

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

	)	
Deivy Zamora Porres	)	
	)	
Petitioner,	)	Civil Action No. _____
	)	
v.	)	PETITION FOR WRIT OF
	)	HABEAS CORPUS PURSUANT TO
Warden, Florida Soft Side South;	)	28 U.S.C. § 2241
Pamela Bondi, U.S. Attorney General;	)	
Todd Lyons, Acting Director of Immigration)	)	
and Customs Enforcement;	)	
U.S. Attorney for the Middle District of	)	
Florida,	)	
	)	
Respondents.	)	
	)	

INTRODUCTION

1. Petitioner, Deivy Zamora Porres, is a native and citizen of Cuba. On April 5, 2022, Petitioner entered the United States near San Luis, Arizona. He was issued a Notice to Appear ("NTA") and released on his own recognizance pursuant to an Order of Release on Recognizance (Form I-220A). On March 15, 2026, Petitioner was stopped and detained by U.S. Immigration and Customs Enforcement ("ICE") during an interior traffic stop, without a warrant, without probable cause, and without any prior hearing.
2. Petitioner's detention is unlawful for multiple independent reasons. First, the warrantless interior stop and seizure of Petitioner violated his Fourth Amendment rights because ICE lacked reasonable suspicion or a judicial warrant. Second, the NTA issued to Petitioner is facially defective under *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), and *Niz-Chavez v. Garland*, 593 U.S. 155 (2021), because it failed to specify the time and date of Petitioner's removal hearing, depriving immigration courts of jurisdiction and rendering any resulting proceedings invalid. Third, Respondents violated the Administrative Procedure Act and the Accardi Doctrine by failing to follow their own custody and parole regulations. Fourth, Respondents' continued detention of Petitioner violates his Fifth Amendment right to due process.
3. Petitioner has pending applications before U.S. Citizenship and Immigration Services ("USCIS"), including an I-485 Application to Register Permanent Residence or Adjust Status and an I-589 Application for Asylum and for Withholding of Removal, both of which entitle Petitioner to remain in the United States while they are adjudicated.

4. Release is not reasonably foreseeable because Respondents have made no individualized determination that Petitioner presents a flight risk or danger to the community, and have provided no mechanism for obtaining a bond hearing.
5. Accordingly, to vindicate Petitioner's statutory, constitutional, and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus.
6. Absent an order from this Court, Petitioner will remain in detention indefinitely and will likely be subject to an order of removal from the United States, notwithstanding his pending applications and meritorious legal claims.
7. Petitioner asks this Court to find that Respondents have violated Petitioner's statutory, constitutional, and regulatory rights, and order Petitioner's immediate release, or, in the alternative, order an immediate custody redetermination hearing under 8 U.S.C. § 1226(a).

JURISDICTION

8. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq.
9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

11. Venue is proper because Petitioner is detained at Florida Soft Side South, located at 54575 Tamiami Trail East, Ochopee, Florida, which is within the jurisdiction of this Court's Fort Myers Division.
12. In addition, venue is proper in this District because Respondents are officers, employees, or agencies of the United States, Respondent Warden resides in this District, a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the Respondents "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).
14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

15. Petitioner, Deivy Zamora Porres, is a native and citizen of Cuba. Petitioner is currently detained at Florida Soft Side South, 54575 Tamiami Trail East, Ochopee, Florida. He is in the custody, and under the direct control, of Respondents and their agents.

16. Respondent, Warden, Florida Soft Side South, has immediate physical custody of Petitioner pursuant to a contract with U.S. Immigration and Customs Enforcement to detain noncitizens. Respondent Warden is a legal custodian of Petitioner.
17. Respondent, Pamela Bondi, is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals ("BIA"). Respondent Bondi is a legal custodian of Petitioner.
18. Respondent, Todd Lyons, is sued in his official capacity as the Acting Director of the U.S. Immigration and Customs Enforcement ("ICE"). Respondent Lyons is a legal custodian of Petitioner and has authority to release him.
19. Respondent, U.S. Attorney for the Middle District of Florida, is sued in an official capacity, as an officer of the United States, with authority over matters arising within this district.

STATEMENT OF THE FACTS

20. Petitioner, Deivy Zamora Porres, is a thirty-two-year-old native and citizen of Cuba, born on , in Cienfuegos, Cuba. *See Exhibit ("Exh.") A*, copy of Petitioner's Cuban Passport.
21. On April 5, 2022, Petitioner entered the United States near San Luis, Arizona. On April 7, 2022, the U.S. Department of Homeland Security ("DHS") issued Petitioner a Notice to Appear ("NTA"), placed him in removal proceedings under section 240 of the Immigration and Nationality Act ("INA"), and charged him as an alien present in the United States

without being admitted or paroled, pursuant to INA § 212(a)(6)(A)(i). *See Exh. B*, copy of Petitioner's Notice to Appear.

