unloading trailers. In the year of 2003 times were very difficult and my family came into hardships. I was behind on rent and bills and during this time a friend of mine offered me an opportunity that I should have never taken, but at that time I did not see another way out of my family's financial hardship.

17. I was sent to prison for five years for dealing with stolen property but for good behavior I was paroled after 27 months. Instead of being released I was picked up by the INS authorities

in 2005 and detained for 18 months.

18. In the duration of these 18 months the INS attempted to remove me to Cuba but the Cuban government would not accept me. At that time the law was not in favor of people in my situation, the detention of Cubans was indefinite because Cuba would accept us and the U.S. government would not release us.

19. In the year of 2006 after the Immigration law changed (stating that the government has 90 days to remove) I was released on Order of Supervision (OSUP).

20. My OSUP required me to report annually for check-ins which I always reported to. In the duration of almost 20 years I have never again been in any trouble with the law. For 20 years I worked and supported my family.

21. I have lived with my wife of 32 years, Maricela Vasquez, who is a Lawful Permanent Residence and with whom I have a daughter. My daughter,  is a U.S. Citizen. I also raised my wife's daughter who is like my own.

22. On July 16th, 2025 ICE officers came to my house and arrested me. I did not break my Order of Supervision and ICE did not give me cause for my detention other than stating that there was an executive order to detain everyone.

23. I have been detained for almost seven (7) months now and it has been very difficult on me and my family.

24. Cuba will never accept me back and ICE does not have any third countries who are willing to accept me. ICE did attempt to force me to cross over into Mexico but has not provided any legal documentation that Mexico is willing to accept me. ICE has threatened me numerous times by telling me that, "If you do not cross into Mexico we will transfer you to a facility

where the ICE agents are not as nice.”

25. I am a 70 year old man who has numerous medical conditions. I have stated to ICE that I am not Mexican and that I am afraid to be taken to a country I do not belong to especially when there is no legal documentation to show that Mexico is accepting me.

26. Since my detention I have suffered greatly because at my age it is difficult to move around. The housing unit I am housed in is not build to accommodate someone my age and someone with my medical problems. (Exhibit A)

27. I have been detained now for over six (6) months and I do not see a likelihood in the near future of ICE deporting me to a country who is willing to issue Travel Documents. I am also afraid that my medical condition is continuing to get worse and that I am around a dangerous environment. I was recently discharged from a hospital after a surgery. (Exhibit A)

28. I have always cooperated with my OSUP requirements and I hope and pray I can be reinstated back on Order of Supervision.

LEGAL FRAMEWORK FOR RELIEF SOUGHT

29. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the U.S. Supreme Court held that 8 U.S.C. §1231(a)(6), when “read in light of the Constitution’s demands, limits an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s removal from the United States.” 533U.S. at 689. “habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal.” *Id.* at 699. If the individual’s removal “is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by the statute.” *Id.* at 699-700.

30. In determining the length of a reasonable removal period, the Court adopted a “presumptively reasonable period of detention” of six months. *Id.* at 701. After six months the

government bears the burden of disproving an alien's "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." See *Zhou v. Farquharson*, 2001 U.S. Dist. LEXIS 18239, *2-*3 (D. Mass. Oct. 19, 2001) (quoting and summarizing *Zadvydas*). Moreover, "for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701. ICE's administrative regulations also recognize that the HQPDU has a six-month period for determining whether there is a significant likelihood of an alien's removal in the reasonably foreseeable future. See 8 C.F.R. §241.4 (k)(2)(ii).

31. Evidence showing successful repatriation of other persons to the country at issue is not sufficient to meet the government's burden to establish that an alien petitioner will be deported in the reasonably foreseeable future. See *Thompson v. INS*, 2002 U.S. Dist. LEXIS 23936 (E.D.L. September 16, 2002 (government failed to show that alien's deportation to Guyana was reasonably foreseeable where the government offered historical statistics of repatriation to Guyana, but failed to show any response from Guyana on the application for travel documents that INS and the petitioner had requested). Rather for the government to meet its burden of showing that an alien's repatriation is reasonably foreseeable, it must provide some meaningful evidence particular to the individual petitioner's case.

32. An alien who has been detained beyond the presumptive six months should be released where the government is unable to present documented confirmation that the foreign government at issue will agree to accept the particular individual in question. See *Agbada v. John Ashcroft*, 2002 U.S. Dist. LEXIS 15797 (D. Mass. August 22, 2002) (court "will likely grant" habeas petition after fourteen months if ICE is "unable to present document confirmation that the Nigerian government has agreed to [petitioner's] repatriation"); *Zhou*, 2001 U.S. Dist. LEXIS 19050 at *7 (W.D. Wash. February 28, 2002) (government's failure to offer specific information regarding how or when it expected to obtain the necessary documentation or cooperation from the foreign government indicated that there was no

significant likelihood of petitioner's removal in the reasonably foreseeable future).

