

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FILED
ENTERED
RECEIVED
SERVED ON
COUNSEL/PARTIES OF RECORD
FEB 17 2026
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: ROA DEPUTY

Case No.

**PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 U.S.C. § 2241**

Gilberto Gonzalez-Diaz,

Petitioner,

v.

PAMELA BONDI, Attorney General of the
United States; KRISTI NOEM, Secretary,
United States Department of Homeland
Security; MICHAEL BERNACKE, Field
Director, West Valley City Office; TODD
LYONS, Acting Director; John Mattos,
Warden, Nevada Southern Detention
Center,

Respondents.

2:26-cv-00413-APG-BNW

Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986) (citing *Kreiling v. Field*, 431 F.2d 638, 640 (9th Cir. 1970) (per curiam)). “In deciding whether to appoint counsel in a habeas proceeding, the district court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved.” *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

Petitioner alleges the immigration and habeas issues in this case are complex and continuing to evolve. Petitioner is unable to adequately present the claims without the assistance of counsel, and Petitioner is unable to retain private counsel to represent him. Courts in this District have appointed the office of the Federal Public Defender in similar cases. Accordingly, Petitioner hereby respectfully requests that the Court appoint counsel for the reasons stated above.

DATED this 10 day of 02, 20 26.

Respectfully submitted,

Gilberto Gonzalez Diaz
PETITIONER

Personal Information

1. (a) Gilberto Gonzalez-Diaz

(b) Other names used:

2. Place of confinement:

(a) Nevada Southern Detention Center

(b) 2190 E Mesquite Avenue, Pahrump, NV 89048

(c) Case number or numbers: My A No. is 

3. I am currently being held on orders by federal authorities: United States Immigration and Customs Enforcement.

4. I am currently being held pursuant to a final removal order.

Decision or Action You Are Challenging:

5. What you are challenging in this petition: immigration detention.

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: United States Immigration and Customs Enforcement.

(b) Docket number, case number, or opinion number: My A No. is


(c) Decision or action you are challenging: I was originally ordered removed on October 10, 2025.

I was taken into custody by ICE on or about July 17, 2025, and I have remained detained in ICE custody for more than 6 months since my initial arrest. I have not a bond hearing before an immigration judge other than my first hearing when the judge ordered detention.

Your Earlier Challenges of the Decision or Action

7-9. First, second, and third appeals: None

10. Motion under 28 U.S.C. § 2255: N/A

11. Appeals of immigration proceedings:

Does this case concern immigration proceedings? Yes

(a) Date you were taken into immigration custody: 7/17/2025

(b) Date of the removal or reinstatement order: 10/10/2025

(c) Did you file an appeal with the Board of Immigration Appeals?

Yes If "Yes," provide answers.

(1) Date of filing: 10/20/2025

(2) Case number:

(3) Result: Pending

(4) Date of result:

(5) Issues raised: appealing denial of asylum claim and removal because Petitioner fears return to Cuba.

(d) Did you appeal the decision to the United States Court of Appeals? ____ If "Yes," provide answers.

(1) Name of court:

(2) Date of filing

(3) Case number:

(4) Result:

(5) Date of result:

(6) Issues raised:

12. Other appeals:

Other than the appeals listed above, have you filed any other petition, application, or motion (including a motion for bond before an immigration judge) about the issues raised in this petition? ☒ Yes ☐ No

If yes, please explain:

JURISDICTION AND VENUE

This Court has jurisdiction pursuant to 28 U.S.C. § 2241, which grants federal courts the authority to issue writs of habeas corpus to individuals in custody if that custody violates “the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3); *see also Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (holding § 2241 is the proper vehicle through which to challenge the constitutionality of a noncitizen’s detention without bail); *Jennings v. Rodriguez*, 583 U.S. 281, 294–296 (2018) (holding that neither 8 U.S.C. § 1226(e) nor § 1252(b)(9) bar review of constitutional challenges to prolonged immigration detention).

