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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ISABEL PEREZ PINEIRO,

Petitioner,

v.

MOISES BECERRA, Acting Director,
San Francisco Field Office, ERO, DHS;
GERALD MOSS, As Warden of Central
Valley Annex in McFarland, California;
The Geo Group Inc.; Markwayne Mullin,
as Secretary for the DHS; Todd Blanche,
Attorney General of the United States

Respondents.

CASE NUMBER:

To be supplied by the Clerk of
The United States District Court

**PETITION FOR WRIT OF
HABEAS CORPUS**

**PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW the Petitioner, ISRAEL PEREZ PINEIRO (a.k.a Israel Perez-Perez, a.k.a Israel Perez), by and through undersigned counsel and pro hac vice counsel and hereby brings this Petition for Writ of Habeas Corpus under to 28 USC § 2241 and Complaint for Declaratory and Injunctive Relief. IN SUPPORT OF THIS PETITION, Petitioner alleges the following:

INTRODUCTION

Petitioner ISRAEL PEREZ PINEIRO (a.k.a Israel Perez-Perez, a.k.a Israel Perez) is a native and citizen of Cuba who has resided in the United States since the early 1990s.

Petitioner has a final order of removal from August 2010 but, for years, the Department of Homeland Security ("DHS") has been unable to remove him to Cuba because the Cuban government refuses to accept his return.

Consistent with that reality, DHS released Petitioner under an Order of Supervision (Form I-220B) and required him to report regularly.

On February 26, 2026, DHS/ICE revoked his Order of Supervision and detained him to attempt removal.

While detained, officers attempted to coerce Petitioner to voluntarily depart to Mexico and "turn himself in" to Mexican officials, effectively forcing removal to a third country without lawful authority and contrary to his will. Petitioner refused to accept deportation to Mexico a country where he is not a citizen or national of.

1 He remains detained today, now at Central Valley Annex in McFarland,
2 California, months after the revocation of his order of supervision and years since
3 his Order of Removal became final, with no significant prospect of lawful removal
4 to Cuba—his designated country of removal—and no lawful authority to remove
5 him to Mexico or any other third country.
6

7 Under 8 U.S.C. § 1231 and the Supreme Court's decision in *Zadvydas v.*
8 *Davis*, 533 U.S. 678 (2001), immigration detention after a final order of removal is
9 constitutionally and statutorily limited to a period reasonably necessary to
10 accomplish removal, presumptively six months.
11

12 Petitioner's removal order to Cuba became final on August 25, 2010. DHS
13 attempted, but failed, to remove him to Cuba and, in light of Cuba's refusal to accept
14 his return, released him on an Order of Supervision (Form I-220B) on or about
15 December 2, 2010.
16

17 Petitioner has been under the post-order custody regime of 8 U.S.C. § 1231
18 for more than 15 years. During this entire period, the government has been unable
19 to remove him to Cuba, well beyond the presumptively reasonable six-month period
20 contemplated in *Zadvydas*.
21

22 His recent re-detention in February 2026 occurred against this backdrop of
23 prolonged and unsuccessful post-order removal efforts; it does not change the fact
24 that DHS/ICE has never been able to carry out his removal.
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1 Cuba has long refused his return and continues to do so. DHS's effort to
2 circumvent that reality by trying to force him to voluntarily deport himself to
3 Mexico—without Mexico's prior acceptance and over Petitioner's objections—was
4 unlawful and does not create a "significant likelihood" of removal in the reasonably
5 foreseeable future.
6

7 Petitioner therefore seeks a writ of habeas corpus under 28 U.S.C. § 2241
8 ordering his immediate release under reasonable conditions of supervision, as well
9 as declaratory and injunctive relief protecting him from further unlawful detention,
10 coerced "self-removal" to third countries and improper revocation of supervision.
11 He also seeks an order requiring DHS to restore him to the prior conditions of his
12 supervised release under Form I-220B or substantially equivalent terms.
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15 JURISDICTION

16 This Court has jurisdiction over this petition pursuant to 28 U.S.C. § 2241
17 (habeas corpus) and 28 U.S.C. § 1331 (federal question). Petitioner challenges the
18 legality and constitutionality of his ongoing civil immigration detention under 8
19 U.S.C. § 1231.
20

21 The REAL ID Act's jurisdiction-stripping provisions do not preclude habeas
22 review of post-order detention claims under *Zadvydas v. Davis*, 533 U.S. 678
23 (2001), and its progeny. Petitioner is not challenging the validity of his removal
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1 order itself, but rather his continued detention in violation of federal statute and the
2 Due Process Clause.

