

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

FREDERICO ABREU,

A [REDACTED]

Civil Action No. 25-20821-CIV-MD

Petitioner.

v.

ZOELLE RIVERA, in her official capacity as
ASSISTANT FIELD OFFICER DIRECTOR
KROME PROCESSING CENTER
PAM BONDI, in her official capacity as
ATTORNEY GENERAL;
KRISTI NOEM, in her official capacity as
SECRETARY OF THE DEPARTMENT OF
HOMELAND SECURITY;
CALEB VITELLO, in his official capacity as
DIRECTOR OF UNITED STATES
IMMIGRATION AND
CUSTOMS ENFORCEMENT

Respondents.

**PETITIONER FREDERICO ABREU'S OBJECTIONS TO REPORT AND
RECOMMENDATION DISMISSING
VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Frederico Abreu objects to the Report and Recommendation Dismissing his Petition for Writ of Habeas Corpus and in support states:

FACTS RELEVANT TO REPLY

Petitioner is a citizen of the Federated Republic of Brazil. On or about March of 2006, he obtained his Legal Permanent Residency Status. Mr. Abreu is also HIV Positive, and suffers from a heart condition, respiratory complications, and consistent seizures.

Mr. Abreu permitted to see a practicing nurse on February 14, 2025, six days after being released from the hospital due to severe chest pains [REDACTED]

[REDACTED]. However, he did not receive a full medical evaluation by a practicing physician until February 26, 2025, nineteen days after being released from the hospital [REDACTED]

Upon being fully evaluated by a medical doctor nineteen days after being released from the hospital, Mr. Abreu was diagnosed [REDACTED]

[REDACTED]. He currently is only receiving medical treatment for his [REDACTED]

Nevertheless, Mr. Abreu has been denied mental health treatment [REDACTED]

During the same evaluation, it was discovered that Mr. Abreu fractured his arm when falling during a seizure on February 8, 2025. As such, he was denied medical care for his fractured arm for a total of nineteen days after being released from the hospital.

On or about September of 2013, Mr. Abreu received a Notice to Appear (2013 NTA) before the Immigration Judge pursuant to his criminal convictions in California. *See* 2013 NTA attached as Exhibit “A”.¹ The 2013 NTA charged Mr. Abreu with removability pursuant to Section 237(a)(2)(B)(i), 8 U.S.C. § 1227(a)(2)(B)(i), of the INA as an alien convicted of a controlled substance violation and Section 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), of the INA as an alien convicted of an aggravated felony.²

Respondent’s Response to Petitioner’s Habeas attaches a different and incomplete NTA as its Exhibit “A” and an incomplete affidavit by Deportation Officer Eric Porrata as its Exhibit “B”

¹ Petitioner seeks to have the Court take Judicial Notice of certain official government documents and communication pursuant to Fed. R. Evid. 201(b)(1) & (2). Judicial Notice is appropriate because (1) they are not subject to reasonable dispute; (2) they can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

² The Report and Recommendation states that Petitioner has been convicted of grand theft of a vehicle. *See* DE-30 at 9. However, Petitioner has never been convicted of grand theft of a vehicle nor has an NTA been issued/served to encompass removability based on grand theft of a vehicle.

which asserts that Mr. Abreu was originally charged with removability solely pursuant to Section 237(a)(2)(B)(i), 8 U.S.C. § 1227(a)(2)(B)(i), of the INA as an alien convicted of a controlled substance violation.

During the pendency of Mr. Abreu's immigration proceedings, he received an immigration bond in the amount of \$20,000 granted by the Immigration Court in Los Angeles, California on March 31, 2014 while considering the charges in the 2013 NTA which included Section 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), of the INA as an alien convicted of an aggravated felony. As such, the Immigration Judge considered and rejected Mr. Abreu's mandatory detention under Section 236(c)(1)(B), 8 U.S.C. § 1226(c)(1)(B), of the INA as an alien convicted of an aggravated felony.

