


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

FILED
RECEIVED
NOV-11
2025

JOSE POLANCO PENALVER


Petitioner,

Civil Action No: _____

v.

PAM BONDI

Attorney General;

KRISTI NOEM

Secretary of Department of

Homeland Security;

HOMER BRYSON

U.S. ICE Field Office Director For

The Middle District of Georgia

Field Office, and Warden **STREEVAL**

of Immigration Detention Facility,

Respondent(s)

**PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241, BY A PERSON
SUBJECT TO INDEFINITE IMMIGRATION
DETENTION.**

AND

**MOTION FOR APPOINTMENT OF COUNSEL
PURSUANT TO 18 U.S.C. §3006A**

Petitioner, **JOSE POLANCO PENALVER**, hereby petitions 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 Respondents. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

BACKGROUND

Petitioner is a Citizen of CUBA, detained and in the Custody of DHS/ICE in the United States, but has been **ordered removed** to CUBA by an Immigration Judge on **4-4-2019**.

Petitioner's removal order is Final, but the Petitioner cannot be removed to CUBA, thus Petitioner remains detained in DHS/ICE custody, and has been confined for a period far longer than the law mandates, as he has been detained over **90-days** in the past, been on supervision with DHS for over **6-years** and now has been detained again over **6-days** and recognized on October 2, 2025 in **Perez v. Noem**, 2025 U.S. Dist. LEXIS 195132 11th Circuit that the 180-day detention period ended years ago not at the new date detained, any other reading would allow indefinite detention or a life long sentence.

CUSTODY

1. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement ("ICE"). Petitioner is detained at Stewart Detention Center in Lumpkin, Georgia where DHS/ICE has contracted the institution to house Immigration detainees such as Petitioner. Petitioner is in 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 to 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 IS9, 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 form for statutory and constitutional challenges to post-removal-period detention.”) INS v. St. Cyr, 533 U.S. 289, 301 (2001) (“**at it's 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 it's 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

3. Venue lies in the Middle District of Georgia as the Petitioner is currently detained in the territorial jurisdiction of this Court, at the Stewart Detention Center in Lumpkin, Georgia. 28 U.S.C. §1391.

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 8 C.F.R. §241.4. Petitioner received a final order of removal on 4-4-2019 . Petitioner was apprehended again by DHS/ICE ~~on 11-24-2025 and he proposed to have a 90-day custody review at which time he would be released~~ on 11-24-2025 where DHS/ICE decided to revoke his supervision and continue to detain him with-out any formal reason, nor was he given notice or an opportunity to contest his detention. Like Zavvar v. Scott, 2025 U.S. Dist LEXIS 175897 Respondents have not been able to obtain any travel documents or find a country to accept him, not to mention that he has never been given notice of which Country they have tried to get to accept him. He is entitled to “**Seek Fear based relief from that Country**”, which would require additional proceedings as well. **CF. Guzman Chavez**, 594 U.S. At 537. ICE's Headquarters Post-order Detention Unit (“HQPDU”) **has not** informed Petitioner that it would release or continue to keep him in custody despite having been detained for over 6-months after a final order of removal. DHS/ICE is violating there own rules and regulations by not allowing the petitioner know why his supervision was terminated and not allowing him to contest his new detention.

The custody review regulations do not provide for appeal from a HQPDU custody review decision. See 8 C.F.R. §241.4(d). **Especially when it has never been made or given to the Petitioner.**

5. No statutory exhaustion requirements apply to Petitioner claim of unlawful detention. Petitioner remains detained without any indication from the United States Government or the Government of Cuba that the Petitioner's repatriation is reasonably foreseeable. A Habeas Corpus petition is proper in light of these facts.

PARTIES

6. Petitioner is a Citizen of Cuba, detained and in the custody of DHS/ICE in the United States, But has been ordered removed to Cuba on **4-4-2019** by an Immigration Judge. It is known that Cuba will not accept the Petitioner nor will it agree to repatriation as he is a Political Refugee.