3 This Court has authority to grant declaratory and injunctive relief pursuant to
4 28 U.S.C. §§ 2201–2202 and the general equitable powers of the Court.
5

6 **VENUE**

7 Venue is proper in this Eastern District of California under 28 U.S.C. §
8 1391(b), 28 U.S.C. § 1391(e)(1) (United States defendant resides in this district), 28
9 U.S.C. § 1391(e)(2) (cause of action arose in this district), and 28 U.S.C. §
10 1391(e)(4) (Petitioner resides in this district and no real property is at issue).
11

12 **CUSTODY**

13 The Petitioner is in the Respondents' physical custody within this district at
14 the Central Valley Annex in McFarland, California, an immigration detention center
15 under the direct control of the Respondents and their agents.
16

17 **IMMEDIATE CUSTODIAN**

18 The Warden of Central Valley Annex, GERALD MOSS, is Petitioner's
19 immediate physical custodian and is a proper Respondent in this habeas action.
20

21 **PARTIES**

22 Petitioner ISABEL PEREZ PINEIRO (a.k.a Isael Perez-Perez, a.k.a Isael
23 Perez) is a citizen and national of Cuba in the Respondents' physical custody.
24

25 The Petitioner brings a suit against MOISES BECERRA in his official
26 capacity as Acting Director San Francisco Field Office, Enforcement and Removal
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1 Operations (ERO), Department of Homeland Security. In this official capacity, he
2 is a legal custodian of the Petitioner.

3 The Petitioner brings a suit against GERALD MOSS, as Warden of Central
4 Valley Annex in McFarland California where Petitioner is currently detained. In this
5 official capacity, he is the Petitioner's immediate physical custodian and is
6 responsible for the day-to-day implementation of Petitioner's detention.
7

8 The Petitioner brings a suit against THE GEO GROUP, INC. which is a
9 private corporation that owns and/or operates the Central Valley Annex — the
10 facility in which Petitioner is detained — pursuant to a contract with the U.S.
11 Department of Homeland Security ("DHS") and U.S. Immigration and Customs
12 Enforcement ("ICE"). GEO, through its officers, employees, and agents, exercises
13 day-to-day physical custody and control over Petitioner and is responsible for the
14 conditions of his confinement and for the provision of medical care to him. Petitioner
15 does not contend that GEO determines the legal authority under which he is held —
16 that authority rests with DHS and ICE — but GEO is Petitioner's immediate physical
17 custodian and the entity with the practical ability to produce Petitioner and to
18 effectuate his release from the facility should this Court so order. See *Rumsfeld v.*
19 *Padilla*, 542 U.S. 426, 435 (2004). GEO is therefore named as a Respondent for the
20 purpose of effectuating any order of release and for declaratory and injunctive relief
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1 concerning the conditions of Petitioner's confinement and his access to
2 constitutionally adequate medical care.

3 The Petitioner brings a suit against MARKWAYNE MULLIN in his official
4 capacity as Secretary for the Department of Homeland Security (DHS). In this
5 official capacity, he is a legal custodian of the Petitioner.
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7 The Petitioner brings a suit against TODD BLANCHE in his official capacity
8 as United States Attorney General. In this official capacity, he is a legal custodian
9 of the Petitioner.
10

11 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

12 Exhaustion of administrative remedies is not required for this habeas petition
13 because Petitioner challenges the legality of his ongoing detention under the
14 Constitution and federal statute, and there is no adequate or effective administrative
15 remedy for these claims.
16

17 To the extent any exhaustion requirement arguably applies, exhaustion should
18 be excused as futile and inadequate. Petitioner has already been subject to post-order
19 custody reviews and has been repeatedly told, explicitly or effectively, that he will
20 not be released despite the lack of a significant likelihood of removal in the
21 reasonably foreseeable future to Cuba. The limited ICE post-order review process
22 cannot provide the relief he seeks—judicially enforceable release under Zadvydas
23 and constitutional protections against coercive removal and abuse.
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FACTUAL ALLEGATIONS

A. Petitioner's Immigration History and Final Order of Removal

Petitioner is a native and citizen of Cuba, [REDACTED] See Exhibit 1, Cuban Birth Certificate with English Translation.

