

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

FILED JUN 25 25 AM 3:08
MDGA-COL

Luis Alberto Alvarez Cuan.

A. 

PETITIONER.

V.

PAM BONDI, ATTORNEY GENERAL OF THE UNITED STATES; KRISTI NOEM,
SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY; TERRACE
DICKERSON, DIRECTOR FOR THE U.S. ICE FIELD OFFICE ATLANTA AND
WARDEN OF STEWART DETENTION CENTER IN LUMPKIN, GA.
RESPONDENTS.

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 —

PETITIONER (Luis Alberto Alvarez Cuan), HEREBY PETITIONS THIS
COURT FOR A WRIT OF HABEAS CORPUS TO REMEDY PETITIONER'S
UNLAWFUL DETENTION BY THE RESPONDENT. IN SUPPORT OF THIS
PETITION AND COMPLAINT FOR INJUNCTIVE RELIEF, PETITIONER
ALLEGES AS FOLLOWS:

- CUSTODY -

1. PETITIONER IS IN THE PHYSICAL CUSTODY OF RESPONDENTS AND U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE). PETITIONER IS DETAINED AT THE STEWART DETENTION CENTER, LOCATED AT 146 CCA ROAD, LUMPKIN GA 31815, WITHIN THIS DISTRICT. PETITIONER IS UNDER THE DIRECT CONTROL OF RESPONDENTS AND THEIR AGENTS.

- JURISDICTION -

2. 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 *ZADWYDAS 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 *ZADWYDAS* APPLIES TO ALIENS FOUND INADMISSIBLE AS WELL AS REMOVABLE).

3. VENUE LIES IN THE MIDDLE DISTRICT OF GEORGIA, BECAUSE PETITIONER IS CURRENTLY DETAINED IN THE TERRITORIAL JURISDICTION OF THIS COURT, AT THE STEWART DETENTION CENTER, LOCATED AT 146 CCA ROAD, LUMPKIN, GA 31815.

- EXHAUSTION OF REMEDIES -

4. 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 8C.F.R. § 241.4. PETITIONER RECEIVED A FINAL ORDER OF REMOVAL ON NOVEMBER 14, 2024. AT HER/HIS "90-DAY" CUSTODY REVIEW, ON OR ABOUT APRIL 16, 2025, ICE DECIDED TO CONTINUE HER/HIS DETENTION. THE CUSTODY REVIEW REGULATIONS DO NOT PROVIDE FOR APPEAL FROM A HQPDU CUSTODY REVIEW DECISION. SEE 8C.F.R. § 241.4(d).

5. NO STATUTORY EXHAUSTION REQUIREMENTS APPLY TO PETITIONER'S CLAIM OF UNLAWFUL DETENTION. ON MAY 5, 2025, PETITIONER FILED A PETITION FOR WRIT OF HABEAS CORPUS PROSE. THE DISTRICT COURT "DISMISSED" BECAUSE IT WAS FILED PREMATURELY. EVEN IF THE MAGISTRATE JUDGE MISCALCULATE THE SIX-MONTH PERIOD, THE PETITION WAS NEVERTHELESS FILED PRIOR TO THE EXPIRATION OF THE SIX MONTH PERIOD DETERMINED TO BE PRESUMPTIVELY APPROPRIATE IN BINDING PRECEDENT. HOWEVER, MORE THAN ONE MONTHS HAVE PASSED SINCE PETITIONER'S PROSE HABEAS PETITION WAS FILED, AND PETITIONER STILL REMAINS DETAINED WITHOUT ANY INDICATION FROM THE GOVERNMENT OF THE UNITED STATES OR CUBA THAT PETITIONER'S REPATRIATION IS

REASONABLY FORESEEABLE. A NEW HABEAS PETITION IS PROPER IN LIGHT OF THESE NEW FACTS.

— PARTIES —

6. PETITIONER IS A NATIVE AND CITIZEN OF CUBA, PETITIONER WAS FIRST TAKEN INTO ICE CUSTODY ON NOVEMBER, 14, 2024, AND HAS REMAINED IN ICE CUSTODY CONTINUOUSLY SINCE THAT DATE, PETITIONER WAS ORDERED REMOVED ON AUGUST 13, 2024. PETITIONER IS CURRENTLY DETAINED AT STEWART DETENTION CENTER. PETITIONER HAS BEEN CONTINUOUSLY DETAINED BY ICE FOR OVER SEVEN MONTHS.

7. 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 & NATURALIZATION ACT (INA). AS SUCH, MS. BONDI HAS ULTIMATE CUSTODIAL AUTHORITY OVER PETITIONER.

