

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

Luis Alberto BEJERANO AMADOR

Petitioner,

v.

Warden, Florida Soft Side South;
Pamela BONDI, U.S. Attorney General;
Todd LYONS, Acting Director of Immigration
and Customs Enforcement;
U.S. Attorney for the Middle District of Florida; and
EOIR Miami Immigration Court

Respondents.

Case No.

**PETITION FOR WRIT OF HABEAS
CORPUS**

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

This case concerns the unlawful detention of Luis Alberto Bejerano Amador (“Petitioner”), a Cuban national who was apprehended by DHS officers during a routine traffic stop on February 26, 2026. For more than three years, Petitioner resided in the community, complied with all Immigration and Customs Enforcement (“ICE”) supervision requirements, appeared at every scheduled court proceeding, and actively pursued his asylum claim. On February 26, 2026, ICE detained Petitioner despite the absence of any criminal conduct, violation of release conditions, or change in his immigration status.

For more than three years, Petitioner has lived in the United States, he has been a law-abiding member of his community, he has complied with all ICE supervision conditions, he appeared at every required Immigration Court hearing, and he lawfully and diligently pursued immigration relief via an asylum application, via an adjustment of status application. Respondents’ interior stop and seizure of Petitioner violated Petitioner’s Fourth Amendment rights because Immigrations and Customs Enforcement (“ICE”) lacked reasonable suspicion or a judicial warrant. Respondents violated Petitioner’s Fifth Amendment due process rights by failing to afford a pre-deprivation hearing prior to re-detaining Petitioner.

STATEMENT OF FACTS

Petitioner is presently confined at the Florida Soft Side South in Ochopee, Florida. *See Exhibit ("Exh.") A*, Petitioner's Detention Information. Petitioner, Luis Alberto Bejerano Amador, is a native and citizen of Cuba. *See Exh B*, copy of Petitioner's Birth Certificate with an English translation and Cuban Passport. On or about May 10, 2022, at or near Sasabe, Arizona, Petitioner entered the United States, and he was detained by U.S. Department of Homeland Security ("DHS") officials. *See Exh. C*, copy of Petitioner's DHS Form I-862 Notice to Appear and DHS Form I-213 Record of Deportable/Inadmissible Alien. Three next day, on May 13, 2022, DHS issued to Petitioner a Notice to Appear ("NTA"), placed him in removal proceedings under section 240 of the Immigration and Nationality Act ("INA"), and scheduled him for his initial removal proceedings hearing at the Miami, FL Immigration Court on March 28, 2024 *Id.* The NTA also charged Petitioner as "an alien present in the United States who has not been admitted or paroled." *Id.* Also on May 14, 2022, DHS issued to Petitioner Form I-220A, Order of Release on Recognizance, and released Petitioner from DHS custody with certain conditions to be followed, permitting him to reside in the community while his removal proceedings were pending. *See Exh. D*, copy of Petitioner's ICE Form I-220A, Order of Release on Recognizance.

After Petitioner's release from DHS custody, he diligently pursued immigration relief he was eligible to apply for. On June 15, 2022, U.S. Citizenship and Immigration Services ("USCIS") received Petitioner's timely filed I-589, Application for Asylum and for Withholding of Removal (Asylum Application), and issued a Receipt Notice. *See Exh. E*, copy of Petitioner's

I-589 Receipt Notice and Biometrics Appointment Notice.

In addition, Petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, pursuant to the Cuban Adjustment Act (“CAA Application”), in or about April 2024, upon information and belief. His Employment Authorization Document (“EAD”) under category C08 was approved and issued, and is valid from April 15, 2025 through April 14, 2030. *See Exh. F*, copy of Petitioner’s Employment Authorization Document (EAD), Category C08.

On February 26, 2026, Petitioner was apprehended by officers of the Department of Homeland Security (“DHS”) during a routine traffic stop in West Palm Beach, Florida. The stop was not initiated because of any traffic violation or criminal activity committed by Petitioner. Rather, it was a routine stop during which officers requested identification and immigration-related documents. At the time of the encounter, Petitioner had not committed any traffic offense, criminal violation, or conduct that would otherwise justify a custodial seizure. Nevertheless, immediately after requesting and reviewing Petitioner’s documents, DHS officers placed Petitioner into custody at the scene and transported him into immigration detention. Petitioner was taken into custody without the benefit of a judicial warrant, without a prior hearing, and without any individualized determination that detention was necessary or authorized under the governing statutory framework. Since that time, Petitioner has remained in immigration detention. More specifically, Respondents’ seizure of Petitioner violated the Fourth Amendment. Respondents’ lack of pre-deprivation hearing for Petitioner violated the Fifth Amendment. Petitioner’s continued detention exceeds statutory authority and violates due process.

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) because Petitioner is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241. Petitioner does not seek review of a final order of removal. He does not seek review of a discretionary decision committed to the Executive’s sole authority. Rather, he challenges the legality of his seizure and the statutory and constitutional basis for his present detention. That form of challenge lies at the historic core of the writ of habeas corpus.