Venue is proper in the District of Nevada under 28 U.S.C. § 1391(e) because Petitioner is detained in this district at the Nevada Southern Detention Center and a substantial part of the events or omissions giving rise to Petitioner’s claim occurred in this district.

Accordingly, Petitioner’s habeas petition is properly before this court.

PARTIES

Gilberto Gonzalez-Diaz is a citizen of Cuba. He is detained in the control and custody of Respondents in Nevada.

John Mattos is the warden of Nevada Southern Detention Center. Mattos in his official capacity, is the immediate custodian of Petitioner.

Michael Bernacke is the Field Director of the West Valley City Office of ICE Enforcement and Removal Operations, which has jurisdiction of enforcement and removal operations over detention facilities in Nevada, including Nevada Southern Detention Center where Petitioner is detained. Bernacke, in his official capacity, is a legal custodian of Petitioner.

Todd Lyons is the Acting Director of Immigration and Customs Enforcement, which is responsible for administering and enforcing immigration laws, including

1 the detention and removal of immigrants. Lyons, in his official capacity, is a legal
2 custodian of Petitioner.

3 Kristi Noem is the Secretary of the Department of Homeland Security, which
4 oversees ICE. Noem, in her official capacity, is the ultimate legal custodian of
5 Petitioner.

6 Pam Bondi is the Attorney General of the United States. She oversees the
7 immigration court system, which is housed within the Executive Office for
8 Immigration Review (EOIR) and includes all immigration courts and the Board of
9 Immigration Appeals (BIA). She is named in her official capacity.

10 11 GROUNDS FOR RELIEF

12 **Ground One: Petitioner's prolonged detention without the opportunity for**
13 **release on bond violates his right to due process under the Fifth**
Amendment of the United States Constitution.

14 "The Fifth Amendment's Due Process Clause forbids the Government to
15 'depriv[e] any 'person . . . of . . . liberty . . . without due process of law.' Freedom
16 from imprisonment—from government custody, detention, or other forms of physical
17 restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*,
18 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).
19 "Arbitrary civil detention is not a feature of our American government. '[L]iberty is
20 the norm, and detention prior to trial or without trial is the carefully limited
21 exception.'" *Rodriguez v. Marin*, 909 F.3d 252, 256–57 (9th Cir. 2018) (quoting
22 *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

23 Petitioner is being detained pursuant to the discretionary authority of 8
24 U.S.C. § 1226(a). It appears he either had no bond hearing or had his first and only
25 bond hearing at or around July or October 2025. It is unclear why the Immigration
26 Judge (IJ) denied his request for release on bond. However, Petitioner has now been
27

1 detained for since July 2025. Accordingly, his prolonged detention without the
2 opportunity to seek release on bond violates his due process rights.

3 In considering the issue of prolonged detention in ICE custody pursuant to
4 mandatory detention, the Ninth Circuit has expressed “grave doubts that any
5 statute that allows for arbitrary prolonged detention without any process is
6 constitutional or that those who founded our democracy precisely to protect against
7 the government’s arbitrary deprivation of liberty would have thought so.”
8 *Rodriguez*, 909 F.3d at 256. Addressing a similar issue, Justice Kennedy, concurring
9 in *Demore v. Kim*, 538 U.S. 510, 532 (2003), pronounced that “since the Due Process
10 Clause prohibits arbitrary deprivations of liberty, a lawful permanent resident alien
11 such as respondent could be entitled to an individualized determination as to his
12 risk of flight and dangerousness if the continued detention became unreasonable or
13 unjustified.” Other circuits have similarly determined that unreasonably prolonged
14 detention violates a noncitizen’s due process rights. *See Black v. Decker*, 103 F.4th
15 133 (2d Cir. 2024); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021).

16 Petitioner’s continued detention since his first and only opportunity to seek
17 release on bond is the type of arbitrary deprivation of liberty the Due Process
18 Clause of the Constitution protects against. *See Rodriguez*, 909 F.3d at 257 (“The
19 Fifth Amendment says that ‘[n]o person shall be . . . deprived of life, liberty, or
20 property without due process of law.’ An alien is a ‘person.’ To hold him without bail
21 is to deprive him of bodily ‘liberty.’ And, where there is no bail proceeding, there has
22 been no bail-related ‘process’ at all. The Due Process Clause—itsself reflecting the
23 language of the Magna Carta—prevents arbitrary detention.” (quoting *Jennings v.*
24 *Rodriguez*, 583 U.S. 281, 330 (2018) (Breyer, J., dissenting) (internal citations
25 omitted)).

