

FILED

February 07, 2026

JUDGE LEON SCHYDLOWER

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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: Elizabeth Y. Martinez
DEPUTY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ALEJANDRO ENRIQUE BARCENA

Petitioner,

Civil Action No: _____

FEB 06 2026
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: [Signature]
DEPUTY CLERK

v.

PAM BONDI

Attorney General;

KRISTI NOEM

Secretary of Department of

Homeland Security;

U.S. ICE Field Office Director For

The Western District of Texas Field Office,

Warden ERO EL Paso E. Montana Detention Facility,

Respondent(s)

EMERGENCY
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

EP 26CV0362

Petitioner, Alejandro Enrique Barcena, 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 1/20/23

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 31-days in the past, been on supervision with DHS for over 11-years and now has been detained again over 84-days and recognized on October 2, 2025 in Perez v. Noem, 2025 U.S. Dist. LEXIS 195132 and the New 2026 Case's of Cuban Nationals Beltran v. Ripa, 2026 U.S. Dist. LEXIS 273 2:25-cv-01174-SPC-NPM and Gonzalez v. Noem, 2026 U.S. Dist. LEXIS 2007 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 the El Paso E. Montana Detention Facility 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

3. 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 2013. Petitioner was apprehended again by DHS/ICE on 11-5-2015, 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.

4. 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. **The office of Inspector general recognizes that Cuba is a Country that is un-cooperative in repatriation.**(See Exhibit A)

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,

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 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. Warden at the El Paso E. Montana Detention Facility 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 ~~01-12-2005~~ and fled the country to the United States and arrived on 1-12-2005 as a Political Refugee.

12. Petitioner was a Permanent Resident until he was ordered removed on 2013.

13. Petitioner agreed to the charges of ~~document production~~ ^{poss w/ intent to distribute} which caused his removal order.

14. Petitioner was released after a final order of removal on supervision after his 90-days which gave him a credit of ~~90~~ ²¹ days plus the 11-years on Supervision and now 84-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, to apply for a Habeas Corpus, any other reading will allow for indefinite detention or cruel & unusual punishment.

15. Petitioner was detained by DHS/ICE this time on 11-5-2025 and brought to the ~~Stewart Detention Center~~ ^{South Florida} Detention Center and then transferred to the El Paso E. Montana Detention Facility where he has remained detained ever since.

16. To date however, ICE has not released the petitioner.

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 all aliens.

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 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).

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). (See Exhibit A) DHS Inspector general Report,

(Exhibit B OIG 19-28 PG 7-8, (Exhibit C OIG 19-28 PG 29

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 and the 180-day removal proceeding while detained by DHS/ICE since being ordered removed by an Immigration Judge on 2013. Respondents 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

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

28. **“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

29. Respondents are taking Cuban such as Petitioner to the El Paso Detention Center and forcing them to cross the border illegally in the middle of the night, providing no safe guard, protections or legal documents against their will.

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 of 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.)

32. **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

33. Petitioner re-alleges and incorporates by reference paragraphs 1 through 32.

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

See Office of Inspector General report attached
stating Cuba is a uncooperative Country in Repatriation or removal

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 an agent at Immigration Connection and everything that is said in the following motion is true.

x 

date January-29-2026

Alejandro Enrique Becerra

A# 

El Paso E. Montana Detention Facility

~~8915 Montana Ave. Suite 100~~

El Paso, TX 79925

6920 Digital Rd
El Paso, TX 79936

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 29, 2026

1. U.S. DISTRICT COURT

For the Western District of Texas

El Paso Division

525 Magoffin Ave, Suite 105

El Paso, TX 79901

2. Office Of Chief Counsel DHS/ICE

El Paso E. Montana Detention Facility

8915 Montana Ave. Suite 100

El Paso, TX 79925

x 

date January -29 -2026

Alejandro Enrique Barcena

A# 

El Paso E. Montana Detention Facility

~~8915 Montana Ave. Suite 100~~

~~El Paso, TX 79925~~

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EL Paso, TX 79936