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 and Naturalization Act(INA). As such, Ms. Bondi has ultimate custodial authority over the petitioner.

8. 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 Ms, Noem is the legal custodian of the Petitioner.

9. Respondent Homer Bryson is the ICE field office director for the Middle District of Georgia for the Stewart Detention center in Lumpkin, Georgia field office of ICE and is Petitioner's immediate custodian, *See Vasquez v. Reno*, 233F.3d 688, 690 (1st Cir. 2000), cert. Denied, 122 S. Ct. 43 (2001).

10. Respondent **Jason Streeval** Warden at the Stewart Detention Center in Lumpkin, Ga where the Petitioner is currently detained under the authority of ICE, alternatively may be considered to be petitioner's immediate custodian.

STATEMENT OF FACTS

11. Petitioner was born in Cuba on  and fled the country to the United States and arrived on **1-26-2006** as a Political refugee.

12. Petitioner was a Permanent Resident until he was ordered removed on **4-4-2019**.

13. Petitioner agreed to the charges of Fraudulent Marriage which ultimately caused an order of removal to be lodged against him.

14. Petitioner was released after a final order of removal on supervision after 91-days which gave him a credit of **91** days plus the **5-years** on Supervision and now **5-days** detained yet again to use in a Habeas Corpus petition and is recognized by various Court's decision's and the instant case dated **October 2, 2025** under **Perez v. Noem**, 2025 U.S. Dist. LEXIS 195132. 11th Circuit.

15. Petitioner was detained by DHS/ICE this time on 11-24-2025 and brought to Stewart Detention Center where he has remained detained.

16. ICE has not released the petitioner or given him notice of why his supervision was terminated and in addition he was never given an opportunity to contest his newest detention.

17. As of today ICE has been unable to remove the petitioner to Cuba or any other Country. Petitioner knows for sure that Cuba will deny and has denied any and all request for travel documents.

18. Petitioner has cooperated fully with all efforts of ICE to remove Petitioner from the United States, even though all parties acknowledge that Cuba will not accept him back to Cuba.

LEGAL FRAMEWORK FOR RELIEF SOUGHT

19. 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-order removal period detention to a period reasonably necessary to bring about the 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 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. In Clark v. Martinez, 543 U.S. 371(2005), the U.S. Supreme Court held that Zadvydas applies to aliens found inadmissible as well as removable.

20. In determining the length of a reasonable removal period, the Court adopted a “preemptively reasonable period of detention.” **After 90 days**, DHS has the discretion to release the detainee under reasonable conditions of supervision. 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-order removal grows, what counts as the reasonably foreseeable future' conversely have to shrink.” Zadvydas, 533 U.S. At 701. ICE's administration regulations also recognize that the HQPDU has a maximum six-month period for determining whether there is a significant likelihood of a alien's removal in the reasonable foreseeable future. See 8 C.F.R. §241.4(k)(2)(ii).

21. An alien who has been detained beyond the presumptive period 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. Hohn Ashcroft*, 2002 U.S. Dist. LEXIS 15797(D. Mass. August 22, 2002) (court “**will likely grant**” after ICE is “**unable to present document confirmation that the 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 is no significant likelihood of petitioner's removal in the reasonably foreseeable future).

CLAIMS FOR RELIEF

COUNT ONE

STATUTORY VIOLATION

22. Petitioner re-alleges and incorporates by reference paragraphs 1 through 21 above.

23. Petitioner's continued detention by respondents is unlawful and contravenes 8 U.S.C. §1231(a)(6) as interpreted by the Supreme Court in *Zadvydas*. Petitioner's 90-day statutory period of detention for continued removal efforts have passed as this is now his 2nd time actually completing and exceeding a 90-day and 180-day removal proceeding while detained by DHS/ICE since being ordered removed by an Immigration Court and Judge on 4-4-2019. Respondent's are unable to remove the Petitioner to Cuba, because there is no repatriation agreement between the United States and Cuba for Political Refugees such as the Petitioner, and Cuba will not accept Political Refugee Cubans from the era that the Petitioner arrived to the United States who have been ordered removed. In the instance of *Martinez*, the Supreme Court held that the continued indefinite detention of someone like the petitioner under such circumstances is unreasonable and not authorized by U.S.C. §1231(a)(6).

