

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED

MAR 16 2026

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY *[Signature]*

BISMARCK MARTINEZ,
PETITIONER.

v.

KRISTI NOEM, ET AL.,
RESPONDENTS.

NO. 3:26-CV-00368-LS

PETITIONER'S OPPOSITION TO THE
RESPONDENTS' RESPONSE TO THE
PETITION FOR WRIT OF HABEAS CORPUS

Respondents claim in the Response that Petitioner's detention is lawful under 8 U.S.C. § 1231(a)(6), that assumption is misleading, based on respondents' erroneous interpretation of the law. In fact, 8 U.S.C. 1231 does not authorize indefinite detention.

It is a fact that Petitioner has a final order of removal which mandates his detention for a 90-day removal period under 8 U.S.C. § 1231. However, the truth is that ICE has abused its discretion in detaining the petitioner for 10 months and 21 days.

On September 14, 1993, Petitioner was convicted of second-degree robbery and sentenced to 3 years with 50% (not 15 years.) On November 15, 2015, Petitioner was convicted of possession for personal use of controlled substance and sentenced to time served and 3 year probation, (not 3 years in prison.)

On December 26, 2024, Petitioner was arrested for violation of probation and on January 22, 2025, he was sentenced to

1 16 months in STATE prison with 14 months Credit awarded by the
2 COURT.

3
4 Respondents Claim that There is No Good Reason to Believe
5 That Removal is NOT Significantly likely in the Reasonably Foreseeable
6 Future.

7 According to the Government ("exhibit A") On May 22, 2025
8 A request was made to the Cuba Government for approval of
9 Petitioner Repatriation. That request was denied On September 8, 2025.

10
11 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), The U.S. Supreme
12 Court held that 8 U.S.C. § 1231(a)(6), when "read in light of the
13 Constitution's demands, limits an alien's post-removal-period detention
14 to a period reasonably necessary to bring about that alien's removal
15 from the United States." 533 U.S. at 689. A "habeas court [first] must
16 ask whether the detention in question exceeds a period reasonably
17 necessary to secure removal." *Id.* at 699. If the individual's removal "is
18 not reasonably foreseeable, the court should hold continued detention
19 unreasonable and no longer authorized by the statute." *Id.* at 699-700.

20
21 In determining the length of a reasonable removal period, the
22 court adopted a "presumptively reasonable period of detention" of
23 six months. *Id.* at 701. After six months, the government bears the
24 burden of disproving an alien's "good reason to believe that
25 there is no significant likelihood of removal in the reasonably
26 foreseeable future." See *Zhou v. Farquharson*, 2001 U.S. Dist. LEXIS
27 18239, *2-3 (D. Mass. Oct. 19, 2001) (quoting and summarizing
28 *Zadvydas*). Moreover, "for detention to remain reasonable, as

1 The period of prior post-removal confinement grows. What
 2 counts as the 'reasonably foreseeable future' conversely would
 3 have to shrink." Zadvydas, 533 U.S. at 701. ICE's administrative
 4 regulations also recognize that the HQPDU has a six-month
 5 period for determining whether there is a significant likelihood
 6 of an alien's removal in the reasonably foreseeable future. See
 7 8 C.F.R. § 241.4(k)(2)(ii).

8
 9 On The Government Response (Exhibit A) Page 3 Line 26
 10 Respondent claim that it has successfully removed a total of
 11 901 Cuban nationals to Mexico and 711 Cuban nationals to
 12 to Cuba.

13 Petitioner has no tie to Mexico which happen to be
 14 a narcos state. That the United States Government is
 15 advising it ~~citizen~~ not to travel to Mexico a place
 16 where Cuban national had been kidnapping and murdered
 17 by the cartel, and the majority of Cuban national are
 18 in Tobasco, Mexico are living in the street "Google Cuban
 19 in Tobasco Mexico." I told my deportation officer
 20 M. Harris that was the reason I fear to go to Mexico.

21
 22 However, Evidence showing successful repatriation of
 23 other persons to the country at issue is not sufficient to
 24 meet the government's burden to establish that an alien
 25 petitioner will be deported in the reasonably foreseeable
 26 future. See Thompson v. INS, 2002 U.S. Dist. Lexis 23936 (E.D.
 27 La. September 16, 2002) (Government failed to show that
 28 alien's deportation to Guyana was reasonably foreseeable where

1 the government offered historical statistics of repatriation to
 2 Guyana. but failed to show any response from Guyana on
 3 the application for travel documents that INS and the
 4 petitioner had requested). Rather for the government to meet
 5 its burden of showing that an alien's repatriation is reason-
 6 ably foreseeable, it must provide some meaningful evidence
 7 particular to the individual petitioner's case. in the instant
 8 case Cuba denied Respondents request for the repatriation
 9 of Petitioner.

10 The Petitioner has been detained for almost 11 months
 11 however. An alien who has been detained beyond the
 12 presumptive six months should be released where the govern-
 13 ment is unable to present documented confirmation that
 14 the foreign government at issue will agree to accept the
 15 particular individual in question. See *Agbada v. John Ashcroft*,
 16 2002 U.S. Dist. LEXIS 15797 (D. Mass. August 22, 2002) (court
 17 "will likely grant" habeas petition after fourteen months
 18 if ICE is "unable to present document confirmation that the
 19 Nigerian government has agreed to petitioner's repatriation")
 20 See *Zhou*, 2001 U.S. Dist. LEXIS 19050 at *7 (W.D. Wash. February
 21 28, 2002) (government's failure to offer specific information
 22 regarding how or when it expected to obtain the necessary
 23 documentation from the foreign government indicated that
 24 there was no significant likelihood of petitioner's removal in
 25 the reasonably foreseeable future).

26
 27 In the instant case Respondent has failed to meet
 28 its burden that the petitioner would in fact be

1 likely to be remove in the reasonably foreseeable future.

2 In fact Respondents know very well that the Cuban
3 government has denied the request towards approval of
4 Petitioner's repatriation on September 8, 2025.

5 For these reasons stated above this honorable Court
6 on the interest of Justice should deny Respondents' response
7 to Petitioner's Petition for a writ of habeas Corpus and
8 enter an Order granting the Petition for writ of
9 habeas Corpus. Respectfully Submitted.

10 03/10/2026

11 Bismarck Martinez

12 BISMARCK MARTINEZ, Pro se
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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:

03/10/2026

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.

PETITIONER further declare That he received The Respondents' Response on 03/10/2026

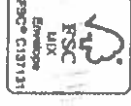
Date:

03/10/2026

Bernard W. Porter
Signature of Petitioner

Signature of Attorney or other authorized person, if any

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MAR 16 2024