On July 29, 1994, Petitioner was inspected and admitted on Cuban Humanitarian Parole. He was assigned file number [REDACTED] See Exhibit 2, Parole.

On or about August 9, 2002, in Tampa, Florida, Petitioner was adjudicated guilty of Conspiracy to Possess with Intent to Distribute Five Kilograms or more of Cocaine pursuant 21 U.S.C § 841 (b) (1) (A) and 21 U.S.C § 846, and was sentenced to a 10 year (120 month) prison term. See Exhibit 3, Judgment for case 8:99-cr-271. He served his criminal sentence and has long since completed all criminal penalties related to this case.

On July 22, 2010, the Department of Homeland Security issued a Warrant for Arrest for Alien. See Exhibit 4, I-200, Warrant for Arrest dated 07/22/2010.

On July 22, 2010, the Department of Homeland Security initiated removal proceedings against Petitioner under Section 212 (a) (2) (A) (i) (II). See Exhibit 5, NTA dated 07/22/2010.

On July 22, 2010, the Department of Homeland Security also issued a Form I-286, Notice of Custody Determination, placing Petitioner in mandatory custody

1 pending a final determination by an immigration judge. See Exhibit 6, Form I-286
2 dated 07/22/2010.

3 On August 25, 2010, Immigration Judge Jonathan D. Pelletier denied
4 Petitioner's request for a change in custody status. See Exhibit 7, Order Denying
5 Custody Redetermination dated 08/25/2010.

7 On August 25, 2010, Immigration Judge Jonathan D. Pelletier also issued an
8 oral order deporting Petitioner to Cuba in absentia and waived appeal. See Exhibit
9 8, Order of Removal dated 08/25/2010. It is unclear from the record why Petitioner
10 was not present at his immigration hearing despite being held in immigration
11 detention.
12

13
14 On November 29, 2010, unable to remove Petitioner to Cuba, U.S.
15 Immigration and Customs Enforcement (ICE) issued Petitioner a release notification
16 stating he would be released subject to certain written conditions described on the
17 Order of Supervision and Addendum to the Order of Supervision forms. See Exhibit
18 9, Release Notification dated 11/29/2010.

20 On December 2, 2010, DHS/ICE released Petitioner from Immigration
21 detention with an I-220B, Order of Supervision. Petitioner maintained consistent
22 reporting from 2010 to 2016. See Exhibit 10, I220B Order of Supervision.

24 On September 23, 2016, in Miami, Florida, Petitioner was arrested for
25 conspiracy to distribute, and possession with intent to distribute 500 grams and more
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1 of a mixture containing a detectable amount of cocaine, in violation of 21 USC §
2 841(a)(1), 21 USC § 841 (b)(1)(B)(ii)(II) and 21 USC § 846. On May 17, 2017,
3 Petitioner was adjudicated guilty and was sentenced to a 71 month prison term. See
4 Exhibit 11, Judgment from case 8:16-cr-132.
5

6 On December 29, 2021, Petitioner was released from Beaumont FCI jail with
7 a supervision term of 5 years. Instead of being released to complete supervision, he
8 was transferred to ICE custody. See Exhibit 12, I-213 dated 12/29/2021. See also
9 Exhibit 13, I-200, Warrant for Arrest dated 12/29/2021.
10

11 **B. Petitioner's Long-Term Release on Order of Supervision (I-220B)**

12 On February 17, 2022, because Cuba would not accept Petitioner, and
13 consistent with longstanding practice for similarly situated Cuban nationals,
14 DHS/ICE again released Petitioner from immigration detention under supervision.
15 See Exhibit 14, I-220B dated 02/17/2022 showing consistent reporting from 2022 to
16 2026.
17

18 Under the terms of the February 2022 I-220B, Petitioner was required to
19 comply with certain conditions of release, including regular reporting to the assigned
20 ICE field office, maintaining a consistent address, and refraining from additional
21 criminal conduct.
22

23 Due to his compliance, he was able to check-in with ICE regularly from 2022
24 to 2026. Id. This compliance allowed DHS/USCIS to grant Petitioner Employment
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1 Authorization Documents under category C18. See, e.g. Exhibit 15, EAD valid from
2 05/01/2025-04/30/2026.

3 Since the issuance of Petitioner's removal order in August 2020,
4 DHS/ICE/ERO have been unable to secure his removal to Cuba. There have been
5 no material changes in Cuba's willingness to accept Petitioner; the impediment to
6 his removal has persisted for years.

