

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

Misael Diaz

At 
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

Warden JASON STREEVAL Stewart 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, Misael Diaz, 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 on 5-26-2004, 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 **20-years** and now has been detained again over **60-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, also Krechmar v. Parra, 2025 U.S. Dist. LEXIS 258292 and the New 2026 Case of a Cuban National Beltran v. Ripa, 2026 U.S. Dist. LEXIS 273 2:25-cv-01174-SPC-NPM 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.)

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 5-26-2004.

5. Petitioner was apprehended again by DHS/ICE on 11-6-2025, and was never formally given notice that his supervision order was being terminated nor was he given an opportunity to contest his detention which violates his due process rights. “**NO DECISION WAS EVER MADE TO PETITIONER**” nor was he given notice or an opportunity to contest his detention. Like *Zavvar v. Scott*, 2025 U.S. Dist LEXIS 175897

6. 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. **The office of Inspector general recognizes that Cuba is a Country that is un-cooperative in repatriation.** (See Exhibit A, B, C, D)

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.**

7. 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

8. 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 **5-26-2004** by an Immigration Judge. It is known that Cuba did not accept the Petitioner nor will it agree to repatriation as he is a Political Refugee from 1999.

9. 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.

10. 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.

11. 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 **Yasquez v. Reno**, 233F.3d 688, 690 (1st Cir. 2000), cert. Denied, 122 S. Ct. 43 (2001).

12. Respondent **Jason Streeval** Warden at the Stewart Detention Center in Lumpkin, Ga , alternatively may be considered to be petitioner's immediate custodian.

STATEMENT OF FACTS

13. Petitioner was born in Cuba on  and fled the country to the United States and arrived on **05-17-1999** as a Political Refugee.

14. Petitioner was a Permanent Resident until he was ordered removed on **5-26-2004**.

15. Petitioner agreed to the charges of Possession of Marijuana which caused his removal order.

16. Petitioner was released after a final order of removal on supervision after his 90-days which gave him a credit of **90+** days plus the **20-years** on Supervision and now **60-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, **Beltran v. Ripa**, 2026 U.S. Dist. LEXIS 273 2:25-cv-01174-SPC-NPM to apply as the 180-day detention period ended years ago not now at his newest detention for no reason, any other reading will allow for indefinite detention or cruel & unusual punishment.

17. Petitioner was detained by DHS/ICE this time on 11-6-2025 and brought to Stewart Detention Center where he has remained detained to this day.

18. 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.

19. Petitioner has cooperated fully with all efforts of ICE to remove Petitioner from the United States.

LEGAL FRAMEWORK FOR RELIEF SOUGHT

20 . 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 all aliens.

21. 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 admin 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).

22. 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). (See Exhibit A) DHS Inspector general Report, (Exhibit. B, C) OIG 19-28 Pg 7-8,(Exhibit D) OIG 19-28 Pg 29

CLAIMS FOR RELIEF

COUNT ONE

STATUTORY VIOLATION

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

24. 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 and 180-day removal proceeding while detained by DHS/ICE since being ordered removed by an Immigration Court and Judge on 5-26-2004. 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 Clark v. 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

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

26. 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**).

27. 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.

28. In Alba v. Campell. The Eleventh Circuit held that ICE must prove that removal is likely; otherwise, release is required.

29. **“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.

30. If the non-citizen satisfies the initial burden 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

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

32. 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.)

33. **Detainees in Petitioners position are not required to show “the absence of any prospect of removal” to be eligible for relief. Zadvydas, 533 U.S. at 702(Emphasis in the original).**

Their detention does not remain lawful just because their custodians act in good faith. Id

COUNT FOUR

PROCEDURAL DUE PROCESS VIOLATION

34. Petitioner re-alleges and incorporates by reference paragraphs 1 through 33.

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 in the Southern District of Florida Zavvar v. Scott, 2025 U.S. Dist. LEXIS 175897 where ICE had not met its Burden it was ordered to release the petitioner with instructions. The petitioner in this case seeks the same 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 and the 4th and 5th Amendment 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.

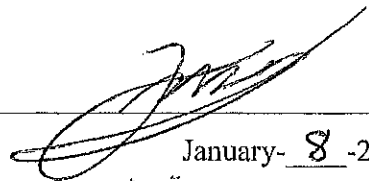
Therefore, Petitioner request that this Court appoint Counsel to represent Petitioner in this Habeas action if he is not immediately released.

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



January- 8 -2026

Misael Diaz

A#



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 January 8, 2026

1. U.S. DISTRICT COURT

For the Middle District of Georgia

Columbus Division

P.O. BOX 124

Columbus, GA 31902

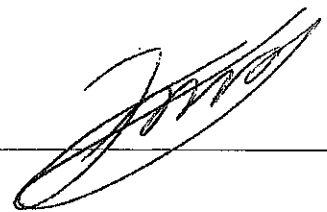
2. Office Of Chief Counsel DHS/ICE

Stewart Detention Center

146 CCA Rd.

Lumpkin, GA 31815

x _____



January- 8 -2025

Misael Diaz

A#



Stewart Detention Center

146 CCA Rd.

Lumpkin, GA 31815