**UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**LUIS MAURICIO MARTINEZ**

*Petitioner-Plaintiff,*

**v.**

**JL JAMISON**, in his official capacity as warden of The Philadelphia Federal Detention Center;

**BRIAN MCSHANE**, is the Acting Philadelphia Field Office Director for Immigration and Customs Enforcement's ("ICE") Enforcement and Removal Operations

**TODD LYONS**, in his Official Capacity as Acting Director of Immigration and Customs Enforcement;

**KRISTI NOEM**, in her official capacity as: Secretary of the Department of Homeland Security;

**DHS,** THE U.S. DEPARTMENT OF HOMELAND SECURITY;

**PAMELA BONDI**,: Attorney General of the United States

*Respondents-Defendants.*

**Verified Petition for Writ of Habeas Corpus**

**Docket No. 26-cv-718**

**Administrative Number:** [redacted]

**PETITIONER'S REPLY TO THE GOVERNMENT'S ANSWER IN OPPOSITION TO HIS PETITION FOR A WRITE OF HABEAS CORPUS**

## A. INTRODUCTION

Petitioner, Luis Mauricio Martinez, filed his petition for habeas corpus on or about February 4, 2026, after he had been detained three weeks subsequent to his last ICE check in. Petitioner relies on the procedural history presented in that petition, and will not restate the facts in this reply. Petitioner wishes to address the arguments presented by the government in its response dated February 18, 2025.

## B. PETITIONER'S DETENTION IS UNLAWFUL UNDER 8 USC SECTION 1231, IS VIOLATIVE OF 8 CFR SECTION 241.4, HAS VIOLATED HIS DUE PROCESS RIGHTS UNDER THE FIFTH AMENDMENT AND HAS VIOLATED THE ADMINISTRATIVE PROCEDURES ACT

Respondent government (hereinafter referred to as "government") argues that the Petitioner's detention is lawful under the above-cited statutory provision, stating that "an alien with a final order of removal is subject to the detention and removal standards set forth at 8 USC Section 1231." Government's Answer at page 7. The government acknowledges that the Petitioner has a 5th Amendment claim under **Zavydas v. Davis, 533 US 678 (2001),** decided four years prior to the order of removal was issued against him in February of 2005, but dismisses the Petitioner's claim that his prolonged detention violates the due process provisions of the Fifth Amendment by noting that "while ICE previously released (the Petitioner) on an order of supervision, ICE has determined that it is appropriate to move forward with executing his final order of removal and detained him to facilitate that process." Government Answer at page 8.

It is respectfully submitted that the government, while authorized to detain an individual for a certain limited period of time until it can effectuate removal, the suggestion that re-

detaining him under these circumstances approximately twenty one (21) years after his order of removal was entered and became final is a gross violation of his constitutional right and does not comply with the requirements of **Zavydas, supra.** The government, in its answer, simply notes that:

> **When removal is not effectuated within the 90 day statutory period The government may continue to detain an alien-or to detain him again In the future for the purpose of executing the order-and there is no Statutory limit on how long that post-removal detention period may Last.**
>
> **Johnson v. Arteaga-Martinez 596 US 573,579 (2022)**

In that case, the Respondent had been removed in 2012, returned that same year without apprehension, and was then re-detained in 2018, six years later. It is respectfully submitted that the facts of that case are clearly distinguishable from the one at bar, since the Respondent in **Arteaga Martinez** had been physically removed from the United States and returned, while the instant Petitioner's removal order has never been effectuated. Furthermore, the Respondent in **Arteaga Martinez** was re-detained six years after his re-entry, whereas the instant Petitioner was re detained twenty one years after his last contact with the immigration service. Furthermore, there is no indication in the **Arteaga Martinez** case that the Respondent therein was under any order of supervision, or had any contact with the government between his re entry in 2012 and his re detention in 2018. In the case at bar, the Petitioner has been under an Order of Supervision for over a decade, has been regularly reporting to ICE and has been in full compliance with the government's orders. He was, in fact, most recently at an ICE check in with undersigned attorney in January, approximately three weeks prior to his detention. Therefore, it is respectfully submitted that the government cannot argue that **Arteaga Martinez** stands for the

wholesale proposition that the government can wait approximately twenty years before deciding to detain an individual when it has made no reasonable efforts to remove him during that two decade period of time, and then, as the government argues detain him indefinitely.