8 **C. 2026 Detention at Tampa and Transfer to ICE Custody**

9 From the time of his release under the February 2022 Order of Supervision
10 until his re-detention in February 2026, Petitioner complied fully with all supervision
11 conditions. He reported to ICE Tampa Field Office as directed, including annual
12 check-ins, maintained a stable residence, he did not commit any new criminal
13 offenses, nor was he arrested or charged with any new criminal offenses.

14
15 On February 26, 2026, during a scheduled ICE Check In, without prior notice
16 of revocation, without any new criminal conduct, without violation of the terms in
17 the I220B Order of Supervision, or material changes in circumstances justifying
18 re-detention, DHS/ICE/ERO officers detained Petitioner and placed him in
19 immigration custody. See Exhibit 16, I-213 dated 02/26/2026.

20
21 Petitioner was initially transferred to Baker Correctional Institute (North
22 Florida Detention Center) in Sanderson, Florida, but has since been transferred to
23 Central Valley Annex in McFarland, California where he remains detained today.
24 See Exhibit 17, ICE detainee Locator.

1 Since his detention in February 2026, DHS/ICE/ERO officers have repeatedly
2 presented Petitioner with documents and forms pressuring him to agree to deport
3 himself to Mexico. Petitioner has consistently refused to sign these documents
4 because he is a citizen and national of Cuba— he has no citizenship or lawful
5 immigration status in Mexico (or any other third country), and he does not wish to
6 depart the United States to a country other than Cuba—the country he is a citizen of
7 and where he has an order of removal to.
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10 **D. Lack of Significant Likelihood of Removal to Cuba**

11 Petitioner is currently detained pursuant to a final order of removal that
12 became final on or about August 25, 2010. For more than fifteen years since that
13 date, DHS/ICE/ERO has remained unable to remove him to Cuba, and Cuba has
14 consistently refused to accept his return.
15

16 Although ICE re-detained Petitioner on February 26, 2026, that re-detention
17 occurred after years of unsuccessful post-order removal efforts and after a prolonged
18 period of supervised release under several I-220Bs.
19

20 As of the filing of this petition, Petitioner has been under post-order custody
21 (detained and supervised) for more than fifteen years, including the 123 days since
22 the current re-detention which began on February 26, 2026.
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1 Throughout this time, Cuba has not changed its prior refusal to accept his
2 return. DHS/ICE/ERO has provided no evidence to Petitioner that Cuba is now
3 willing to issue travel documents or admit him.
4

5 DHS's attempt to compel Petitioner to voluntarily deport to Mexico does not
6 create a legally cognizable, "significant likelihood" of removal within the meaning
7 of *Zadvydas v. Davis*, 533 U.S. 678 (2001). The statute contemplates removal to a
8 country that has agreed to accept the noncitizen through lawful
9 government-to-government channels—not coerced, extralegal abandonment at a
10 land border.
11

12 Petitioner's long history of release under supervision, Cuba's consistent refusal
13 to accept him, and DHS/ICE's resort to unlawful coercion to force him into a third
14 country demonstrate that there is no significant likelihood of lawful removal in the
15 reasonably foreseeable future.
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17

18 Petitioner remains in DHS/ICE custody solely by virtue of a final order of
19 removal that the government has been unable to execute for over fifteen years and
20 has no realistic prospect of executing in the foreseeable future.
21

22 **E. Medical Neglect while in Immigration Detention**

23 Petitioner is in Central Valley Annex in McFarland, California with serious
24 medical conditions including bronchitis, constant cough, and a history of steroid
25 antibiotics. Petitioner also has a history of high blood pressure (prescribed )
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1 [REDACTED] for hypertension) and prostate-related issues (prescribed [REDACTED]).