COUNT TWO

SUBSTANTIVE DUE PROCESS VIOLATION

24. Petitioner re-alleges and incorporates by reference paragraphs 1 through 23 above.

25. Petitioner's continued detention violates his 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)(**Alien's retain substantive due process rights**).

26. The due process clause of the Fifth Amendment require 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's 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 United States 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 interests 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 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, his continued indefinite detention violates substantive due process.

27. **"Detention is now not driven by legitimate interest of removal at all, but rather detention for the sake of detention, motivated by animus towards, or ill will against the individual, or even a desire to inflict suffering."** C.F. Riverside, 500 U.S. At 56

28. If the non-citizen satisfies the initial burden **"which he clearly has,"** then the Government **"must respond with evidence sufficient to rebut that showing."** Id. If the Government fails to meet its burden, then the non-citizen must be released from detention. See Jennings v. Rodriguez, 583 U.S. 281, 299 (2018)

COUNT THREE

PROCEDURAL DUE PROCESS VIOLATION

29. Petitioner re-alleges and incorporates by reference paragraphs 1 through 28.

30. Under the Due process clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that he/she 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 and 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 towards the continued detention of aliens, raising the risk or 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, 917 F. Supp. 243, 251(S.D.N.Y. 1996) ("Due to community and political pressure, INS, an executive agency, has 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. C99-3042 THE, 199WL521177, (N.D. Cal. Jul. 13, 1999)(Procedural due process requires that aliens release determination be

made by impartial adjudicator due to policy bias.)

COUNT FOUR

PROCEDURAL DUE PROCESS VIOLATION

31. Petitioner re-alleges and incorporates by reference paragraphs 1 through 30.

Respondent's failure to provide him with notice and an opportunity to be heard to contest his removal to a nation that is not his country of origin violates the Due process Clause, the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551-559, 701-706, and the INA and its implementing regulations.

Like Zavvar v. Scott, 2025 U.S. Dist. LEXIS 175897 the petitioner in this case seeks an order directing Respondents to provide him with notice and an opportunity to contest removal to a third country on the basis of fear or likelihood of persecution in such a third country. Petitioner fled from a Communist country given asylum and C.A.T. comparable to that sought in D.V.D. See D.V.D., 2025 WL 1142968, at *24 (enjoining the Government from removing non-citizens to third-party countries without providing various procedural safeguards, including a "meaningful opportunity for the alien to raise a fear of return for eligibility for [Convention Against Torture ("CAT")] protections"). If granted the Habeas relief petitioner asks that it be ordered just as the case of Alic v. Dept of Homeland Security, 2025 U.S. Dist. LEXIS 193793 that Respondents and all their officers, agents, employees, attorneys, and persons acting on their behalf or in concert with them be prohibited from removing Petitioner to a third country without a meaningful opportunity to be heard in reopened removal proceedings with hearing before an immigration Judge.


The question as to whether Petitioner's detention is in violation of the Laws of the United States is one for a Federal Habeas Court to hear. 28 U.S.C. §2241. Accordingly, Petitioner files the accompanying petition for appointment of Counsel and request that this Court order his immediate release from detention/confinement at Stewart Detention Center located at 146 CCA Rd. Lumpkin, GA 31815.

Therefore, Petitioner request that this Court appoint Counsel to represent Petitioner in this Habeas action if he is not immediately released.

Motion FOR:
Also see: Judicial Notice and Memorandum of Law attached explaining that DHS Supervision Counts as custody/detention towards Habeas Corpus Relief attached.
Also see: DHS Inspector General Report w/ exhibits A, B, C, D
1. Attached.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
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JOSE POLANCO PENALVER


Petitioner,

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v.

