

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 26-20979-CIV-SMITH

KEVIN GUTIERREZ CASTANO,

Petitioner,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT, *et al.*,

Respondents.

**ORDER DISMISSING PETITION WITHOUT PREJUDICE AND
DENYING EMERGENCY MOTIONS WITHOUT PREJUDICE**

The matter comes before the Court on Petitioner, Kevin Gutierrez Castano's *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 ("Petition") [DE 1] and corresponding Emergency Motions for Temporary Restraining Order [DE 3] and for Immediate Release [DE 4] (collectively, the "Emergency Motions"). However, Petitioner has failed to either pay the Clerk's \$5.00 filing fee or file a compliant Motion for Leave to Proceed *in forma pauperis*, and neither the Petition nor the Motions are signed by Petitioner. Accordingly, for the reasons stated below, the Petition is **DISMISSED WITHOUT PREJUDICE** and the Motions are **DENIED WITHOUT PREJUDICE**.

Rule 11 of the Federal Rules of Civil Procedure requires that "[e]very pleading, written motion, and other paper" filed by an unrepresented party be personally signed. Fed. R. Civ. P. 11(a); *see also* 28 U.S.C. § 2242 (requiring that an application for writ of habeas corpus be "in writing signed and verified by the person for whose relief it is intended or by someone acting in

his behalf”); S.D. Fla. L.R. 88.2(a) (requiring that motions to vacate “be signed under penalty of perjury by petitioner/movant or a person authorized to sign it for petitioner/movant . . .”). This signature “certifies that to the best of the [pro se party’s] knowledge, information, and belief” the pleading “is not being presented for any improper purpose,” is not frivolous, and “the factual contentions [therein] have evidentiary support.” Fed. R. Civ. P. 11(b). Courts have narrowly construed Rule 11’s signature requirement, finding that it requires “a name handwritten” or “a mark handplaced.” *Becker v. Montgomery*, 532 U.S. 757, 764 (2001).

The Petition and Emergency Motions are deficient because they lack Petitioner’s signature. While Petitioner’s name is typed at the end of all three filings (Pet. 4; Emergency Mot. for TRO 1; Emergency Mot. for Immediate Release 1), a typed name is not sufficient to meet Rule 11’s signature requirement. *See Becker*, 532 U.S. at 764. This facial deficiency warrants dismissal of the Petition and denial of the Emergency Motions without prejudice.

Further, Rule 88.2(a) of this Court’s Local Rules requires that Petitions for Writ of Habeas Corpus brought under 28 U.S.C. § 2241 “be signed under penalty of perjury by petitioner/movant or by a person authorized to sign it for petitioner/movant . . .” S.D. Fla. L.R. 88.2(a). The instant Petition is not signed, as discussed above, nor does it contain any independent indication that Petitioner swears to its contents “under penalty of perjury.” Therefore, dismissal of the Petition is further warranted because it fails to abide by this Court’s Local Rules.

Additionally, parties instituting an action pursuant to a Petition for Writ of Habeas Corpus must either pay \$5.00 or seek pauper status by filing a Motion for Leave to Proceed *in forma pauperis* (“IFP”). *See* 28 U.S.C. §§ 1914, 1915(a); *see also* Rule 3(a), Rules Governing Section

2254 Cases in the United States District Courts.¹ To proceed IFP, a party must submit “the form ‘Application to Proceed Without Prepayment of Fees and Affidavit,’ which may be obtained from the Clerk of the Court, or an affidavit which substantially follows the form.” S.D. Fla. Local Rule 88.2(b). The form must “set forth information which establishes that” Petitioner “is unable to pay the fees and costs of the proceedings” and be signed under penalty of perjury. *Id.*; *see also* 28 U.S.C. § 1915(a). Petitioner must also obtain “from the appropriate official of each prison at which [Petitioner] is or was confined” “a certified copy of [his] trust fund account statement . . . for the 6-month period immediately preceding the filing of the” Petition. 28 U.S.C. § 1915(a)(1); *see also* Rule 3(a), Rules Governing Section 2254 Cases in the United States District Courts.

In this case, Petitioner has failed to either (1) pay the Clerk’s \$5.00 filing fee or (2) file a compliant Motion to Proceed *in forma pauperis*. Petitioner will therefore be granted one **FINAL** opportunity to file a compliant IFP Motion or pay the \$5.00 filing fee.

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that:

1. The Petition [DE 1] is **DISMISSED WITHOUT PREJUDICE** for failure to comply with Rule 11 of the Federal Rules of Civil Procedure and Rule 88.2(a) of this Court’s Local Rules.
2. The Emergency Motions [DE 3, 4] are **DENIED WITHOUT PREJUDICE** for failure to comply with Rule 11 of the Federal Rules of Civil Procedure.
3. Within **THIRTY (30) DAYS** of the date of this Order, Petitioner **SHALL**:
 - a. file an Amended Petition for Writ of Habeas, **SIGNED** under **PENALTY OF PERJURY**, consistent with the requirements of this Order; and
 - b. either pay the Clerk’s filing fee of \$5.00 or file a motion to proceed *in forma pauperis*, with supporting financial affidavit, and a six-month account statement as required by Rule 3(a) of the Rules Governing § 2254 Cases in the United States

¹ The Court may apply Rule 3(a) to the instant § 2241 Petition. *See* Rule 1(b), Rules Governing Section 2254 Cases in the United States District Courts.

District Courts.

4. The Amended Petition **MUST** bear the case number **26-20797-CIV-SMITH** so that it is docketed in the correct case.
5. If the filing fee is paid, the check or money order must bear the case number **26-20797-CIV-SMITH** so that the fee will be docketed in the correct case.
6. If Petitioner files a Motion to Proceed *in forma pauperis*, it **MUST**:
 - a. Be filed using the "Application to Proceed Without Prepayment of Fees and Affidavit" provided with this Order;
 - b. Be signed and dated under penalty of perjury;
 - c. Include a certificate concerning Petitioner's prison bank account that was completed by an officer of the institution; and
 - d. Include an attached certified copy of Petitioner's prison/jail account for the six-month period preceding the filing of the Petition, in accordance with the above quoted statute. Plaintiff is reminded that this must be a **full statement** of all deposits and withdrawals, not just a summary.
7. Petitioner is cautioned that this is his **ONLY** opportunity to file an Amended Complaint and compliant IFP Motion, and failure to timely complete and file the required documents or pay the Clerk's \$5.00 filing fee **WILL** result in the dismissal of this case.
8. The Clerk is directed to **MAIL** a copy of this Order to Plaintiff at the address listed below, along with a long form "Application to Proceed Without Prepayment of Fees and Affidavit."

DONE AND ORDERED in Fort Lauderdale, Florida, on this 13th day of February, 2026.



RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc: **Kevin Gutierrez Castano, pro se**
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