On or about December of 2020, Mr. Abreu was released from federal custody and placed on Order of Release on Recognizance (OREC) by ICE. He has continued to appear at yearly check-ins with ICE under the Alternative to Detention (ATD) program. Per DHS ICE:

[This] program exists to ensure compliance with release conditions and provides important case management services for non-detained aliens. ATD consists of the Intensive Supervision Appearance Program (ISAP). The ATD-ISAP program utilizes case management and technology tools to support aliens' compliance with release conditions while on ICE's non-detained docket. ATD-ISAP also increases court appearance rates.³

Stating it plainly, the ICE ATD program is to ensure that aliens not detained are monitored through GPS and regularly check-in with ICE to ensure they do not abscond and/or become a danger to society.

After his placement on OREC by ICE, Mr. Abreu began to work with Poverello, a non-profit located in Wilton Manors, where he assists with organizing food banks for the community; organizes and participates in support groups for HIV Positive participants; and provides those

³ <https://www.ice.dhs.gov/ats/ats-isap> (last visited on Mar. 27, 2025).

without the proper financial capabilities to purchase HIV medications with access to affordable medications.

In addition to his work with Poverello, Mr. Abreu is also an active participant in two Narcotics Anonymous (NA) groups. He is an active sponsor for two participants within one of the groups whereas they would have direct access to Mr. Abreu, prior to his ICE Detention. Mr. Abreu is an active speaker for the second NA group, which is an online group where Respondent actively tells his story of becoming sober for the past nine and half years.

On April 12, 2022, over two years after COVID-19, Officer Juan F. Gonzalez, as the Supervisory Detention and Deportation Officer for ICE Non-Detained Unit, terminated Mr. Abreu from ATD and transferred to his case fully to non-detained, whereas he would no longer be monitored through GPS by ICE.

The method of determining whether an alien may be removed from ATD and placed solely onto Non-Detained Unit is whether the alien poses a risk of becoming an absconder; a risk of not appearing for his immigration proceedings; and/or a risk of becoming a danger to the community. In 2022, Officer Juan F. Gonzalez, as the Supervisory Detention and Deportation Officer for ICE Non-Detained Unit, found that Mr. Abreu did not pose any of these risks.

[REDACTED] On February 8, 2025, ICE Officials arrested Mr. Abreu at his home without a warrant. ICE Officials knocked on the door of Mr. Abreu's home without identifying themselves but stated [REDACTED]
[REDACTED]. Upon a family friend opening the door, ICE Officials rushed into the home and entered the kitchen where Mr. Abreu was sitting with his mother-in-law: [REDACTED]
[REDACTED].

Upon seeing Mr. Abreu, ICE Officials arrested him in his kitchen without presenting an arrest warrant. Mr. Abreu's family friend immediately contacted undersigned and undersigned requested to be placed on speaker phone. Undersigned asked where Mr. Abreu would be processed while on speaker phone and an ICE Official stated Mr. Abreu would be processed at the ICE Miramar Field Office.

Respondent's Response to Petitioner's Habeas attaches an Arrest Warrant as its Exhibit "P" and Notice of Custody Determination as its Exhibit "R" which appear to have been completed after the actual arrest of Mr. Abreu and misstate that the arrest took place "while conducting surveillance near her domicile ... [a] vehicle stop was executed [sic] ERO/HIS officers identified themselves." Respondent's Response to Petitioner's Habeas also attaches an affidavit by Deportation Officer Eric Porrata as its Exhibit "B" attesting to the arrest of Mr. Abreu. However, Deportation Officer Eric Porrata was not present at the time of this arrest.

Respondent's Response to Petitioner's Habeas attaches a superseding NTA dated March 13, 2025 (2025 NTA) as its Exhibit "U" which charges Mr. Abreu with removability pursuant to Section 237(a)(2)(B)(i), 8 U.S.C. § 1227(a)(2)(B)(i), of the INA as an alien convicted of a controlled substance violation and Section 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), of the INA as an alien convicted of an aggravated felony. The charges described in the 2025 NTA are the exact same charges in the 2013 NTA.

