

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA

MIAMI, FL

400 North Miami Avenue, Miami FL 33128-7716

FILED BY <u>MCOD.C.</u>
SEP 03 2025
ANGELA E. NOBLE CLERK U.S. DIST. CT. S. D. OF FLA. - MIAMI

In Matter Of:

Jose Luis Tamayo

Petitioner

A-No: [REDACTED]
SS. [REDACTED]
Civil Action No.

V.

Krome Detention Center Warden, Mr. Reyes

Jose Sierra, Field Office Director

Pamela Bondi, Attorney General

Kristi Noem, Secretary of

Department of Homeland Security

Respondent

APPELLANT FOR WRIT OF HABEAS CORPUS

AND RELEASE FROM DETENTION UNDER

28 U.S.C. § 2241

Come Now, _____, "Mr. Jose Luis Tamayo" Who files this motion *Pro Se*, prays that this court construe this motion of writ of habeas corpus to review the lawfulness of his detention by the Department of Homeland Security. His continued detention by the respondent violates 8 U.S.C. § 1231(a)(6), as interpreted in *Zadvydas V. Davis* 533 U.S. 678 (2001).

In support of this Appellant, Mr. Jose Luis Tamayo alleges as follows:

CUSTODY

Petitioner is in the physical custody of Respondents and the U.S. Immigration and Custody Enforcement (ICE). Petitioner Jose Luis Tamayo Merillas detained at the Krome Services Processing Center in Miami FL. Petitioner is under the direct control of respondents and their agents. Krome Warden Mr. Reyes, Jose S. Sierra Field Office Director, Kristy Noem, Secretary of Homeland Security and Pamela Bowdler, U.S. Attorney General

JURISDICTION

1. This action arises under the Constitution of the United States, and the Immigration and National Act (INA), 8 U.S.C. § 1101 et. seq., as amended by the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104 – 208, 110 Stat. 1570, and the Administrative Procedure Act (APA), 5 U.S.C. § 701 et. Seq.
2. This Court has the jurisdiction under 28 U.S.C. § 2241; art. I § 9, cl. 2 of the United States Constitution (Suspended Clause); and 28 USC § 1331, as petitioner is presently in custody under color of the authority of the United States. This Court may *grant* relief pursuant to 28 USC § 2241, 5 USC § 702, and the all Writs Act, 28 USC §1651.
3. Petitioner has exhausted any and all administrative remedies to the extent required by law.

VENUE

Pursuant to *Braden V. 30TH Judicial Circuit Court of Kentucky*, 401 US. 484, 493-500(1973), venue lies in the United States Southern District Court of Florida the district where petitioner is resides.

PARTIES

1. Petitioner is a native and citizen of Cuba. Petitioner was first taken into ICE custody on 6-21-25, and has remained in ICE custody continuously since that date. Petitioner was ordered removed on 1995 ? Th 90's
2. Respondent Pamela Bondi, is the Attorney General of the United States and is responsible for the administration of ICE and the implementation and enforcement of the Immigration and National Act (INA). As such Mrs. Bondi Attorney General has ultimately custodial authority over petitioner.
3. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the administration of ICE custody and the implementation and enforcement of the INA. As such Mrs. Noem secretary of ICE is the legal custodian of petitioner.
4. Respondent Jose Sierra is the ICE Field Office Director of the Krome SPC. Field Office of ICE and is petitioner's immediate custodian. *See Vasquez v. Reno* 233 F. 3d 688, 690(1st Cir. 2000), cert. denied, 122 S. CT. 43 (2001).
5. Respondent Warden of the Krome Services Processing Center where petitioner is currently detained under the authority of ICE alternatively may be considered to be Petitioner's immediate custody; "Mr. Reyes", Warden

FACTUAL ALLEGATIONS

1. Petitioner, Jose Luis Tamayo, is a native and citizen of Cuba.
Petitioner has been in ice custody since 6-21-25. An Immigration Judge ordered the petitioner removed on The 90's, 1995.
2. Petitioner did Appeal Immigration Judge
Ordered of Removal To The Board of Immigration
Appeal, ☐ yes ☒ no.
IF The answer above is Yes, Write the
date of Appeal (), and date of BIA decision ().
3. Brief Summary of Petitioner Immigration History: (a)
When First Arrived in The United States: (maria
boat left from Cuba on 1980); (b)
Countries You Lived In before The United States: (Cuba); (c)
You or any Family member ever became Lawful Permanent residents,
or Applied for Citizenship. (Yes - my kids family).
4. A Brief Summary of Petitioner's Criminal History,
IF Applicable. (Bank Robbery with
no guns
Criminal History Is not coincident with Dangerous Individuals, "Hendrick
Supra. 358, [541 U.S. at 357, 358] Terrorists, Past sexually violent behavior, or
Present Mental Condition that creates a likelihood of such conduct in the future")
5. Petitioner was Taken Into ICE Custody due To:
(on data of report
ON The date of - - - 6-21-25
I Reported to Miami Center
and was detained, no Reason given.)

