

JUDGE LEON SCHYDLOWER

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

for the

Western District of Texas

El Paso Division



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WESTERN DISTRICT OF TEXAS
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Case No. _____

EP 26CV0368

BISMARCK MARTINEZ

Petitioner

v.

KRISTI NOEM, Secretary of the Department of
Homeland Security, PAMELA JO BONDI, Attorney
General, WARDEN, ERO El Paso Camp East Montana

Respondent

(name of warden or authorized person having custody of petitioner)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Bismarck Martinez Lopez
(b) Other names you have used: _____
2. Place of confinement:
(a) Name of institution: ERO CAMP EAST MONTANA
(b) Address: 6920 Digital Road
El Paso, TX 79936
(c) Your identification number:
3. Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☐ Other - explain: _____
4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you: _____
(b) Docket number of criminal case: _____
(c) Date of sentencing: _____
☒ Being held on an immigration charge
☐ Other (explain): _____

BACKGROUND

PETITIONER, Bismarck Martinez Lopez, 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 Respondent.

In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

CUSTODY

1. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement ("ICE"). Petitioner ~~has~~ is detained at The Ero Camp East Montana in the City of El Paso, Texas. ICE has contracted with this institution to house immigration detainees such as Petitioner.] Petitioner is under direct control of Respondent and their agents.

JURISDICTION

This action arises under the Constitution of the United States, 28 U.S.C. § 2241 (c)(1), and 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. I § 9, cl. 2 of the United States Constitution ("Supension Clause"), and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority 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 forum for statutory and constitutional challenges to post-removal-period detention."); *INS v. St. Cyr*, 533

1 U.S. 289, 301 (2001) ("AT ITS HISTORICAL CORE, THE WRIT OF
 2 habeas Corpus has served as a means of reviewing the
 3 legality of executive detention, and it is in that context
 4 that its protection have been strongest.") 'CLARK V. MAR-
 5 TINEZ, 543 U.S. 371 (2005) (holding that Zadvydas applies to
 6 ~~found~~ inadmissible as well as removable). A liens

8 VENUE

9 Venue lies in the Western District of Texas. El
 10 El Paso Division, because Petitioner is currently detained in
 11 the Territorial Jurisdiction of this Court, at the [ERO El
 12 Paso Camp East Montana 6920 Digital Road, El Paso,
 13 TX. 79936]. 28 USC § 1391.

15 EXHAUSTION OF REMEDIES

16 Petitioner only remedy is by way of this Judicial
 17 action. After the Supreme Court decision in Zadvydas, the
 18 Department of Justice issued regulation governing the
 19 custody of Aliens removed. See 8 C.F.R. § 241/his "90-day
 20 custody Review. Petitioner received a final Order of
 21 Removal on October 24 1996. Petitioner was Release
 22 On December 1996 On Supervision Release.

23 On May, 2024 Petitioner was arrested for burglary
 24 by the Los Angeles Police.. Petitioner was sentenced to
 25 one year County Jail and 3 years probation.

26 On December 26, 2024 the Petitioner was arrested
 27 for violation of ~~Probation~~ Probation. The Court sentenced
 28 Petitioner to 16 months in State Prison, and 3 year

1 Probation. The COURT awarded the PETITIONER
 2 14 months Credit. PETITIONER was Transferred to STATE
 3 Prison on April 02, 2025. On April 10, 2025 "ICE"
 4 Placed a hold for illegal entry.

5 PETITIONER was Release to "ICE" on April 15,
 6 2025. On November 18, 2025, 7½ months AFTER
 7 ICE TAKE THE PETITIONER INTO Custody. He was inform
 8 by the Deportation Officer tha his case would be
 9 review for Consideration of release on an Order of
 10 Supervision (See Exhibit A).

11 On December 10 and 11, 2025 he WAS
 12 interview by ICE Office M. Jerry. She inform
 13 The PETITIONER That he would received an answer very
 14 soon.

15 As of the time of filing this PETITION for WRIT
 16 of habeas Corpus The PETITIONER have NOT received an
 17 answer to his Review.

