

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

REYNOL MARTINEZ DE LUNA,

Petitioner,

V.

THOMAS BERGAMI, Warden of the Prairieland Detention Center, JOSH JOHNSON, Acting Director of Immigration and Customs Enforcement, Enforcement and Removal Operations, Dallas Field Office, KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, United States Attorney General, in their official capacities,

Respondents.

Civil Action No. 3:25-cv-1570

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Reynol Martinez De Luna (Petitioner or Mr. Martinez De Luna) files this petition seeking a Writ of Habeas Corpus releasing him from detention immediately, or in the alternative, requiring Respondents to afford him a bond hearing in which the Respondents bear the burden of proving by clear and convincing evidence that Petitioner is not a flight risk or a danger to the community. Respondents have detained Petitioner since November 11, 2022 for his removal proceedings which have not concluded. Petitioner contends that notwithstanding his categorization as an aggravated felon under the Immigration and Nationality Act (INA), his prolonged detention is unreasonably long and unconstitutional, and requires his immediate release or that Respondents afford him a bond hearing in accordance with the United States Constitution.

2. Mr. Martinez De Luna is a native and citizen of Mexico. More than thirty years ago, on March 1, 1993, he was admitted to the United States as a conditional resident, because he had

married a U.S. citizen. Almost two years later, on February 16, 1995, he adjusted his status to permanent resident. On May 5, 2005, he pleaded guilty to violating 18 U.S.C. § 1708 and on October 14, 2005, U.S. District Judge William Wayne Justice sentenced him to five years of probation. Then on September 9, 2019, Petitioner pleaded guilty to conspiracy to transport illegal aliens in violation of 8 U.S.C. § 1324 and he was sentenced to eighteen months of prison on May 5, 2021.

3. On November 22, 2022, the Department of Homeland Security (DHS) initiated removal proceedings against Petitioner charging him as deportable as an aggravated felon based on his transporting conviction. At a later date, the DHS issued a superseding Notice to Appear.

4. Petitioner has appeared with counsel at all of his hearings and is contesting his removability. Twice he has appealed the immigration judge's removal order and each time the Board of Immigration Appeals (BIA or Board) has ruled in part in Petitioner's favor and returned the case to the immigration court. To date, pleadings have not closed and the immigration judge has not made a final determination as to Petitioner's removability. Further, no final hearing has been set for Petitioner to present his applications for relief from removal.

5. Mr. Martinez De Luna has not sought a bond hearing before the Immigration Judge because his conviction subjects him to mandatory detention. Notwithstanding the aggravated felony charge, he maintains that he is eligible for relief from removal.

6. As set forth herein, Mr. Martinez De Luna submits that his prolonged detention pending a final decision in his removal proceedings is unreasonable and unjustified. Petitioner's continued detention is unlawful and unconstitutional because he maintains he is not ultimately removable and is not a flight risk or danger to the community.

CUSTODY

7. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Prairieland Detention Center, an immigration detention facility, in Alvarado, Johnson County, Texas. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION AND VENUE

8. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. § 1331; 28 U.S.C. § 2241; the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I, § 2.

9. The proper venue for a habeas petition under § 2241 is the petitioner's district of confinement. Venue in this case lies in the Northern District of Texas because Petitioner is detained in Alvarado, Johnson County, Texas.

PARTIES

10. Mr. Martinez De Luna is a citizen and national of Mexico. He is a lawful permanent resident. He is the father of two U.S. citizen children and stepfather to another U.S. citizen. Petitioner is married to a permanent resident and his mother is also a permanent resident.

11. Respondent Thomas Bergami is the warden of the Prairieland Detention Center (PDC). He is an employee of LaSalle Corrections, which operates the PDC pursuant to an Intergovernmental Services Agreement with Immigration and Customs Enforcement (ICE). As the warden, Mr. Bergami is the immediate custodian of Mr. Martinez De Luna. Respondent Bergami is sued in his official capacity.

12. Respondent Josh Johnson is the Acting Director for the Dallas Field Office of the ICE Enforcement & Removal Operations (ERO). In this capacity, he is responsible for the administration of immigration laws and the execution of immigration confinement and the

institution of removal proceedings in North Texas, the jurisdiction where Mr. Martinez De Luna is confined. Respondent Johnson is therefore a custodian of Mr. Martinez De Luna and is authorized to release him. He is sued in his official capacity and his address is 8101 North Stemmons Freeway, Dallas, Texas 75247.

13. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. Under the Homeland Security Act of 2002 (Pub. L. 107-296), the Department of Homeland Security assumed all of the functions of the former Immigration and Naturalization Service (INS). Section 441 of the Homeland Security Act created ICE and authorizes ICE to enforce the immigration laws. As a result, in her official capacity, Secretary Noem has responsibility for the administration of the immigration laws under 8 U.S.C. § 1103. She is empowered to initiate removal proceedings against Mr. Martinez De Luna and to detain him. She is his legal custodian and is sued in her official capacity.

14. Respondent Pamela Bondi, is the Attorney General of the United States. The Attorney General has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and oversees the Executive Office of Immigration Review (EOIR). She is Mr. Martinez De Luna's legal custodian and is sued in her official capacity.

FACTS AND PROCEDURAL HISTORY

15. Mr. Martinez De Luna is a citizen and national of Mexico.

16. On March 4, 1992, he married Julissa M. Nevarez, a U.S. citizen. That same year, Ms. Nevarez filed a family visa petition for Petitioner so he could immigrate to the United States. The former INS approved the petition and forwarded it to the U.S. Department of State so that Petitioner could apply for his immigrant visa (permanent residence).

17. The U.S. Department of State issued Petitioner an immigrant visa on March 1, 1993 and he entered that same day as a conditional permanent resident. Exh. A (superseding Notice to Appear).

18. Conditional permanent resident status is accorded to spouses, fiancées or fiancés of U.S. citizens (or spouses of permanent residents) who immigrate based on a marriage that was entered into less than twenty-four months before the noncitizen obtains such conditional status by virtue of the marriage. 8 U.S.C. §§ 1186a(a)(1) and (h)(1). Conditional permanent residence and lawful permanent residence are distinct statuses. The latter are entitled to reside in the United States indefinitely; the former must take affirmative steps to maintain their status, such as filing a petition with the DHS to remove the “conditions” on their status and appearing for a personal interview. 8 U.S.C. §§ 1186a(c)(1)(A)-(B).

19. On February 16, 1995, the former INS changed Petitioner’s status to a lawful permanent resident. Exh. A.

20. On May 5, 2005, Mr. Martinez De Luna pleaded guilty to violating 18 U.S.C. § 1708, and on October 14, 2005, U.S. District Judge William Wayne Justice sentenced Petitioner to five years of probation. Then on September 9, 2019, Petitioner pleaded guilty to conspiracy to transport illegal aliens in violation of 8 U.S.C. § 1324 and he was sentenced to eighteen months of prison on May 5, 2021.

21. On November 11, 2022, the DHS took custody of Petitioner and detained him at the PDC. That same day, the DHS initiated removal proceedings against Petitioner by serving him with a Notice to Appear charging him as removable for having an aggravated felony conviction as defined in 8 U.S.C. §§ 1101(a)(43)(N) and (U). The DHS subsequently issued a superseding

Notice to Appear on November 28, 2022 which was filed with the immigration court on December 13, 2022.

22. The immigration court scheduled an initial master calendar hearing on January 9, 2023. Undersigned counsel entered his notice of appearance and requested to appear by Webex video because he could not travel. Although Petitioner appears by video, the immigration court requires the attorney's presence even if they are out of town. Because undersigned counsel could not appear in person, the hearing was reset to January 23, 2023.

23. At the January 23, 2023 hearing, Petitioner, through his attorney who appeared in court, objected to the Notice to Appear because it was not legally compliant, denied the charge of removability, and objected to the record of conviction submitted by the DHS. The immigration judge heard arguments and re-set the case to February 9, 2023 for the DHS to submit conviction documents.

24. At the February 9, 2023 hearing, Petitioner's counsel appeared in court and renewed his objections and argued that, in the alternative, Petitioner remains eligible for relief even if found removable as an aggravated felon. The immigration judge reset the case to March 7, 2023 to announce his decision.

25. Prior to the March 7, 2023 hearing, Petitioner filed with the immigration court his applications for relief, namely an application for adjustment of status and an application for a waiver of inadmissibility.

26. Undersigned counsel traveled to Dallas on March 7, 2023 for Petitioner's master hearing. The hearing was set for 8:30 A.M. and counsel arrived promptly. He waited until noon when the immigration judge's assistant came out of the courtroom and handed counsel the immigration judge's decision overruling counsel's objections, and finding Petitioner removable

and ineligible for relief. The decision is dated March 2, 2023 but counsel did not receive it until March 7, 2023.