Furthermore, the government continues to state that the Petitioner has not "met his burden in demonstrating that there is not a significant likelihood of removal in the foreseeable future," referencing **Zavydas.** Government Answer at page 8. It is difficult to understand how the government can argue that it is now in a position to "imminently" remove the Petitioner after not having been able or willing to do so for the past two decades. The government has provided no evidence that would establish changes circumstances, or any additional reasons as to why, in 2026, they have finally decided to remove him from the United States.

As noted above, the Petitioner herein was placed under an Order of Supervision or an OSUP over ten (10) years ago, and closer to fifteen (15.) The regulations which govern the condition of OSUP have been codified at **8 CFR Section 241.5(a) (1)-(5)** Specifically, **8 CFR Section 241.4(1)** sets out the process ICE must follow in revoking a noncitizen's OSUP. Paragraph (1) which is entitled "Revocation of Release" states that any alien whose OSUP is revoked "will be notified of the reasons for revocation of his or her release or parole" and "will be afforded an initial informal interview promptly after his or her return to 9ICE) custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification," **Id at Section 241.4(1)** It is respectfully submitted that in this case, the Petitioner was given no opportunity to address the change in circumstances that would have warranted the revocation of his OSUP, and that none was given to him. The government seems to have glossed over the procedural requirements, which violate both his Fifth Amendment rights, and also represents a violation of the Administrative Procedures Act .

Here, the Petitioner is being detained because of an immigration officer's determination that there is a reasonably foreseeable probability that he will be removed in the near future. There is no allegation of any changed circumstances and, if anything, the only changed circumstances would be favorable to the Petitioner. In the past twenty years, he has established two new possible forms of relief, including an approved immigrant petition filed on his behalf by his US citizen mother, as well as an application for asylum that is filed an pending. At no part of its Answer has the government indicated that it has considered, and prepared for, the Petitioner to litigate his application for asylum relief, and speaks only to the government's desire to remove the Petitioner imminently. It is difficult to understand how this would be possible, given the fact that the Petitioner still retains the right to litigate his application for asylum. Therefore, any suggestion that removal is "imminent" is without merit.

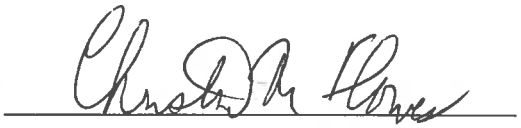
Finally, there are no facts to suggest that the Petitioner's detention at this point is required to assure his presence at the moment of an allegedly "imminent" removal. As noted above, for well over a decade, this Petitioner has complied with all of the requirements set out by the government, faithfully attending his ICE check ins. He has no criminal record, and has extensive family ties in the area, including his mother who is a US Citizen and who, as noted above, filed a petition on his behalf which has been approved and which has a priority date that is swiftly approaching.

**C. CONCLUSION**

For the foregoing, reasons, Petitioner argues that the appropriate remedy here is his immediate release from custody, in order to rectify the violation of the rights described, supra.

The government has failed to establish that those rights were not violated, has failed to establish that the Petitioner was given notice of why his Order of Supervision was revoked, has failed to establish whether the government is in fact in a position to remove him "imminently," and has failed to establish any legitimate reason for having re detained him over twenty years after his order of removal became final. Wherefore, and for the reasons stated above, Petitioner respectfully requests that his Petitioner for Habeas Corpus be granted.

Respectfully submitted



CHRISTINE M. FLOWERS, ESQUIRE

JOSEPH M ROLLO AND ASSOCIATES PC

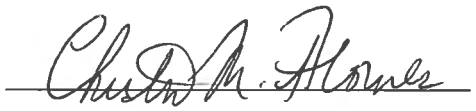
ATTORNEYS FOR PETITIONER

Dated: February 23, 2026

CERTIFICATE OF SERVICE

I certify that on this date I filed the foregoing Reply to the Government's Answer In Opposition to the Petition for Habeas Corpus via the court CM/ECF System, thereby making it available for viewing and download for all parties in this case.

Dated: February 24, 2026



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