18 No STATUTORY exhaustion requirements apply to
 19 PETITIONER'S claim of unlawful detention.

20 PETITIONER still remains detained without any
 21 indication from the governments of the United States
 22 or the Cuba governments that PETITIONER'S repatriation
 23 is reasonably foreseeable. This PETITION is Proper in light
 24 of These Facts.

25 PARTIES

26 PETITIONER is a NATIVE CITIZEN OF Cuba.
 27 PETITIONER was TAKEN INTO ICE Custody on April 15, 2025
 28 and has remained in ICE Custody continuously since that

1 date. Petitioner was Ordered removed on October 24.
 2 1996. Petitioner is currently detained at Ero Camp
 3 East Montana. Petitioner has been continuously
 4 detained by ICE for over 9 months.

5 Respondent, Pamela Jo Bondi, is the Attorney
 6 General of the United States and she is responsible for
 7 the administration of ICE and the implementation and
 8 and enforcement of the immigration and Naturalization
 9 Act (INA). As such Pamela Jo Bondi has ultimate custodial
 10 authority over Petitioner.

11 Respondent, Kristi Noem is the Secretary of
 12 the department of Homeland Security. She is responsible
 13 for the administration of "ICE" and the implementation and
 14 enforcement of the "INA". As such Kristi Noem is the legal
 15 custodian of Petitioner.

16 Respondent, "ICE" Field Office Director of El Paso.
 17 Texas, is Petitioner's immediate custodian. See Vázquez v.
 18 Reno, 233 F.3d 688, 690 (1st Cir. 2000), cert. denied, 122 S. Ct.
 19 43 (2001).

20 Respondent, Warden of Ero Camp East
 21 Montana, where Petitioner is currently detained under
 22 the authority of ICE, alternatively may be considered
 23 to be Petitioner's immediate custodian.

24 STATEMENT OF THE FACTS

25
 26 Petitioner, Bismarck Martinez López, was born in
 27 Cuba on  1962. Petitioner is 64 years
 28 old. Petitioner came to the United States on May

1 of 1980. because The Petitioner do not agreed
2 with The Policy of The Cuban Government. in Cuba
3 There is no Freedom of Speech.

4 Petitioner Come to The United States because
5 this is A Country of Law. where Petitioner Can
6 enjoy The protection of The U.S. Constitution.

7 Petitioner First Arrived in the United States
8 in 1980 as part of the Mariel boatlift. Petitioner
9 previously resided in Cuba.

10 Petitioner was on Supervision. From 1980-2025.
11 in 1984. Petitioner was convicted of illegal possession
12 of Firearm. Petitioner was Release to Immigration
13 in 1986. Immigration Release the Petitioner in 1992.

14 In 1993 Petitioner was Arrested for Second
15 degree Robbery. on July 1996 he was Release to
16 Immigration Custody. On October 24, 1996 the
17 Court issue an Order of removal. Petitioner was Release
18 on Supervision on December 1996.

19 Petitioner was Arrested on April 2024. for
20 burglary. Second degree. and was Sentenced to 1-year
21 County Jail and 3-years probation on his Release
22 he fail to Comply with the probation do to a Car
23 Accident. On December 26, 2024 he was Arrested
24 for Probation violation. The Court Sentenced the
25 Petitioner to 16-months in State Prison. The Court
26 awarded the Petitioner 14-months Credit.