On March 30, 2025, the Immigration Judge held a bond hearing and denied bond, finding the Mr. Abreu was subject to mandatory detention and only DHS could facilitate his release. The Immigration Judge ultimately did not consider Mr. Abreu's prior release from detention nor DHS' two (2) reviews of Respondent's history whereas it was determined that he was not a flight risk or danger to the community.

MEMORANDUM

A. The Report and Recommendation Misapplied *Jennings* and *Demore*.

The Report and Recommendation improperly finds that Petitioner's detention is lawful under *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and *Demore v. Kim*, 538 U.S. 510 (2003). Both cases address facial constitutionality of mandatory detention, but neither forecloses an as-applied challenge based on prolonged, unreasonable detention.

Specifically, Section 1226(c) authorizes the detention of aliens charged with removability on certain grounds. *See Demore v. Kim*, 538 U.S. 510, 523 (2003):

Congress enacted section 1226(c) as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Div. C, Pub. L. No. 104-208, § 303(b), 110 Stat. 3009-586 (Sept. 30, 1996), in response to evidence that the immigration authorities were unable to remove many criminal aliens because they failed to appear for removal hearings, and also that criminal aliens released on bond often committed additional crimes before they could be removed.

Demore, 538 U.S. at 518-20. The record does not support Congress' fear of flight or re-offense here.

Mr. Abreu has repeatedly appeared before the government in form of his ICE Check-ins and at every hearing for his immigration proceedings from the date he was released from custody on December of 2020 to his recent and illegal detention by DHS on February 8, 2025. Notably, on April 12, 2022, Officer Juan F. Gonzalez, as the Supervisory Detention and Deportation Officer for ICE Non-Detained Unit, terminated Mr. Abreu from ATD and transferred his case to non-detained status. As a result, Mr. Abreu would no longer be monitored through GPS by ICE. DHS made this decision based on a finding that Mr. Abreu did not pose a flight risk or a danger to the community. There is no evidence in the intervening period to suggest otherwise.

As established in *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199 (11th Cir. 2016), district courts still utilize the multi-factor *Sopo* test in as-applied due process challenges. In *Sopo*, the Eleventh Circuit explained that:

as a matter of constitutional avoidance, we readily join other circuits in holding that § 1226(c) “implicitly authorizes detention for a reasonable amount of time, after which *the authorities must make an individualized inquiry into whether detention is still necessary to fulfill the statute's purposes of ensuring that an alien attends removal proceedings and that his release will not pose a danger to the community.*”

Sopo, 825 F.3d at 1213-14. (internal citation omitted)(emphasis added). A proper individualized inquiry would support Mr. Abreu’s release. The government reviewed Mr. Abreu’s risk of failing to attend his removal proceedings and whether he posed a danger to society three times by two different agencies. In all three instances, Mr. Abreu was found to not be at risk of absconding and to not pose a danger to the community.

For these reasons, Mr. Abreu’s continued detention by Respondents is unlawful and in violation of due process of the law.

B. Petitioner’s History Rebuts Flight Risk or Dangerousness.

Mr. Abreu received an immigration bond in the amount of \$20,000 on March 31, 2014 while the Immigration Court considered the charges in the 2013 NTA which cited to section 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), of the INA as an alien convicted of an aggravated felony. The Immigration Judge considered and rejected Mr. Abreu’s mandatory detention under Section 236(c)(1)(B), 8 U.S.C. § 1226(c)(1)(B), of the INA as an alien convicted of an aggravated felony.

On December of 2020, Mr. Abreu was released from federal custody and placed on Order of Release on Recognizance (OREC) by ICE. And on April 12, 2022, ICE terminated Mr. Abreu

from ATD and transferred his case to non-detained status where he would no longer be monitored through GPS by ICE.