26 Accordingly, this Court should order that Petitioner receive a new bond
27 hearing in immigration court with the burden on the government to prove that he is

1 a flight risk or presents a danger to the community. This is especially necessary
2 because Petitioner's immigration proceedings have already spanned many months
3 and are likely to continue for substantially longer. Petitioner won cancellation of
4 removal in immigration court but the government appealed that, and the appeal
5 was sustained by the Board of Immigration Appeals. Accordingly, Petitioner has
6 recently filed a petition for review in the Ninth Circuit. Given that it was the
7 government that appealed, Petitioner is not at fault in the for the prolonged nature
8 of his detention.

9 **Ground Three: ICE's policy to remove noncitizens to a third country with**
10 **no notice or opportunity to seek fear-based protection constitutes**
11 **arbitrary and capricious agency action in violation of the Administrative**
Procedure Act, 5 U.S.C. § 706.

12 The APA entitles "a person suffering legal wrong because of agency action, or
13 adversely affected or aggrieved by agency action . . . to judicial review." 5 U.S.C. §
14 702. Further, the APA compels a reviewing court to "hold unlawful and set aside
15 agency action, findings, and conclusions found to be . . . arbitrary [or] capricious, . . .
16 otherwise not in accordance with law," *id.* § 706(2)(A), or "short of statutory right,"
17 *id.* § 706(2)(C). The APA also compels a reviewing court to "hold unlawful and set
18 aside agency action, findings, and conclusions found to be . . . without observance of
19 procedure required by law." 5 U.S.C. § 706(2)(D).

20 Petitioner has a due process right to meaningful notice and opportunity to
21 present a fear-based claim to an immigration judge before DHS deports him to a
22 third country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Aden v.*
23 *Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Petitioner also has a due
24 process right to implementation of a process or procedure to afford these
25 protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991).
26 Respondents, however, have adopted a policy—set forth in their March 30, 2025
27 memo and July 9, 2025, directive—that is arbitrary and capricious and deprives

1 Petitioner of meaningful notice and an opportunity to present a fear-based claim to
2 an immigration judge prior to his deportation to a third country. Moreover,
3 Respondents' policy also violates the INA and implementing regulations which
4 mandate that Respondents refrain from removing Petitioner, and similarly situated
5 individuals, to a third country where they will likely be persecuted or tortured, thus
6 requiring Respondents to provide meaningful notice of deportation to a third
7 country and the opportunity to present a fear-based claim to an immigration judge
8 before deporting an individual to a third country. In this case, the March 30 memo
9 and July 9 directive and Respondents recent actions in this case and others,
10 demonstrate Respondents do not intend to observe those protections.¹

11 The APA empowers federal courts to "compel agency action unlawfully
12 withheld or unreasonably delayed." 5 U.S.C. § 706(1). The Court should hold that
13 Respondents' actions and policy are unlawful and compel that—before any attempt
14 is made to deport him to a third country—Petitioner be provided with meaningful
15 notice and opportunity to present a fear-based claim to an immigration judge.

16
17 **Ground Three: Petitioner's detention in immigration custody pending**
18 **removal to any third country pursuant to recent ICE policy violates the**
19 **Due Process Clause of the Fifth Amendment.**

20 "It is well established that the Fifth Amendment entitles aliens to due
21 process of law in the context of removal proceedings." *Trump v. J.G.G.*, 145 S. Ct.
22 1003, 1006 (2025)(per curiam(quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993))).
23 Petitioner is thus entitled to "notice and an opportunity to be heard appropriate to
24 the nature of the case." *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*,

25 ¹ See also Lunga Masuku, Eswatini government faces court challenge for
26 accepting US deportees, THE GUARDIAN (Aug. 22, 2025),
27 <https://www.reuters.com/world/africa/eswatini-government-faces-court-challenge-accepting-us-deportees-2025-08-22/>.