8. RESPONDENT KRISTI NOEN IS THE SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY, HE IS RESPONSIBLE FOR THE ADMINISTRATION OF ICE AND THE IMPLEMENTATION AND ENFORCEMENT OF THE INA. AS SUCH MS. NOEN IS THE LEGAL CUSTODIAN OF PETITIONER.

9. RESPONDENT TERRACE DICKERSON IS THE ICE FIELD OFFICE DIRECTOR OF THE ERO ATLANTA FIELD OFFICE OF ICE AND IS PETITIONER'S IMMEDIATE CUSTODIAN. See VÁZQUEZ V. RENO, 233 F.3d 688, 690 (1ST Cir. 2000). CERT. DENIED, 122 S. CT. 43 (2001).

10. RESPONDENT WARDEN OF STEWART DETENTION CENTER, WHERE PETITIONER IS CURRENTLY DETAINED UNDER THE AUTHORITY OF ICE, ALTERNATIVELY MAY BE CONSIDERED TO BE PETITIONER'S IMMEDIATE CUSTODIAN.

- STATEMENT OF THE FACTS -

11. PETITIONER (Luis Alberto Alvarez Chan), was born in Havana, Cuba on [REDACTED]. PETITIONER WAS ARRESTED ON NOVEMBER 27, 2012, 30 miles south of Dominican Republic and brought to the United States for the offense of possession of five kilograms or more of cocaine on board a vessel, to wit the petitioner is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 180 months. PETITIONER were paroled into the United States for the purpose of criminal prosecution at/near Tampa, Florida on or about December 5, 2012 as a Public Benefit Parolee.
12. On 03/04/2024 while the petitioner was in B.O.P custody he received a written arrest warrant stating that he was removable under U.S. immigration law while remaining in custody. In August 13, 2024 the petitioner received a notice and order of expedited removal. (see attachment 1 & 2).
13. On November 14, 2024 ICE officer from IRO Atlanta field office took the petitioner into custody after he finished that sentence in USP Atlanta to await his deportation. The petitioner received a final removal order on November 14, 2024 (see attachment 3). Since that time the petitioner has been continuously detained by ICE for over seven months.
14. Prior to the petitioner first custody review, an ICE officer requested the petitioner to be released from ICE custody because the petitioner repatriation to Cuba had not been accepted. ICE informed that the petitioner would not be released, so the petitioner still continues being in detention.

15. TO DATE, HOWEVER, ICE HAS BEEN UNABLE TO REMOVE THE PETITIONER TO CUBA. IT IS PETITIONER'S UNDERSTANDING THAT CUBA WILL DENY ANY AND ALL REQUESTS FOR TRAVEL DOCUMENTS, AS THERE IS NO FORMAL OR INFORMAL REPATRIATION AGREEMENT BETWEEN CUBA AND THE UNITED STATES.

16. PETITIONER HAS COOPERATED FULLY WITH ALL EFFORTS BY ICE TO REMOVE PETITIONER FROM THE UNITED STATES. HE PROVIDED ICE DEPORTATION OFFICE WITH INFORMATION ABOUT WHEN AND WHERE HE WAS BORN, PHOTOGRAPHS, AND FINGERPRINTS.

— LEGAL FRAMEWORK FOR RELIEF SOUGHT —

17. IN *ZADWYDAS 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. 533 U.S. AT 689. A HABEAS COURT MUST (FIRST) ASK WHETHER THE DETENTION IN QUESTION EXCEEDS A PERIOD REASONABLY NECESSARY TO SECURE REMOVAL. *Id.* AT 689. 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. IN *CLARK V. MARTINEZ*, 543 U.S. 371 (2005), THE U.S. SUPREME COURT HELD THAT *ZADWYDAS* APPLIES TO ALIENS FOUND INADMISSIBLE AS WELL AS REMOVABLE.

18. 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 *ZADYDAS*). 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." *ZADYDAS*, 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). 19. 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 *AGBADAN. 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).

— CLAIMS FOR RELIEF —
 — COUNT ONE —
 STATUTORY VIOLATION

20. PETITIONER RE-ALLEGES AND INCORPORATES BY REFERENCE PARAGRAPHS 1 THROUGH 19 ABOVE.

21. 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*. PETITIONER'S NINETY-DAY STATUTORY REMOVAL PERIOD AND SIX-MONTH PRESUMPTIVELY REASONABLE PERIOD FOR CONTINUED REMOVAL EFFORTS HAVE BOTH PASSED. RESPONDENTS ARE UNABLE TO REMOVE PETITIONER TO CUBA, BECAUSE THERE IS NO REPATRIATION AGREEMENT BETWEEN THE UNITED STATES AND CUBA. AND CUBA WILL NOT ACCEPT ITS CITIZENS WHO HAVE BEEN ORDERED REMOVED FROM THE UNITED STATES. IN *MARTINEZ*, THE U.S. SUPREME COURT HELD THAT THE CONTINUED INDEFINITE DETENTION OF SOMEONE LIKE PETITIONER UNDER SUCH CIRCUMSTANCES IS UNREASONABLE AND NOT AUTHORIZED BY 8 U.S.C. § 1231(a)(6).