2 Petitioner asserts his medication is not properly and consistently being administered.

3 At the time of his most recent detention on February 26, 2026, Petitioner was
4 already ill and was taking antibiotics. His condition worsened while in custody in
5 Sanderson, Florida and as a result he was subsequently diagnosed with pneumonia.
6 Since then, he has experienced persistent symptoms, including a severe cough and
7 difficulty sleeping at night.
8

9
10 Petitioner asserts he continues being denied proper medical care and
11 inconsistent administration of his medications while in immigration detention.
12

13 At this time, Petitioner's legal team is seeking copies of medical records from
14 detention to examine along with the Medical Justice Alliance the extent of his
15 medical conditions and whether or not he is receiving appropriate medical care
16 within the detention facility. See Exhibit 18, Medical requests to DHS for records
17 via email and FOIA request.
18

19 The factual allegations in this habeas petition are made to shed light on the
20 conditions of detention Petitioner is facing, and not as a means to obtain any
21 monetary damages due any potential medical neglect claim.
22

23 **LEGAL FRAMEWORK**

24 Under 8 U.S.C. § 1231(a)(2), the government must detain a noncitizen during
25 the initial 90-day "removal period" following a final order of removal.
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1 After the 90-day removal period, detention is governed by 8 U.S.C. §
2 1231(a)(6), which provides that certain categories of noncitizens "may be detained
3 beyond the removal period" if they are inadmissible, removable on certain criminal
4 grounds, or determined to be a risk to the community or unlikely to comply with the
5 order of removal.
6

7 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court construed §
8 1231(a)(6) to avoid serious constitutional problems by reading it to authorize
9 detention only for a period reasonably necessary to bring about the noncitizen's
10 removal. The Court held that once removal is no longer reasonably foreseeable,
11 continued detention is no longer authorized. "Freedom from imprisonment lies at the
12 heart of the liberty protected by the Due Process Clause." *Id.* at 690.
13

14 Further, in *Prieto-Romero v. Clark*, the Court held that after the six-month
15 period, a noncitizen must provide "good reason to believe that there is no significant
16 likelihood of removal in the reasonably foreseeable future," after which the
17 government must respond with evidence sufficient to rebut that showing. 534 F.3d
18 1053 (9th Cir. 2008).
19

20 The Supreme Court further held in *Clark v. Martinez*, 543 U.S. 371 (2005),
21 that the *Zadvydas* construction of § 1231(a)(6) applies equally to inadmissible
22 noncitizens, making clear that the statute does not permit indefinite or potentially
23 permanent detention for any class of noncitizens.
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1 Further, immigration detention must "bear a reasonable relation to the purpose
2 for which the individual was committed." See *Demore v. Kim*, 538 U.S. 510, 527
3 (2003).

4 The Due Process Clause of the Fifth Amendment independently prohibits
5 arbitrary, indefinite civil detention and requires that immigration detention be
6 reasonably related to its purpose: securing the person's presence for actual, feasible
7 removal.
8

9 Moreover, under the Fifth Amendment of the United States Constitution, DHS
10 and the EOIR may not deprive a noncitizen of notice and an opportunity to be heard.
11 See *Mathews v. Elridge*, 424 U.S. 319 (1976).
12

13 DHS regulations recognize that noncitizens with final orders must generally
14 be released under supervision where there is no significant likelihood of removal.
15 See, e.g., 8 C.F.R. § 241.4, § 241.13 (post-order custody reviews; special review
16 procedures for aliens who may not be removed).
17

18 In applying § 1231(a)(6), courts consider the entirety of the post-order period
19 during which the government has been unable to remove a noncitizen, regardless of
20 whether that time is spent in physical detention or on supervised release. DHS does
21 not obtain a new, presumptively reasonable six-month period simply by re-detaining
22 a person years into an already-prolonged and unsuccessful effort to remove him.
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1 In evaluating the reasonableness of post-order detention under § 1231(a)(6),
2 courts consider the entire duration of custody following a final order of removal and
3 the government's persistent inability to effectuate removal. See *Zadvydas*, 533 U.S.
4 at 684–86; *Ly*, 351 F.3d at 271–73; *Nadarajah*, 443 F.3d at 1077–80. DHS may not
5 evade the limits recognized in *Zadvydas* and *Clark* simply by cycling a noncitizen
6 between detention and supervised release while removal remains unachievable.
7

8
9 Courts across the country have applied *Zadvydas* to require release under
10 supervision where post-order detention extends beyond six months and removal is
11 not reasonably foreseeable, even for noncitizens with criminal histories. See, e.g.,
12 *Nadarajah v. Gonzales*, 443 F.3d 1069, 1080–82 (9th Cir. 2006); *Ly v. Hansen*, 351
13 F.3d 263, 271–73 (6th Cir. 2003); *Rajigah v. Conway*, 268 F. Supp. 2d 159, 167–68
14 (E.D.N.Y. 2003).
15