1 339 U.S. 306, 313 (1950)). As relevant here, this means that Petitioner is entitled to
2 notice that he is to be removed to a third country “within a reasonable time and in
3 such a manner as will allow [him] to actually seek habeas relief in the proper venue
4 before such removal occurs.” *Id.*

5 Petitioner has not had an opportunity to contest removal to any third country
6 on the ground that he may face persecution or torture if he is removed to that
7 country. To the extent that Petitioner’s continued detention is meant to facilitate
8 his removal to a third country, his detention is unlawful because, as argued in
9 Ground Two, ICE’s procedure for third country removal is arbitrary and capricious,
10 and does not comply with due process. Any such future removal would be
11 accomplished in violation of his due process rights, rendering his detention on that
12 basis unlawful. This due process claim “necessarily impl[ies] the invalidity of [his]
13 confinement and removal” to a third country not yet named in any removal order.
14 *J.G.G.*, 145 S. Ct. at 1005. Thus, his due process claim is properly brought in these
15 habeas proceedings, and ordering his release from detention is a proper remedy for
16 such a violation.

17 PRAYER FOR RELIEF

18 Accordingly, Petitioner respectfully requests that this Court:

19 1. Issue a writ of habeas corpus to have Petitioner brought before the
20 Court so that he may be discharged from his unconstitutional confinement within
21 30 days unless Respondents schedule a bond hearing before an immigration judge
22 at which the judge must order the release of Petitioner unless ICE can establish by
23 clear and convincing evidence that he presents a risk of flight or danger to the
24 community;

25 2. Grant such other and further relief as, in the interests of justice, may
26 be appropriate; and
27

3. Grant such other and further relief as, in the interests of justice, may be appropriate.

Dated: Click or tap to enter a date.

cut

Gilberto Gonzalez-Diaz

Gilberto Gonzalez Diaz

(Name of alien or aliens)



(Alien number of alien or aliens)

CERTIFICATE OF SERVICE

On 02/10/26, I, Gilberto Gonzalez Diaz,
(date) (printed name of person signing below)

served a copy of this Habeas Corpus,
(name of document)

and any attached pages to U.S. District Court office of the clerk
(name of party served)

at the following address: 333 Las Vegas Blvd South, Room #1334 Las Vegas, NV 89101
(address of party served)

by first class mail
(method of service, for example overnight courier, hand-delivery, first class mail)

Gito
(signature)

02/10/26

(date)

2:26-cv-00413-APG-BNW

Rene L. Valladares
Federal Public Defender
District of Nevada

Lori C. Teicher
First Assistant

Sylvia Irvin
Assistant Federal Public Defender



**FEDERAL PUBLIC
DEFENDER**

— District of Nevada —

411 E. Bonneville Ave.
Suite #250
Las Vegas, NV 89101
Tel: 702-388-6577

February 5, 2026

Gilberto Gonzalez-Diaz (A4265)
Nevada Southern Detention Center
2190 E Mesquite Avenue
Pahrump, NV 89060

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
FEB 17 2026	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: <i>AJZ</i>	DEPUTY

Re: Pro Se Habeas Documents

Dear Mr. Gonzalez-Diaz:

We received your call requesting help with filing a habeas petition challenging your detention in ICE custody. Attached you will find the forms necessary to file a habeas case. These forms are:

1. A petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Read this form and fill in any necessary information and make any edits necessary based on the facts of your specific situation.
2. A motion for appointment of counsel. You should file this with the petition if you would like the court to appoint you an attorney. You will not automatically have an attorney assigned in this case, but the court may appoint you an attorney if the court believes it is necessary. If the court does not appoint counsel, you will need to represent yourself unless you can find your own attorney.
3. An application to proceed in forma pauperis. This helps the court determine if it should appoint an attorney because you cannot afford one, and if you can afford to pay the filing fee.