- COUNT TWO -
SUBSTANTIVE DUE PROCESS VIOLATION

22. PETITIONER RE-ALLEGES AND INCORPORATES BY REFERENCE PARAGRAPHS 1 THROUGH 21 ABOVE.

23. 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 E.G. *TAM V. INS*, 14 F. SUPP. 2D 1184 (E.D. CAL 1998) (ALIENS RETAIN SUBSTANTIVE DUE PROCESS RIGHTS).

24. 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 *ZADNYDAS* 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 (N.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."). BECAUSE PETITIONER IS UNLIKELY TO BE REMOVED TO CUBA, HER CONTINUED INDEFINITE DETENTION VIOLATES SUBSTANTIVE DUE PROCESS.

— COUNT THREE —

PROCEDURAL DUE PROCESS VIOLATION

25. PETITIONER RE-ALLEGES AND INCORPORATES BY REFERENCE PARAGRAPHS 1 THROUGH 24 ABOVE.

26. 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. THERE IS NO ADMINISTRATIVE MECHANISM IN PLACE FOR THE PETITIONER TO OBTAIN A DECISION FROM A NEUTRAL ARBITER OR APPEAL A CUSTODY DECISION THAT VIOLATES MARTINEZ. SEE GENERALLY 8 C.F.R. § 212.12, THE CUSTODY REVIEW

PROCEDURES FOR CUBANS ARE CONSTITUTIONALLY INSUFFICIENT BOTH AS WRITTEN AND AS APPLIED. A NUMBER OF COURTS HAVE IDENTIFIED A SUBSTANTIAL BIAS WITHIN ICE TOWARD THE CONTINUED DETENTION OF ALIENS, RAISING THE RISK OF AN ERRONEOUS DEPRIVATION TO CONSTITUTIONALLY HIGH LEVELS. SEE, E.G., PHAN V. RENO, 56 F. SUPP. 2d 1149, 1157 (W.D. WASH. 1999) ("INS DOES NOT MEANINGFULLY AND IMPARTIALLY REVIEW THE PETITIONER'S STATUS."); ST. JOHN V. McELROY, 937 F. SUPP. 243, 251 (S.D.N.Y. 1996) ("Due to political and community pressure, INS, an executive agency, has ever incentive to continue to detain aliens with aggravated felony convictions, even though they have served their sentences, on the suspicion that they may continue to pose a danger to the community"); SEE ALSO RIVERA V. DEMORE, No. 99-3042 THE, 199 WL 521177, *7 (N.D. CAL. Jul 13, 1999) (PROCEDURAL DUE PROCESS REQUIRES THAT ALIENS RELEASE DETERMINATION BE MADE BY IMPARTIAL ADJUDICATOR DUE TO AGENCY BIAS).

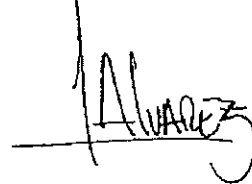
- PRAYER FOR RELIEF -

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, UNDER REASONABLY CONDITIONS OF SUPERVISION;
- 3) ORDER RESPONDENTS TO REFRAIN FROM TRANSFERRING THE PETITIONER OUT OF THE JURISDICTION OF THE ICE FIELD OFFICE ATLANTA G.A. DIRECTOR DURING THE PENDENCY OF THESE PROCEEDINGS AND WHILE THE PETITIONER REMAINS IN RESPONDENT'S CUSTODY; AND
- 4.) AWARD PETITIONER ATTORNEY'S FEES AND COSTS UNDER THE EQUAL

ACCESS TO JUSTICE ACT ('EAJA'). AS AMENDED, 5 U.S.C. § 504 AND 28 U.S.C. § 2412, AND ON ANY OTHER BASIS JUSTIFIED UNDER LAW; AND 5.) GRANT ANY OTHER AND FURTHER RELIEF THAT THIS COURT DEEMS JUST AND PROPER.

I AFFIRM, UNDER PENALTY OF PERJURY, THAT THE FOREGOING IS TRUE AND CORRECT. RESPECTFULLY SUBMITTED THIS 19 OF JUN 2025.



LUIS ALBERTO ALVAREZ CUAN.

A:



STEWART DETENTION CENTER

PO BOX 248

LUMPKIN, GA 31815