27. On March 21, 2023, Petitioner appealed to the Board of Immigration Appeals (BIA). His brief was due on May 15, 2023 and he filed his brief on May 11, 2023.

28. On October 3, 2023, the BIA requested supplemental briefing on the issue of whether a Notice to Appear that lists a time and/or date that falls outside the court's normal hours of operation complies with the INA.

29. On October 17, 2023, the DHS requested a remand in lieu of supplemental briefing and to cure the defect(s) in the Notice to Appear. Petitioner filed his supplemental brief on October 18, 2023. On October 26, 2023, the BIA sustained Petitioner's appeal finding that the Notice of Appearance did not comply with the INA and remanded the case to the immigration court.

30. The immigration court then set a hearing for January 2, 2024, giving Petitioner's counsel only five-days' notice to appear in person in Dallas. Counsel moved to appear by Webex video. The immigration court did not rule on Petitioner's counsel's motion and so Petitioner's associate had to travel at the last minute to Dallas.

31. Previously, the DHS had filed an "amended" Notice to Appear on December 29, 2023. Petitioner objected to the Notice to Appear, denied the charge of removability, and argued that he remained eligible for relief. The immigration judge indicated that he was inclined to re-affirm his prior decision that the Notice to Appear is legally compliant, and that Petitioner is removable and ineligible for relief. But he afforded Petitioner ten days to submit a brief explaining his eligibility for relief.

32. On January 10, 2024, Petitioner, through counsel, filed a motion to terminate arguing the Notice to Appear was not legally compliant.

33. At the January 25, 2024 hearing, the court heard arguments from the parties and set a final (individual) hearing for March 11, 2024 at 1 P.M. The Immigration Judge indicated that he might issue a decision before the hearing if the issues were dispositive.

34. Prior to the final hearing, Petitioner's counsel filed all the necessary supporting documents for the final hearing: the receipts of the applications, the affidavit of support and tax returns, documentation demonstrating the equities in Petitioner's favor, and the witness list.

35. On March 11, 2024, Petitioner's counsel appeared at the Dallas immigration court along with Petitioner's wife and his two children who are witnesses in the case.

36. Sometime after 4 P.M., the immigration judge's assistant called counsel to come into the court. The judge explained that after reviewing the BIA's remand decision, he determined that he first needed to rule on Petitioner's motion to terminate before proceeding to a final hearing. If the motion was granted, Petitioner's removal proceedings would be terminated. If the motion was denied, his prior finding that Petitioner is removable and ineligible for relief stood. Although witnesses had traveled to Dallas that day to provide testimony, he refused to take any testimony.

37. On March 28, 2024, the immigration judge issued his decision denying Petitioner's motion to terminate and ordering him removed.

38. On April 15, 2024, Petitioner appealed the immigration judge's decision to the BIA a second time.

39. The BIA produced the transcript of the proceedings on May 7, 2024, but did not issue a briefing notice.

40. On September 4, 2024, Petitioner moved the BIA to set an expedited briefing schedule because the delay was unreasonable and unconscionable.

41. On September 9, 2024, the Board issued a briefing schedule. Petitioner filed his brief on September 30, 2024 and the DHS filed its brief on October 21, 2024.

42. On January 27, 2025, the DHS filed a motion requesting that the BIA expedite its decision. But the motion was incorrectly filed with the immigration court and so it was rejected.

43. On March 6, 2025, the BIA concluded, among other things, that the DHS's amendments to the Notice to Appear did not sufficiently cure the legal deficiencies in the Notice to Appear and the Notice to Appear, therefore, was in violation of the INA. The Board again remanded the case to the immigration court.

44. Removal proceedings continue and to date have not been concluded.

45. Petitioner remains detained more than thirty months after his removal proceedings were initiated.

46. Petitioner has not delayed or prolonged his proceedings by seeking continuances or engaging in other dilatory tactics.

47. Petitioner maintains that he is not deportable because he remains eligible for relief from removal.

48. Mr. Martinez De Luna has no other remedy at law but to seek habeas relief from this Court.

49. No Article III court has addressed the merits of Petitioner's claim for release.

GROUND FOR RELIEF

FIRST GROUND FOR RELIEF: VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT AND REGULATIONS

50. The foregoing allegations are repeated and re-alleged as though fully set forth herein.

51. Petitioner has now been detained for over thirty months, and his removal proceedings are still not concluded. Although subject to mandatory detention under 8 U.S.C. § 1226(c), the statute does not permit Petitioner's detention with no end in sight.