The Supreme Court has repeatedly confirmed that habeas jurisdiction remains available to challenge the legality of immigration detention. In *Zadvydas v. Davis*, the Court recognized that § 2241 remains available to test the legality of executive detention in the immigration context. 533 U.S. 678, 688 (2001). Although Congress has imposed limits on judicial review of removal orders through 8 U.S.C. § 1252, those limits do not extinguish habeas jurisdiction over challenges to detention itself. 8 U.S.C. § 1252. Similarly, in *Jennings v. Rodriguez*, the Court reaffirmed that constitutional challenges to immigration detention remain cognizable in habeas even where statutory claims are constrained. 583 U.S. 281, 294-295 (2018). While *Department of Homeland Security v. Thuraissigiam* narrowed habeas review of expedited removal determinations, it expressly did not eliminate review of unlawful custody or constitutional violations relating to detention. 591 U.S. 103, 117 (2020). Petitioner contests the legality of his seizure, immediately after his Immigration Court hearing and inside the courthouse, and the statutory authority under

which Respondents now detain him. Because he challenges the very legal basis for his physical confinement, this Court's habeas jurisdiction is properly invoked.

Venue is proper in the Middle District of Florida, Ft. Myers Division, because Petitioner is detained at the Florida Soft Side South detention facility in Ochopee, FL, within this Division; and the immediate custodian is located here. Therefore, the case is ripe for adjudication.

ARGUMENT

I. Prudential Exhaustion is not required.

Although courts sometimes require prudential exhaustion in immigration habeas cases, exhaustion is not jurisdictional. The Eleventh Circuit recognizes that exhaustion may be excused where the claims presented are constitutional in nature, where administrative remedies are inadequate, or where exhaustion would be futile. *See Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982) (alterations added; citations omitted); see also *United States v. Barbieri*, No. 18-cr-20060, 2021 WL 2646604, at (S.D. Fla. June 28, 2021) ("The Court recognizes . . . that administrative exhaustion may be unnecessary where the administrative process would be incapable of granting adequate relief." (alteration added; citation omitted)).

Petitioner's claims fall squarely within those exceptions. First, he challenges the constitutionality of the stop, seizure, and continued detention under the Fourth and Fifth Amendments. Administrative officers lack authority to adjudicate constitutional claims. *Shinholster v. Graham*, 527 F. Supp. 1318, 1322 (N.D. Fla. 1981). Second, Respondents have taken the position that Petitioner is subject to mandatory detention – the Board of Immigration Appeals is applying its precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), to remove Immigration Judge's jurisdiction over bond hearings – thereby foreclosing any

meaningful bond hearing or individualized custody review. Third, Petitioner's continued detention inflicts irreparable injury in the form of ongoing deprivation of liberty. Because no administrative mechanism exists to remedy the constitutional defects asserted here, further exhaustion would be futile and is therefore excused.

II. The Interior Stop and Seizure Violated the Fourth Amendment Because Immigrations and Customs Enforcement (ICE) Lacked Reasonable Suspicion or a Judicial Warrant

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *See* U.S. Const. amend. IV. Ordinarily, a search or seizure is unreasonable "in the absence of individualized suspicion of wrongdoing." *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000) (citation omitted).

In *United States v. Martinez-Fuerte*, the Supreme Court upheld the constitutionality of immigration checkpoints at which government agents stop travelers without individualized suspicion for questioning about immigration status. 428 U.S. 543, 561 (1976). However, the scope of such immigration checkpoint stops "is limited to the justifying, programmatic purpose of the stop: determining the citizenship status of persons passing through the checkpoint." *Jasinski v. Adams*, 781 F.2d 843, 847 (11th Cir. 1986). Whereas a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. *Rodriguez v. United States*, 575 U.S. 348, 350–51 (2015). A seizure justified only by a police-observed traffic violation, therefore, "become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a ticket for the violation. *Id.* at 350 (citing *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). Petitioner's Fourth

Amendment rights were violated because he was not detained at an immigration checkpoint, and there was an absence of individualized suspicion of wrongdoing when he was stopped.

There was no judicial warrant. There was no probable cause of criminal conduct. There was no articulated reasonable suspicion of immigration violation at the time of the stop. To this day, Petitioner, nor Petitioner's counsel, has seen, reviewed or received any contemporaneous report by ICE as to the facts and circumstances regarding Petitioner's stop, interrogation, detainment, or under what authority ICE and police officers were acting on. Petitioner is currently still detained by ICE at the Florida Soft Side South detention facility in Ochopee, FL. *See Exh. A*, ICE Detention Information for Petitioner.