PAM BONDI

Attorney General;

KRISTI NOEM

Secretary of Department of
Homeland Security;

HOMER BRYSON

U.S. ICE Field Office Director For
The Middle District of Georgia
Field Office, and Warden **STREEVAL**
of Immigration Detention Facility,
Respondent(s)

**MOTION FOR APPOINTMENT OF COUNSEL
PURSUANT TO 18 U.S.C. §3006A**

Petitioner, **JOSE POLANCO PENALVER**, hereby petitions this Court for appointment of Counsel to assist him in his Habeas Corpus petition. In support of his Habeas Corpus petition and complaint for injunctive relief he is incorporating this Motion for appointment of Counsel. Petitioner re-alleges everything stated in the Habeas Corpus submitted with this motion and also alleges as follows:

I. The Court should Exercise It's Discretion to Appoint Counsel

assuming that a Petitioner has shown financial need, a District Court may appoint Counsel in a Habeas proceeding under 28 U.S.C. §3006A(a)(2)(B). Courts have often examined 3 elements when determining whether appointment of Counsel is necessary, the Likelihood of success on the merits, the complexity of the legal issues involved in the case, and the ability of the Petitioner to present the case in light of its complexity. See, eg., **Weygandt v. Look**, 718 F.2d 952, 954 (9th Cir. 1983); **Saldina v. Thornburgh** 775 F. Supp. 507, 511 (D. Conn. 1991.)

Moreover, Petitioner would encounter great difficulty in presenting this Habeas Corpus case alone. The house report on the predecessor to § 3006A(a)(2)(B) recognized that Habeas Corpus proceedings often present “**Serious and complex issues of Law and fact**” That would necessitate the assistance of Counsel. H.R. Rep. No. 1546, 91st Cong. 2D. Sess. (1970), reprinted in 1970 U.S.C.C.A.N. 3982, 3993. In addition the congressional report on § 3006A(a)(B) stated that a Court

should appoint Counsel when “**necessary to ensure a fair hearing.**” Id The complexity of a Habeas Case will pose an especially great obstacle for petitioner if he is not appointed Counsel to represent him as it is already unfair to be put against such educated and well versed individuals as the ones holding him in custody such as DHS/ICE.

In light of the complicated issues involved in Habeas Corpus proceedings and Petitioner's inability to adequately present the case at bar, as well as Petitioner's likelihood of success on the merits, this Court should exercise its discretion to appoint Counsel under 18 U.S.C. §3006a(a)(B).

II. Appointment of Counsel is Necessary Because Discovery is Imperative

The rules governing Habeas proceedings require appointment of Counsel in certain circumstances. Under rule 6(a), 28 U.S.C. Foll. §2254, a Judge must appoint counsel for a petitioner if it is necessary for effective utilization of discovery procedures.” ICE has information and documentation relevant to petitioner's Habeas petition, and without assistance of Counsel, Petitioner will not be able to effectively pursue discovery and, as a result, will not adequately present his claims. The aid of an Attorney is especially important in this case given the Petitioner's lack of familiarity with the legal procedures involved in requesting and obtaining discovery. Moreover, even if Petitioner were to obtain documents in discovery, without the assistance of Counsel, Petitioner would not be capable of analyzing them properly to determine the likelihood of being removed in the foreseeable future.

III. An Evidentiary Hearing or Motions Hearing May be Necessary

Under rule 6(c), 28 U.S.C. Foll. §2254, the Court is required to appoint counsel in a Habeas proceeding if an evidentiary hearing is needed. An evidentiary hearing will likely be necessary in this case. Regardless of any other issues, if an evidentiary hearing is scheduled, the Court must appoint counsel for Petitioner.


For the above reasons, the Court should appoint counsel to assist Petitioner in instant Habeas proceedings challenging Petitioner's detention by ICE, pursuant to the Supreme Court decision in Zadvydas and Martinez.

The rules cited in section II and III typically govern those Habeas Corpus cases brought under §2254.