16
17 **CAUSES OF ACTION**
COUNT I

18 **Unlawful Indefinite Detention Under 8 U.S.C. § 1231(a)(6) and *Zadvydas v. Davis***

19 Petitioner re-alleges and incorporates by reference paragraphs 1–70 as though
20 fully set forth herein.
21

22 Petitioner has been subject to post-order custody under 8 U.S.C. § 1231 since
23 his removal order became final on or about August 25, 2010. By the time DHS
24 released him on both Orders of Supervision (December 2010 and February 2022),
25 and certainly by six months after the final order, the presumptively reasonable
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1 Zadvydas period had already elapsed without successful removal to Cuba. His
2 subsequent re-detention in February 2026, after years of failed removal efforts and
3 supervised release under § 1231, does not restart the six-month clock. In total,
4
5 Petitioner has now spent more than fifteen years under § 1231 custody (whether in
6 physical detention or on supervised release), with no significant likelihood of
7 removal in the reasonably foreseeable future.

8
9 Petitioner has provided good reason to believe there is no significant
10 likelihood that he will be removed in the reasonably foreseeable future. Cuba's
11 long-standing refusal to accept repatriation of Petitioner, the years of unsuccessful
12 efforts by DHS to remove him, and the government's resort to coercive and unlawful
13 attempts to force him to depart to Mexico collectively establish that removal to Cuba
14 is not reasonably foreseeable.

15
16 This case presents precisely the situation contemplated in Zadvydas, Clark,
17 and Nadarajah: Petitioner has been detained or supervised under § 1231(a)(6) for
18 more than fifteen years since final order of removal was entered, which is well
19 beyond the six-month presumptively reasonable period, and the government cannot
20 now show a significant likelihood that Cuba (much less any country) will accept him
21 in the reasonably foreseeable future. See Zadvydas, 533 U.S. at 701; Clark, 543 U.S.
22 at 378–79.

1 DHS has not produced, and cannot produce, concrete evidence that Cuba—or
2 any other country—is likely to accept Petitioner within a reasonably foreseeable
3 time frame.

4
5 For significant periods of time, Petitioner was already released under Orders
6 of Supervision precisely because DHS could not remove him. Nothing material has
7 changed to justify his re-detention in 2026. To the contrary, the passage of time and
8 unsuccessful removal efforts demonstrate the absence of a realistic prospect of
9 removal to Cuba.
10

11 Although Petitioner's removal order rests on prior criminal convictions, his
12 present detention is governed by 8 U.S.C. § 1231(a)(6), not by the pre-removal
13 mandatory detention provisions of 8 U.S.C. § 1226(c). The Supreme Court has made
14 clear that § 1231(a)(6) does not authorize indefinite detention of any noncitizen,
15 including those with criminal histories; once removal is not reasonably foreseeable,
16 continued detention exceeds the statute and violates due process. See *Zadvydas*, 533
17 U.S. at 690–91; *Clark*, 543 U.S. at 378–79.
18

19
20 Petitioner's history underscores this point. After his February 2022 release on
21 an Order of Supervision, Petitioner has not reoffended, has not been arrested or
22 charged with any new crime, and has complied fully with all conditions of his
23 February 2022 Order of Supervision.
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1 Under Zadvydas, continued detention under these circumstances exceeds the
2 authority conferred by 8 U.S.C. § 1231(a)(6) and is unlawful.

3 Petitioner is therefore entitled to a writ of habeas corpus directing his
4 immediate release under reasonable supervision conditions, such as those previously
5 imposed via Form I-220B.
6

7 **COUNT II**
8 **Violation of the Fifth Amendment: Substantive and Procedural Due Process**

9 Petitioner re-alleges and incorporates by reference paragraphs 1–80 as though
10 fully set forth herein.

11 The Due Process Clause of the Fifth Amendment protects noncitizens from
12 arbitrary and indefinite civil detention that is not reasonably related to a legitimate
13 governmental objective.
14

15 The government's interest in immigration detention is limited to ensuring
16 appearance for removal and protecting the community from demonstrable danger.
17 Once removal is no longer reasonably foreseeable, detention ceases to serve that
18 purpose and violates due process.
19

20 As the Supreme Court has recognized, civil immigration detention must bear
21 a reasonable relation to its purpose—securing a noncitizen's presence for actual,
22 feasible removal. See *Zadvydas*, 533 U.S. at 690–91.
23

24 Petitioner's continued detention, where there is no significant likelihood of
25 removal in the reasonably foreseeable future, is arbitrary, excessive, and not
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1 narrowly tailored to any legitimate governmental interest, in violation of substantive
2 due process.

