

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ROGER M. THOMAS,

Petitioner,

vs.

JOHN ASHCROFT, *et al.*,

Respondents.

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CIVIL ACTION H-04-4770

MEMORANDUM AND RECOMMENDATION

This is a petition for habeas corpus under 28 U.S.C. § 2241 by Roger M. Thomas, referred to this court for report and recommendation. Thomas is a citizen of Grenada who was being detained by the Bureau of Immigration and Customs Enforcement of the Department of Homeland Security. Because Thomas was being detained beyond the period of time that is presumptively reasonable for removal of aliens, he was entitled to relief, absent rebuttal by the government.

On November 28, 2000, Thomas was ordered removed from the United States, and the removal order became final on December 12, 2003. The travel documents necessary for his removal, however, were lacking, and this order was not carried out. Therefore, Thomas remained in custody until January 28, 2005, longer than the 90-day period provided for by the “post-removal-order” detention statute, 8 U.S.C. § 1231(a). Aliens may be detained beyond this 90 days only for “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The presumptively reasonable period of time is six months. *Id.* at 701. Thomas was detained for longer than six months; thus his detention was no longer presumptively reasonable.

However, on January 28, 2005, Thomas was released from custody of the Bureau under an order of supervision, pending his removal from the United States. Thus, his petition is now moot. *See, e.g., Riley v. I.N.S.*, 310 F.3d 1253, 1257 (10th Cir. 2002) (release moots habeas petition challenging legality of extended detention); *Ibrahim v. I.N.S.*, 2003 WL 292172, at *1 (N.D. Tex. 2003) (same). The court therefore recommends that the petition be dismissed without prejudice.

SIGNED and ENTERED on April 19, 2005, at Houston, Texas.


Stephen Wm Smith
United States Magistrate Judge