22. On April 7, 2022, DHS released Petitioner on his own recognizance pursuant to an Order of Release on Recognizance (Form I-220A), subject to conditions including the requirement to report for any hearing as directed by DHS or the Executive Office for Immigration Review. *See Exh. C*, copy of Petitioner's Order of Release on Recognizance.
23. The NTA issued to Petitioner on April 7, 2022, is facially defective because it does not specify a date or time for Petitioner's removal hearing. It orders Petitioner to appear "on a date to be set" at "a time to be" determined—in direct violation of the statutory and regulatory requirements governing the content of a Notice to Appear.
24. Since entering the United States on April 5, 2022, Petitioner has never received any notice of a removal hearing. Shortly after his arrival, Petitioner personally appeared at the Miami Immigration Court to inquire about the absence of a hearing date and was instructed by court staff to contact ICE Miramar by email to request an appointment. Petitioner complied and sent the email, but never received a response or any scheduled appointment.
25. On May 10, 2022, Petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal, with USCIS. USCIS received the application and issued a receipt notice, followed by a biometrics appointment notice scheduling Petitioner's fingerprinting on October 25, 2022, at the USCIS Kendall Application Support Center. Petitioner attended the biometrics appointment. *See Exh. D*, I-589 Receipt Notice and Biometrics Appointment Notice.

26. On January 3, 2025, USCIS approved Petitioner's application for employment authorization. USCIS issued an Employment Authorization Document (EAD) valid from January 16, 2025, through January 15, 2030. *See Exh. E*, I-797C EAD Approval Notice.
27. Petitioner also filed a Form I-485, Application to Register Permanent Residence or Adjust Status. As of May 17, 2023, USCIS updated Petitioner's I-485 case to reflect that fingerprints had been applied to the case. Petitioner's I-485 remains pending. *See Exh. F*, screenshot of Petitioner's USCIS online account confirming the pending I-485 and fingerprint processing..
28. On March 15, 2026, at approximately 8:00 a.m., Petitioner was traveling toward the Florida Keys to perform a landscaping job when he was stopped by an unmarked vehicle whose lights were activated to signal him to pull over. The officer who approached wore a uniform without any logos or insignia identifying his agency. When Petitioner asked the reason for the stop, the officer identified himself as an ICE agent and demanded identification.
29. Petitioner provided his driver's license and employment authorization card. Despite presenting valid government-issued documents confirming his authorization to be present and work in the United States, Petitioner was ordered out of the vehicle, handcuffed, and taken into custody. The stated basis for his detention was that he had "missed a court date." Petitioner was transported to a Border Patrol office in the Florida Keys. Officers subsequently informed Petitioner's wife by phone that he was detained "for not having court."
30. Petitioner was not committing any criminal offense at the time of the stop. No criminal charges were filed. No traffic citation was issued. No judicial warrant existed. Petitioner did not receive any pre-deprivation hearing prior to being detained.

31. Petitioner is currently detained by ICE at Florida Soft Side South, 54575 Tamiami Trail East, Ochopee, Florida 34141. *See Exh. G*, ICE Detention Locator information for Petitioner.

LEGAL FRAMEWORK

32. 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." U.S. Const. amend. IV. A seizure is unreasonable in the absence of individualized suspicion of wrongdoing. *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000).

33. A traffic stop may not be prolonged beyond the time reasonably required to complete the mission for which it was made. *Rodriguez v. United States*, 575 U.S. 348, 350–51 (2015). Any stop that exceeds this temporal limit and transforms into an immigration arrest without warrant or probable cause violates the Constitution.

34. A Notice to Appear must specify, among other things, the time and place at which removal proceedings will be held. 8 U.S.C. § 1229(a)(1)(G)(i); 8 C.F.R. § 1003.14(a). An NTA that omits the time and date of the hearing is not a valid NTA under the statute. *Pereira v. Sessions*, 585 U.S. 198, 214 (2018). A two-step NTA that is incomplete at the time of service does not trigger the stop-time rule and does not establish jurisdiction in immigration court. *Niz-Chavez v. Garland*, 593 U.S. 155, 160–61 (2021). A defective NTA that never properly vested jurisdiction in the immigration court cannot serve as a valid predicate for continued detention.

35. Under the APA, courts must "hold unlawful and set aside" agency action taken "without observance of procedure required by law" or that is "arbitrary, capricious, [or] not in accordance with law." 5 U.S.C. § 706(2)(A), (D).