3 Additionally, Petitioner has been re-detained after years of compliant
4 supervision without any meaningful notice of his revocation, without hearing, or
5 opportunity to contest the necessity of detention. He has not been provided a neutral
6 decisionmaker's assessment of his risk of flight or danger to the community or the
7 likelihood of removal, violating procedural due process.
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10 Civil immigration detention that has lost its reasonable relation to the purpose
11 of effectuating removal violates due process. See *Zadvydas*, 533 U.S. at 690–91; *Ly*,
12 351 F.3d at 271–73.
13

14 For these reasons, Petitioner's continued detention violates the Fifth
15 Amendment, and he is entitled to immediate release and injunctive relief preventing
16 continued arbitrary detention and coercive removal efforts.
17

18 **COUNT III**
19 **Unlawful Attempted Removal to a Third Country Without Lawful Authority**

20 Petitioner re-alleges and incorporates by reference paragraphs 1–88 as though
21 fully set forth herein.

22 Under 8 U.S.C. § 1231(b)(2), DHS must designate a country of removal and,
23 where the designated country will not accept the noncitizen, must follow a specific
24 statutory hierarchy for alternate countries of removal.
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1 Petitioner's order of removal is to Cuba. Cuba has consistently refused to
2 accept him. DHS has not lawfully redesignated Mexico as a country of removal, nor
3 has Mexico formally agreed to accept him as a deportee.
4

5 Section 1231(b)(2) carefully prescribes the sequence of countries to which a
6 noncitizen may be removed and contemplates removal through lawful
7 government-to-government arrangements with a receiving country. See *Jama v.*
8 *Immigration & Customs Enft*, 543 U.S. 335, 341–46 (2005).
9

10 Respondents may point to Petitioner's old criminal convictions to argue that
11 he is dangerous. But under *Zadvydas* and its progeny, criminal history cannot justify
12 indefinite civil immigration detention when removal is not reasonably foreseeable.
13 *Clark*, 543 U.S. at 378–79. Courts applying *Zadvydas* have repeatedly granted
14 habeas relief to noncitizens with serious criminal records where the government
15 could not demonstrate a significant likelihood of removal. See *Ly*, 351 F.3d at 271–
16 73; *Rajigah*, 268 F. Supp. 2d at 167–68.
17

18
19 DHS's efforts to compel Petitioner to self-remove to Mexico by signing papers
20 and presenting himself to Mexican officials, without any formal designation of
21 Mexico as his country of removal and without Mexico's acceptance through lawful
22 channels, fall outside the statutory scheme and cannot justify continued detention.
23

24 Instead, ICE officers have attempted to induce Petitioner to sign documents
25 agreeing to depart to Mexico and to surrender himself to Mexican authorities, even
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1 though he has no citizenship or legal status there and there is no lawful designation
2 of Mexico as his country of removal.

3 DHS's attempt to effectuate removal without compliance with § 1231(b)(2)'s
4 procedures, and without the receiving a third country's explicit acceptance,
5 underscores the absence of any genuine, lawful, and foreseeable prospect of removal
6 to a third country.
7

8 Accordingly, Petitioner's ongoing detention cannot be justified on the basis of
9 any lawful plan to remove him to Mexico or any other third country, reinforcing that
10 his detention is unauthorized and must end.
11

12 **IRREPARABLE HARM AND BALANCE OF EQUITIES**

13 Petitioner suffers irreparable harm every day he remains unlawfully detained.
14 He is deprived of his liberty, separated from family and community, and subjected
15 to the risk of inadequate medical care, physical abuse and retaliation in ICE custody.
16

17 The balance of equities strongly favors Petitioner. He lived for years under
18 supervision (although not always without incident), has completed his criminal
19 sentences, and poses no demonstrated danger or flight risk. The government's
20 interest in continued detention is minimal where removal is not reasonably
21 foreseeable.
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1 The public interest is served by ensuring government compliance with
2 statutory and constitutional limits on immigration detention and preventing abusive,
3 coercive removal practices.