Mr. Abreu is not a flight risk and/or at risk of not appearing for his immigration proceedings as he has consistently appeared at every immigration hearing and/or his ICE OREC Appointments since his release on or about December of 2020. Further, Mr. Abreu's release is necessary so that

[REDACTED]
[REDACTED] Mr. Abreu has continued be compliant with his federal probation and continues to support his community through his work with Poverello, a non-profit located in Wilton Manors. Finally, Mr. Abreu has been sober for the past nine and half years and is also an active participant in two Narcotics Anonymous (NA) groups.

On March 30, 2025, the Immigration Judge held a bond hearing. During this hearing, the Immigration Judge recognized that Mr. Abreu would be eligible upon an individualized inquiry but stated that only DHS could make that determination. As such, the Immigration Judge failed to complete an individualized bond hearing to determine if there is any record in support of a material change of circumstance between December of 2020 to February of 2025 that would support Mr. Abreu's detention.⁴

As of this filing, no determination of release has been presented to Abreu by DHS and/or ICE despite his pending ATD requested being submitted on February 10, 2025. This record of compliance rebuts the government's claim that mandatory detention is justified under §1226(c), particularly when the 2025 NTA mirrors the 2013 NTA which already underwent bond consideration.

⁴ file:///C:/Users/Louize%20Fiore/Downloads/09684drofieldpolicymanual.pdf (last visited on May 27, 2025).

For these reasons, Mr. Abreu's continued detention by Respondents is unlawful and in violation of due process of the law.

C. Petitioner's Detention Has Already Prolonged.

A person in removal proceedings is entitled to due process of the law under the Fifth Amendment. *Reno v. Flores*, 507 U.S. 292, 306 (1993). This right to due process includes the right to be meaningfully heard. *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (stating that an alien may be removed "only after proceedings conforming to traditional standards of fairness encompassed in due process of the law"); *Augustin v. Sava*, 735 F.2d 32, 38 (2d Cir. 1984) (noting that "the very essence of due process is a meaningful opportunity to be heard" (internal citations omitted)).

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Because of DHS' lack of preparation, Mr. Abreu's removal proceedings have been continued at least two times. The first continuation derived from DHS not being in possession of Mr. Abreu's file during the Master Hearing and being unable to explain why an exact same NTA was issued in 2025 that mirrored the same allegations and charges as the 2013 NTA. The second continuation derived from DHS' inability to properly secure entrance to Dr. Brannon for the completion of Mr. Abreu's competency evaluation as mandated by the Board of Immigration

Appeal's Remand in 2014.

Additionally, Mr. Abreu has not had adequate access to undersigned as ICE/DHS has failed to communicate with undersigned in scheduling confidential call as between Mr. Abreu and his attorney. Instead, Mr. Abreu has been at the mercy of FDC Officers to facilitate any confidential communications as between him and his attorney.

As such, Mr. Abreu has not had access to a full and fair hearing. Instead, his hearings have been repeatedly continued and his access to his attorney undermined by DHS. Therefore, Mr. Abreu's detention does violate his due process right to be meaningfully heard.

D. Petitioner Objects to Dismissal of his APA Claim.

Although the Report and Recommendation deems Petitioner's APA-based argument waived, Petitioner raised this issue in direct response to inconsistent DHS documentation. Respondents provided no explanation for the abrupt change in custody status or failure to consider ongoing ATD suitability, rendering the decision arbitrary and capricious under 5 U.S.C. § 706.

E. Petitioner Objects to the Finding of Proper Medical Care.

The Report and Recommendation improperly downplays the severity of Mr. Abreu's medical neglect. Mr. Abreu has been denied timely access to medications for heart disease, seizures, and depression; only received a full medical evaluation nineteen days after hospital discharge; was untreated for a fractured arm for nearly three weeks; has still been denied mental health care despite [REDACTED]. This violates the Due Process Clause's minimal standards of humane treatment and supports habeas relief under conditions-of-confinement jurisprudence.

CONCLUSION

Based on the foregoing points and authorities, Petitioner Frederico Abreu requests that this Court grant the petition and issue its writ of habeas corpus.

Date: May 27, 2025

Respectfully submitted:

/s/ Louize Fiore

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