27 Petitioner Arrived at The State Prison on April 2,
28 2025. On April 10, 2025 "ICE" place a hold on Petitioner

1 On April 15, 2025, ICE Take the Petitioner
2 into Custody.

3 IRREPARABLE INJURY

4 Petitioner is suffering and will continue to suffer
5 irreparable injury because of the government's actions.

6 Every day that he is held in custody he suffers
7 further injury, which is irreparable.

8 Petitioner is currently in "ICE" custody he was
9 ordered remove to Cuba on October 24, 1996 by an immigration
10 Judge. Petitioner's removal order is final, but Petitioner cannot
11 be removed to Cuba or any other country. Thus Petitioner remains
12 indefinitely detained in "ICE" custody and has been confined
13 for a period far longer than the law mandates under 8 USC
14 § 1231(a)(3)-(2). Once an alien has been ordered removed the
15 Attorney General must carry out the removal period
16 within 90 days, during which time the alien shall
17 be detained. The post removal period provision of the
18 same statute, 8 USC § 1231(a)(6), allows for certain aliens
19 to be detained beyond the removal period but the
20 Supreme Court explicitly limited this detention period in
21 *Zadvydas* 533 U.S. at 689. The Court found that § 1231(a)
22 (4) restrict an alien's post removal period detention to
23 a period reasonably necessary to bring about that
24 alien's removal and that it does not permit indefinite
25 detention." *Zadvydas* 533 US at 689. The Court found
26 that a presumption exist that an alien may not
27 be held longer than six months; the general rule is
28 that an alien may no longer be confined when

1 there is no significant likelihood of removal in the reasona-
 2 bly foreseeable future" Id at 701. In *Clark v. Martinez*
 3 The Supreme Court extended this holding to inadmissible
 4 Aliens: 125 S.Ct 716, 722 (2005).

5 The question as to whether Petitioner's detention
 6 is in violation of the law of the United States is one for
 7 a Federal habeas Court to hear. 28 USC § 2241. Accordingly,
 8 Petitioner file this habeas Corpus Petition pursuant
 9 to 28 USC § 2241 requesting that this Court Order
 10 Petitioner's Release. Other wise Petitioner will continues
 11 suffering irreparable harm. Because "ICE" arbitrary and
 12 capricious way, based on an erroneous interpretation of the
 13 Law. DHS has acted in violation of the immigration and
 14 Nationality Act, and in violation of the Eighth Amendment
 15 and the Due Process Clause of the United States Constitution.

16 REQUEST FOR RELIEF

17 The Petitioner herein respectfully requests the following relief:
 18 (1). That this Court issue a writ of habeas Corpus
 19 directing the Respondents to bring the Petitioner to this
 20 Court at a time to be specified and explain why the Petitioner
 21 should not be released from Custody immediately.

22 (2). That this Court issue a declaratory Judgment that Petitioner
 23 is a lawful resident of the United States entitled to the
 24 protection of the Due Process Clause and the 8 Amendment
 25 of the Constitution:

26 (3) that this Court Order that Petitioner be release imme-
 27 diately.

28 02/02/2026

Respectfully Submitted
Bismarck Martinez
 In pro se

Memorandum
IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS

PETITIONER, BISMARCK MARTINEZ is a Cuban Citizen. he come to the United States in May 1980 on the Mariel boatlift.

PETITIONER, hereby petitions this Court for a writ of habeas corpus to remedy PETITIONER's unlawful detention.

On April 10, 2025, "ICE" placed a detainer for "illegal entry" See exhibit-B.

The Court should take notice that PETITIONER has lived in the United States for almost 46 years. and never had travel outside the U.S.A.

If the PETITIONER is released from custody he would be on three years probation "See exhibit-C"

PETITIONER remains indefinitely detained in "ICE" custody for a period, far longer than the law mandates Under 8 U.S.C. § 1231(a)(1)-(2)

PETITIONER alleges that the DHS's actions are arbitrary and capricious, based on an erroneous interpretation of the Law.

PETITIONER respectfully request that this honorable Court grant the writ of habeas corpus.

02/02/2026

Respectfully Submitted

Bismarck Martinez

Bismarck Martinez
 in pro-se

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury. *and the petitioner served a copy of the writ of habeas corpus to Pamela Jo Bondi U.S. Attorney General at the address below*

Date: _____

Bismarck W. [Signature]

Signature of Petitioner

Signature of Attorney or other authorized person, if any

*Pamela Jo Bondi
U.S. Attorney General
950 Pennsylvania Av. North West
Washington, DC 20530*

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