4 **REQUEST FOR EXPEDITED ORDER TO SHOW CAUSE (RESPONSE**
5 **WITHIN TEN DAYS)**

6 Petitioner respectfully requests that the Court issue an expedited Order to
7 Show Cause directing Respondents to file a return to the Petition within ten (10)
8 days of service, and to address specifically, with evidentiary support, the likelihood
9 of Petitioner's removal to Cuba in the reasonably foreseeable future.
10

11 This is a habeas corpus action brought pursuant to 28 U.S.C. § 2241. By
12 statute and longstanding practice, habeas proceedings are intended to provide a swift
13 and effective remedy where unlawful restraint of liberty is alleged. See e.g., 28
14 U.S.C. § 2243.
15

16 Since Petitioner's final removal order became administratively final on
17 August 25, 2010, DHS has had more than fifteen years to remove him, far exceeding
18 the six-month presumptively reasonable period recognized by *Zadvydas v. Davis*,
19 533 U.S. 678, 701 (2001). Each additional day of confinement inflicts ongoing
20 constitutional injury.
21

22 An expedited order to show cause with a ten-day return deadline is fully
23 consistent with the text and purpose of 28 U.S.C. § 2243. See *Yong v. I.N.S.*, 208
24 F.3d 1116 (9th Cir. 2000). Although the statute sets a three-day return as the
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1 baseline, it expressly authorizes the Court to allow additional time "not exceeding
2 twenty days" for good cause.

3 The issues the Court must resolve at the outset are discrete and largely
4 documentary: whether there is any concrete likelihood of Petitioner's removal to
5 Cuba in the reasonably foreseeable future, supported by sworn declarations or
6 records of communications with Cuban authorities.
7

8 The balance of harms strongly favors expedited treatment. Petitioner faces
9 ongoing unconstitutional detention and progressive physical and medical harm with
10 each passing day he remains detained—while Respondents face only the modest
11 administrative burden of responding within a shortened but statutorily contemplated
12 timeframe.
13

14 Prompt issuance of an expedited Order to Show Cause will not prejudice the
15 merits, but will ensure that the Court can consider the Petition on a complete and
16 current factual record while there is still time to prevent further irreparable injury to
17 Petitioner's health and liberty interests.
18

19 For all of these reasons, Petitioner respectfully requests that the Court:
20

- 21 1. Issue an Order to Show Cause forthwith, directing Respondents to file a
22 response to the Petition and to show cause why the writ should not be granted
23 within ten (10) days of service of the Order;
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- 1 2. Require that Respondents' return specifically address the current status of
2 efforts to remove Petitioner to Cuba and any basis for asserting a significant
3 likelihood of removal in the reasonably foreseeable future;
- 4 3. Require that Respondents' return specifically address any basis for asserting a
5 significant likelihood of removal to a third country in the reasonably
6 foreseeable future; and,
- 7 4. Grant such other and further expedited relief as the Court deems just and
8 proper.
9

10 **REQUEST FOR RELIEF**

11 WHEREFORE, Petitioner respectfully requests that this Court:

- 12 1. Assume jurisdiction over this matter;
- 13 2. Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Petitioner's
14 immediate release from immigration detention under reasonable conditions of
15 supervision, including, but not limited to, restoration of his prior Order of
16 Supervision (Form I-220B) or equivalent conditions;
- 17 3. Declare that Petitioner's continued detention beyond the presumptively
18 reasonable six-month period is unlawful under 8 U.S.C. § 1231(a)(6) as
19 construed by Zadvydas v. Davis, 533 U.S. 678 (2001), and violates the Due
20 Process Clause of the Fifth Amendment;
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- 1 4. Enjoin Respondents from re-detaining Petitioner under § 1231(a)(6) absent a
2 material change in circumstances demonstrating a significant likelihood of
3 removal in the reasonably foreseeable future and from attempting to coerce
4 Petitioner into "self-removing" to Mexico or any other third country without
5 lawful authority and formal acceptance by that country;
6
- 7 5. Order Respondents to provide Petitioner's counsel with all records and
8 information pertaining to efforts to remove Petitioner to Cuba or any other
9 third country, post-order custody reviews, and any communications with
10 foreign governments concerning his repatriation; and,
11
- 12 6. Grant such other and further relief, including costs and reasonable attorneys'
13 fees if available under the Equal Access to Justice Act or other authority, as
14 this Court deems just and proper.
15

16
17 Respectfully submitted this 2nd day of July.
18

19 /s/ Yakup Talha Sevinc

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****Pending Pro Hac Vice Admission*
Co-Counsel for Petitioner