However, these rules may be applied to Habeas cases that do not fall under §2254- such as those cases arising under §2241- at the discretion of the Court, Rule 1(b). U.S.C. Foll §2254.

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

JOSE POLANCO PENALVER


Petitioner/ Plaintiff

Civil Action No: _____

v.

PAM BONDI

Attorney General;

KRISTI NOEM

Secretary of Department of
Homeland Security;

HOMER BRYSON

U.S. ICE Field Office Director For
The Middle District of Georgia

Field Office, and Warden **STREEVAL**
of Immigration Detention Facility,

Respondent(s)

**MOTION TO PROCEED INFORMA PAUPERIS
PURSUANT TO 18 U.S.C. §3006A and
PURSUANT TO 28 U.S.C. §2241**

COMES NOW, the Petitioner **JOSE POLANCO PENALVER** pro se' and files this Motion in a timely manner.

The Petitioner files this Motion to proceed Informa Pauperis and states as follows:

The defendant is indigent and has no monies, employment or income as he has been detained by DHS/ICE since ~~11-14-2025~~ and has remained in custody at Stewart Detention Center at 146 CCA Rd. Lumpkin, GA 31815. Petitioner Humbly asks this Court to accept this motion and waive any and all cost associated with the proceedings and appointment of Counsel in this case at Bar and allow him to proceed Informa Pauperis as he is indigent.

(See fee waiver form attached)

PRAYER FOR RELIEF

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

1. Assume jurisdiction over the matter;
2. Grant the Petitioner a Habeas Corpus directing the respondent to immediately release petitioner from custody, under reasonable conditions of supervision;
3. Order respondent to refrain from transferring the petitioner out of the jurisdiction of ICE Director's Jurisdiction for the Middle District of Georgia while the petitioner remains in the Respondent's custody; and
4. Order Respondents and all their officers, agents, employees, attorneys, and persons acting on their behalf or in concert with them be prohibited from removing Petitioner to a third country without a meaningful opportunity to be heard in reopened removal proceedings with hearing before an immigration Judge especially once released on supervision.
5. Award Petitioner's Attorney fees and cost under the Equal Access to Justice Act("EAJA"), as amended, 5 U.S.C. §2412, and on other basis justified under law; and
6. Grant any other form of relief this court deems proper.

X



November ~~30~~ -2025

JOSE POLANCO PENALVER

DETAINED



Stewart Detention Center

146 CCA Rd.

Lumpkin, GA 31815

CERTIFICATE OF OATH

I Swear under Penalty of Perjury from the United States of America if this Motion is found to be false, frivolous, or made in bad faith. I also swear that this motion is true to the best of my knowledge.

I further state that this motion is not a copy of a motion that has been ruled on nor has it been deposed of by this Court.

I Swear that this motion has been prepared by Jidier Saavedra of Immigration Connection **and everything that is said in the following motion is true.**

Person who assisted in preparing motion for Petitioner:

x Jidier Saavedra Jidier Saavedra of Immigration Connection November-30-2025

x 

November-30-2025

JOSE POLANCO PENALVER

DETAINED 

Stewart Detention Center

146 CCA Rd.

Lumpkin, GA 31815

CERTIFICATE OF SERVICE

I Swear, that a true and correct copy of the following Motion has been placed in the hands of an institution official to be furnished and forwarded by first class mail to the following parties listed below on November 30, 2025

1. **U.S. DISTRICT COURT**
For the Middle District of Georgia
Columbus Division
P.O. BOX 124
Columbus, GA 31902

2. **Office Of Chief Counsel DHS/ICE**
Stewart Detention Center
146 CCA Rd.
Lumpkin, GA 31815

3. **Department of Homeland Security**
H.Q.P.D.U.
500 12th Street SW
Washington, DC 20536

x 

November- 30-2025

JOSE POLANCO PENALVER

DETAINED 

Stewart Detention Center

146 CCA Rd.

Lumpkin, GA 31815