52. Both the DHS Respondents and the Attorney General, who oversees the immigration courts and the Board of Immigration Appeals, have unreasonably and unlawfully delayed the proceedings by failing to cure obvious legal deficiencies in the Notice to Appear and/or failing to expedite Petitioner's appeal.

53. Neither the INA nor the regulations authorize Petitioner's prolonged and unreasonable detention pending his removal proceedings.

**SECOND GROUND FOR RELIEF:
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT**

54. The foregoing allegations are repeated and re-alleged as though fully set forth herein.

55. The Due Process Clause of the Fifth Amendment to the United States Constitution provides that "[n]o person shall . . . be deprived of life, liberty, or property without due process of law."

56. As a noncitizen physically present in the United States, Mr. Martinez De Luna is entitled to Due Process Clause protections against deprivations of liberty.

57. Freedom from detention "lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Civil detention is permitted only under narrow circumstances in which there is legitimate governmental interest at stake. *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)); *Kambo v. Poppell*, 2007 WL 3051601, *10 (W.D. Tex. Oct. 18, 2007) at *18 (there must be a sufficiently compelling government interest ... that outweighs the individual's constitutionally

protected interest in avoiding physical restraint."). Moreover, detention must be imposed by constitutionally adequate procedural safeguards. *Demore v. Kim*, 538 U.S. 510, 523-24 (2003) (Kennedy, J., concurring).

58. In *Zadvydas v. Davis*, the Supreme Court held that § 1231(a)(6) limits the Government's authority to detain a noncitizen to a period reasonably necessary to bring about the noncitizen's removal. *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Court noted that the statute does not permit indefinite detention; the "reasonably necessary" detention period should be limited to six months after the removal order becomes final. *Id.* at 697-702. Under *Zadvydas*, it is presumptively unreasonable, and thus unconstitutional, for the DHS to detain a noncitizen for more than six months after a final order of removal.

59. In *Demore v. Kim*, the Supreme Court considered a constitutional challenge to the mandatory detention provision in § 1226(c). *Demore v. Kim*, 538 U.S. 510 (2003). That provision requires the mandatory detention of certain noncitizens convicted of crimes and who are in removal proceedings. The Supreme Court upheld § 1226(c)'s mandatory detention provision but did so with the specific understanding that the statute authorized mandatory detention only for the "limited period of [the alien's] removal proceedings," which the Court estimated "lasts roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal" his removal order to the BIA. *Id.* at 530.

60. Respondents have detained Mr. Martinez De Luna for over thirty (30) months, well beyond the reasonably necessary period established in *Zadvydas*. Petitioner has attended every hearing and has complied with every deadline imposed by the Immigration Court and the BIA. He prepared and filed his applications for relief and appeared in court with his witnesses ready to proceed. Further he has applied for a waiver of inadmissibility and adjustment of status and is

eligible for relief. Petitioner has done nothing to prolong his detention. Mr. Martinez de Luna's continued detention violates his Due Process rights under the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Mr. Martinez de Luna respectfully requests that the Court:

- a. Assume jurisdiction over this matter;
- b. Issue an order directing Respondents to show cause why the writ should not be granted;
- c. Issue a Writ of Habeas Corpus ordering Respondents: a) to release Mr. Martinez de Luna immediately on his own recognizance or under parole, a low bond or reasonable conditions of supervision, or b) in the alternative, order an individualized bond hearing for Petitioner where the Respondents bear the burden of demonstrating by clear and convincing evidence that Petitioner is not a flight risk or a danger to the community.
- d. Grant reasonable attorneys' fees, costs, and other disbursements pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- e. Grant such further relief as the Court deems just and proper.

Dated: June 19, 2025

Respectfully Submitted,

By: /s/ Javier N. Maldonado

Javier N. Maldonado

Texas Bar No. 00794216

Javier N. Maldonado

Law Office of Javier N. Maldonado, PC

8620 N. New Braunfels, Ste. 605

San Antonio, TX 78217

Tel: 210-277-1603

Fax: 210-587-4001

Email: jmaldonado.law@gmail.com

ATTORNEYS FOR REYNOL MARTINEZ DE LUNA

VERIFICATION OF COUNSEL

I, Javier N. Maldonado, hereby certify that I am familiar with the case of Reynol Martinez De Luna and that the facts as stated above are true and correct to the best of my knowledge and belief.

/s/ Javier N. Maldonado
Javier N. Maldonado