33. Furthermore, Petitioner's due process rights under the Fifth Amendment have been violated because the Respondents failed to comply with the Order of Supervision (OSUP) revocation procedures set forth in 8 C.F.R. §§ 241.4(l)(1-2) and 241.13(h)(4)(i)(3) when revoking Petitioner's Order of Supervision.

34. His detention after being placed on Order of Supervision in 2006, without, "any showing of changed circumstances" and "pending as-yet uninitiated third country removal", is entirely arbitrary and violates his due process rights. *See Trejo v. Warden of the ERO El Paso E. Montana*, 2025 U.S. Dist. LEXIS 212821. In the case of Trejo the Court stated in part, "it also finds, in the alternative, that Trejo's re-detention after his release without a bond hearing violates his due process rights."

CLAIMS FOR RELIEF COUNT ONE STATUTORY VIOLATION

35. Petitioner re-alleges and incorporates by reference paragraphs 1 through 34 above.

36. Petitioner's continued detention by Respondents is unlawful and contravenes 8 U.S.C. § 1231(a)(6) as interpreted by the U.S. Supreme Court in *Zadvydas*. The six-month presumptively reasonable period for continued removal efforts has expired and the petitioner has now been detained for almost 7 months with no changes to the Petitioner's deportation in the foreseeable future. The Supreme Court held in *Zadvydas* and *Martinez* that ICE's continued detention of someone after six months where deportation is not reasonably foreseeable is unreasonable and in violation of 8 U.S.C. § 1231(a). 533 U.S. at 701.

COUNT TWO SUBSTANTIVE DUE PROCESS VIOLATION

37. Petitioner re-alleges and incorporates by reference paragraphs 1 through 36 above.

38. Petitioner's continued detention violates Petitioner's right to substantive due process

through a deprivation of the core liberty interest in freedom from bodily restraint. See. *Tam v. INS*, 14 F.Supp. 2d 1184 (E.D. Cal 1998) (aliens retain substantive due process rights).

39. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. While Respondents would have an interest in detaining Petitioner in order to effectuate removal, that interest does not justify the indefinite detention of Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future. The U.S. Supreme Court in *Zadvydas* thus interpreted 8 U.S.C. §1231(a) to allow continued detention only for a period reasonably necessary to secure the alien's removal, because any other reading would go beyond the government's articulated interest—to effect the alien's removal. See *Kay v. Reno*, 94 F.Supp.2d. 546, 551 (M.D. Pa. 2000) (granting writ of habeas corpus, because petitioner's substantive due process rights were violated, and noting that "If deportation can never occur, the government's primary legitimate purpose in detention—executing removal—is nonsensical.")

COUNT THREE PROCEDURAL DUE PROCESS VIOLATION

40. Petitioner re-alleges and incorporates by reference paragraphs 1 through 39 above.

41. Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that s/he should not be detained. Petitioner in this case has been denied that opportunity. ICE does not make decisions concerning aliens' custody status in a neutral and impartial manner. The failure of Respondents to provide a neutral decision-maker to review the continued custody of Petitioner violates Petitioner's right to procedural due process.

42. Petitioner's detention and revocation of his Order of Supervision violates his Fifth Amendment due process rights and Immigration's procedures set forth in 8 C.F.R. §241.4 and 241.13.

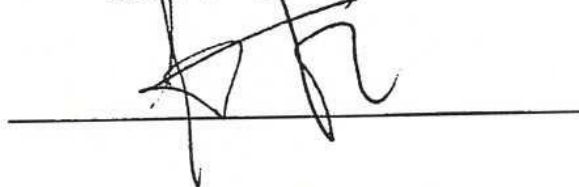
PRAYER FOR RELIEF

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

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from custody, and to reinstate his Order of Supervision;
- 3) Order Respondents to refrain from transferring the Petitioner out of the jurisdiction of the ICE EOIR Field Office of El Paso Processing Center Director during the pendency of these proceedings and while the Petitioner remains in Respondent's custody;

I affirm, under penalty of perjury, that the foregoing is true and correct. Respectfully submitted

this Feb. 6th 2026



Rafael Carlos Barrios, *Pro Se*

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El Paso SPC

8915 Montana Ave

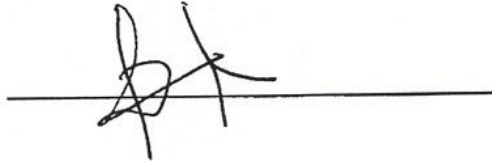
El Paso, Texas 79925

CERTIFICATE OF SERVICE

I, Rafael Carlos Barrios, certify that a true copy of the above document (Petition for Writ of Habeas Corpus) was served on Feb. 6th, 2026, upon the following:

Western District Court of Texas
Albert Armendariz, Sr. United States Courthouse
525 Magoffin Avenue
Room 105
El Paso, Texas 79901

by placing a copy of the above in the mail system at the facility where I am detained.

A handwritten signature in black ink, appearing to be 'R. Barrios', is written over a horizontal line.

Rafael Carlos Barrios *Pro Se*