36. The Accardi doctrine requires agencies to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).
37. The Fifth Amendment prohibits deprivation of liberty without due process of law. U.S. Const. amend. V. Physical detention constitutes the most severe form of liberty deprivation. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Prolonged immigration detention without individualized findings of flight risk or danger violates due process. *Id.* at 690–93.
38. Noncitizens present in the interior of the United States are governed by 8 U.S.C. § 1226, not § 1225(b). Section 1226(a) authorizes arrest and detention pending removal proceedings and contemplates individualized bond hearings. Section 1226(c) mandates detention only for certain criminal and security-related grounds not applicable here. Petitioner entered without inspection and was processed under § 1225 at the border, but was released into the interior and has been present here for nearly four years. His re-detention must be assessed under § 1226(a), which entitles him to an individualized bond determination.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fourth Amendment Right Against Unreasonable Seizure

39. The allegations in the above paragraphs are realleged and incorporated herein.
40. The interior stop and seizure of Petitioner on March 15, 2026, violated his Fourth Amendment rights because ICE lacked reasonable suspicion, probable cause, or a judicial warrant.

41. The officer who conducted the stop drove an unmarked vehicle, wore no agency insignia, and offered no lawful basis for the stop at the time it occurred. Petitioner was in the act of traveling to a lawful place of employment, committed no criminal offense, and was issued no citation. No warrant was produced. No contemporaneous record of the stop's factual basis has been provided to Petitioner or his counsel.
42. Petitioner presented valid, government-issued documents—a driver's license and an Employment Authorization Document—confirming his authorization to be present in the United States. Despite this, he was handcuffed and transported to custody without any judicial authorization and without any pre-deprivation hearing.
43. For these reasons, Petitioner's detention violates the Fourth Amendment.

COUNT TWO

Unlawful Detention Based on a Defective Notice to Appear

44. The allegations in the above paragraphs are realleged and incorporated herein.
45. The NTA issued to Petitioner on April 7, 2022, did not specify the date or time of his removal hearing. It ordered him to appear "on a date to be set" at "a time to be" determined. Under 8 U.S.C. § 1229(a)(1)(G)(i), a Notice to Appear must specify the time and place of the hearing. Under *Pereira* and *Niz-Chavez*, an NTA that fails to provide this information is not a complete statutory NTA and does not confer jurisdiction on the immigration court.
46. Because the NTA is defective, no valid removal proceedings were initiated against Petitioner. No order of removal can lawfully issue from proceedings that were never properly commenced. Respondents cannot use the specter of removal proceedings founded on a defective NTA—proceedings Petitioner never received proper notice of—as justification for his continued detention.

47. Petitioner's detention premised on alleged non-appearance at a hearing he was never lawfully notified of is arbitrary and unlawful.

COUNT THREE

Violation of the Administrative Procedure Act and the Accardi Doctrine

48. The allegations in the above paragraphs are realleged and incorporated herein.

49. Respondents violated the Administrative Procedure Act and the Accardi Doctrine by failing to follow their own custody and parole regulations.

50. ICE's own regulations require individualized consideration before detaining or re-detaining a noncitizen who was previously released. Respondents made no individualized determination that Petitioner is a flight risk or a danger to the community. Respondents did not conduct a custody redetermination hearing. Respondents did not provide Petitioner any opportunity to be heard before being detained.

51. Failure to exercise discretion where discretion exists constitutes arbitrary and capricious agency action. 5 U.S.C. § 706(2)(A), (D). Agencies may not convert discretionary statutory authority into de facto mandatory detention by policy or practice, nor may they ignore procedural safeguards embedded in their own regulatory framework.

52. For these reasons, Petitioner's detention violates the APA and the Accardi Doctrine.

COUNT FOUR

Violation of Fifth Amendment Right to Due Process

53. The allegations in the above paragraphs are realleged and incorporated herein.

54. Respondents' continued detention of Petitioner violates his Fifth Amendment right to due process. Petitioner has been present in the United States for nearly four years. He has maintained employment, complied with all conditions of his release on recognizance, filed

pending immigration applications with USCIS, and has established substantial ties to this country. He possesses a cognizable liberty interest in remaining free from detention.

55. Respondents have made no individualized findings that Petitioner is a flight risk or danger to the community. They have provided no mechanism for Petitioner to challenge his detention before a neutral adjudicator. Detention without individualized justification and without access to a bond hearing is punitive, not regulatory, and violates the Due Process Clause.

56. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (3) Declare that Petitioner's detention violates the Fourth Amendment, and/or the Fifth Amendment, and/or the APA and the Accardi Doctrine, and/or is premised on a defective and jurisdictionally insufficient Notice to Appear;
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, ordering Respondents to schedule a bond hearing under 8 U.S.C. § 1226(a) before an immigration judge within three days;
- (5) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Arno J. Lemus

Arno J. Lemus III

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Counsel for Petitioner

Date: March __, 2026

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Deivy Zamora Porres, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date this 19th day of March, 2026.

/s/ Arno J. Lemus

Arno J. Lemus III

Florida Bar No. 0103075

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Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of MARCH 2026, a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 was filed via CM/ECF and served upon all counsels of record through the Court's electronic filing system.

/s/ Arno J. Lemus
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