The Supreme Court has held that roving immigration patrol stops must be supported by reasonable suspicion. In *United States v. Brignoni-Ponce*, the Court rejected stops based solely on apparent Mexican ancestry. 422 U.S. 873, 882 (1975). In *Almeida-Sanchez v. United States*, the Court invalidated warrantless roving patrol searches conducted away from the border. 413 U.S. 266, 273, (1973). Those principles apply here. Petitioner was stopped in the interior, not at a port of entry, not at a fixed checkpoint, and not at the functional equivalent of the border. Immigration enforcement does not create a Fourth Amendment-free zone. A civil detention is still a seizure. If ICE, and/or police officers, lacked reasonable suspicion that Petitioner was unlawfully present or engaged in immigration violations at the time of the stop, the seizure was unconstitutional. The subsequent arrest and detention are fruits of that unlawful seizure. Continued custody based upon an unconstitutional stop violates the Fourth Amendment and is therefore unlawful under § 2241. 28 U.S.C. § 2241.

III. The Government Violated the Fifth Amendment by Failing to Afford a Pre

Deprivation Hearing prior to Re-detaining Petitioner

Noncitizens released on parole acquire a due process-protected liberty interest in their continued freedom when DHS releases them pending final removal decisions on condition that they abide by reporting requirements. *Esquivel Pacheco v. LaRose*, No. 3:25-CV-2421-JO-AHG, 2026 WL 242300, at 6 (S.D. Cal. Jan. 29, 2026). This liberty interest is similar to, if not greater than, the liberty interests of people on pre-parole, parole, and probation. *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1054 (N.D. Cal. 2021). Courts have distinguished between the initial parole decision, which is part of the admissions process, and the revocation of parole after release, with the latter implicating stronger constitutional protections. *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1031 (N.D. Cal. 2025).

The released individual's interest in avoiding re-detention differs from a detainee's interest in having ongoing periodic reviews of prolonged detention, as revocation implicates a liberty interest that inheres in the Due Process Clause while denial of eligibility for release does not. *Id.* at 1033. Even if immigration detainees must wait months before periodic re-review of their detention, those already released on immigration bond possess an interest in their continued liberty that grows over time and creates a due process right to a hearing before being re-detained. *Id.* at 1031.

Courts apply the three-factor balancing test from *Mathews v. Eldridge* to determine what process is due before revoking parole. See *Mathews v. Eldridge*, 424 U.S. 319 (1976). The first factor – the private interest affected – weighs heavily in favor of parolees, as they have a significant interest in remaining free from physical detention. *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F.

Supp. 3d 1331, 1337 (M.D. Ga. 2020). The second factor examines the risk of erroneous deprivation, which courts have found to be high when the government deprives an individual of any procedure before a neutral adjudicator to determine whether he poses a flight risk and a danger to the community. *Moore v. Nielsen*, No. 418CV01722LSCHNJ, 2019 WL 2152582, at 13 (N.D. Ala. May 3, 2019). When noncitizens are arrested immediately after appearing in court with inconsistent justifications and no prior assessment of changed circumstances, the risk of erroneous deprivation is substantial. *Id.*

The third factor – the government's interest – has been found to carry little weight when balanced against constitutional protections. *J.G. v. Warden*, Irwin Cnty. Det. Ctr., 501 F. Supp. 3d 1331, 1340 (M.D. Ga. 2020). Although providing pre-deprivation hearings requires expenditure of finite resources, these costs are far outweighed by the risk of erroneous deprivation of liberty. *Id.* Courts have noted that when an individual did not pose a risk of flight or danger, those factors should be assessed before detention. *Id.* at 1342.

The Eleventh Circuit has repeatedly affirmed the vitality of *Mathews v. Eldridge* in recent decisions. In *Moore v. Nielsen*, the court explicitly relied on the balancing test in *Mathews v. Eldridge* to determine that continued detention without an individualized bond hearing fails to “comport with the ‘fundamental fairness’ demanded by the Due Process Clause.” No. 418CV01722LSCHNJ, 2019 WL 2152582, at 12 (N.D. Ala. May 3, 2019).

The Eleventh Circuit's position that excludable aliens can raise constitutional challenges to deprivations of liberty or property outside the context of entry or admission reflects a more deferential approach to executive immigration decisions that may be in tension with current

constitutional analysis. See *Alexis v. U.S. Atty. Gen.*, 431 F.3d 1291, 1295 (11th Cir. 2005) citing *Jean v. Nelson*, 727 F.2d 972 (11th Cir. 1984).¹

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant his petition for a writ of habeas corpus and order his immediate release.

Respectfully submitted,

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¹ This is not to say that excludable aliens are afforded no protection by the Constitution. See, e.g., *Jean*, 727 F.2d at 972 (noting that excludable aliens "can raise constitutional challenges to deprivations of liberty or property outside the context of entry or admission, when the plenary authority of the political branches is not implicated"); *United States v. Henry*, 604 F.2d 908, 914 (5th Cir. 1979) (holding that an alien held at the border has the protections of the Fifth Amendment in criminal proceedings). See also *Lynch v. Cannatella*, 810 F.2d 1363, 1374 (5th Cir. 1987) (noting that excludable aliens are entitled under the due process clause to be free of "gross physical abuse" at the hands of state or federal officers).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** was filed via **CM/ECF** and served on all counsels of record on this **4th** day of **MARCH** 2026.

Respectfully submitted,

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