6. Petitioner has cooperated fully with the efforts of ICE to remove petitioner from the United States.

LEGAL FRAMEWORK FOR SOUGHT

1. In Zadvydas V. Davis, 533 U.S. 678 (2001), the U.S. Supreme Court held that six months is the presumptively reasonable period during which ICE may detain aliens in order to effectuate their removal. Id. At 702. IN Clark V. Martinez, 543 US. 371 (2005), the Supreme Court held that its ruling in Zadvydas applies regulations also recognize that the HQPDU has a six months period for determining whether there is a significant likelihood of an alien's removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(b)(2)(ii).

2. Petitioner was ordered removed on 1995 ? 90's and the removal order became final on 1995 ? 90's. Therefore, the six months presumptively reasonable removal period for petitioner ended on ? 90's, 1995 OR 1996

CLAIMS FOR RELIEF COUNT ONE

STATUTORY VOILATION

1. Petitioner re-alleges and incorporates by reference paragraphs al statement listed Above.
2. Petitioner's continued detention by Respondents is unlawful and contravenes 8 USC §1231(a)(6) as interpreted by the Supreme Court in Zadvydas. The six month presumptively reasonable period for removal efforts has expired. Petitioner's removal to Cuba or another country is not significantly likely to occur in the foreseeable future. The Supreme Court held in Zadvydas and Martinez that ICE's continued detention of someone like petitioner under such circumstances is unlawful.

COUNT TWO

SUBSTANTIVE DUE PROCESS VOILATION

3. Petitioner re-alleges and incorporates by reference paragraphs above.
4. Petitioner's continued detention violates petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraints.
5. The Due Process Clause of the 5TH Amendment requires that the deprivation of petitioner's liberty be narrowly tailored to serve a compelling government interest. While respondents would have an interest in detaining petitioner in order to effectuate removal, that interest does not justify the indefinite detention of petitioner, who is significantly likely to be removed in the foreseeable future. Zadvydas recognized that ICE may continue to detain aliens only for a period reasonably necessary to secure the aliens only for a period reasonably period during which ICE may detained in excess of six months

and petitioner's removal is not significantly likely to occur in the reasonably foreseeable future.

COUNT THREE PROCEDURAL DUE PROCESS
VOILATES

6. Petitioner re-alleges and incorporates by reference paragraphs above.
7. Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that he/she should not be detained. Petitioner in this case has been detained that opportunity. ICE does not make decisions concerning alien's custody status in a neutral and impartial manner. The failure of respondent s to provide a neutral decision-maker to review to continued custody of petitioner violates petitioner's rights to procedural due process.

PRAYERS FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Grant petitioner a writ of habeas corpus directed directing the respondents to immediately release petitioner from custody;
3. Enter preliminary and permanent injunctive relief enjoying respondents from further unlawful detention of petitioner.

4. Award petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended 5 USC § 504 and 28 USC §2412, and on any other basis justified under law; and

5. Grant any other and further relief that this Court deem just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Sign: [Signature] [Redacted]
Name: Gose Lois T. Ampt A-No: [Redacted]
Petitioner SS [Redacted] Date 8/8/25

UNNOTARIZED OATH

Jose Luis Tamayo certify under penalty of perjury,
pursuant to 28 USC §1476 that all statements and facts described in document
title "_____ are true and correct to the best of my knowledge.

Respectfully Submitted,

Date Executed: 8/8/25

Name: Jose Luis Tamayo
Sign: [Signature]
A-#: [Redacted]

SS: [Redacted]

CERTIFICATION OF SERVICE

Jose Luis Tamayo hereby certify that the true and correct copy of the forgoing document title, Hebeas Corpus, 28 U.S.C. § 2241, has been placed in the hands of security officials at Krome Services Processing Center, 18201 SW. 12TH St, Miami FL 33194 for the process of mailing via US mail Postal Services "through legal mail category" to the parties listed below.

Date Executed: 8/8/25

Name: Jose Luis Tamayo
Sign: [Signature]
A #: [Redacted]

- 1) Krome Processing Service Center; Warden SS
Mr. Reyes
18201 S.W. 12 ST. Miami, Florida, 33194.
- 2) Jose S. Sierra, Field Office Director, Field Office Manager.
18201 S.W. 12 ST. Miami, Florida, 33194
- 3) Kristi Noem, Secretary For U.S. Department of Homeland Security.
Washington D.C. 20528
- 4) Pamela Bondi, United States Attorney General
U.S. Department of Justice 950 Pennsylvania Ave Washington D.C. 20530
- 5) United States District Court, Southern District of Florida (Miami Division).
400 North Miami, Rm. 8N09, Miami, Florida, 33128.

Home Processing Service

18201 SW 12th Miami, FL 33194



U.S. DISTRICT COURT

United States District

Southern District of Florida

Avenue

301 North Miami
Miami, Florida 33128

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