

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

Deivy Zamora Porres

Petitioner,

v.

Warden, Florida Soft Side South, et al.,

Respondents.

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)

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) Civil Action No. 2:26-cv-00818-SPC-NPM

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) **MOTION TO ENFORCE ORDER**

) **GRANTING HABEAS CORPUS**

) **AND FOR IMMEDIATE RELEASE**

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INTRODUCTION

Petitioner, Deivy Zamora Porres, by and through undersigned counsel, respectfully moves this Court to enforce its Opinion and Order dated April 2, 2026 (“Order”). Doc. 10.

The Order established a clear condition precedent to Petitioner’s continued detention: within ten days, Respondents were required to either provide Petitioner with an individualized bond hearing under 8 U.S.C. § 1226(a) (governing discretionary detention and bond)—one that “must include—and the resulting order must reflect—consideration of evidence properly submitted by the petitioner and the factors announced in *In re Guerra*”—or release him. Doc. 10 at 3. If no compliant hearing occurred, the Order required that Respondents “must release him.” *Id.* at 4. That condition has failed. The ten-day deadline expired on April 12, 2026. No compliant hearing occurred. The self-executing release clause has been triggered.

Respondents have not appealed this Court’s Order. They have not sought a stay. No notice of appeal or motion to stay appears on the docket. Yet Petitioner remains detained—now approaching one month in custody—without ever receiving the individualized bond hearing this Court found he is constitutionally and statutorily entitled to receive. The only appropriate habeas relief now is release from custody.

STATEMENT OF FACTS

The relevant facts and procedural history are set forth in this Court’s Order and are briefly summarized here. Doc 10.

Petitioner is a thirty-two-year-old native and citizen of Cuba who entered the United States on April 5, 2022. Doc. 1-2 at 4. He was issued a Notice to Appear and released on his own recognizance. *Id.* He has a pending I-589 asylum application filed May 10, 2022, a pending I-485

adjustment-of-status application, and employment authorization valid through January 15, 2030. *Id.* at 10-15. He has no criminal record. He has a minor child who is a United States citizen. On March 15, 2026, U.S. Immigration and Customs Enforcement (“ICE”) detained Petitioner during a traffic stop near the Florida Keys. Doc. 1 at 7. He has been held at Florida Soft Side South since that date. Doc. 1-2 at 3.

On March 19, 2026, Petitioner filed a Petition for Writ of Habeas Corpus. Doc. 1. On March 30, 2026, Respondents filed their Response, arguing that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) (mandatory detention) and that the Court lacks jurisdiction. Doc. 4.

On April 2, 2026, this Court granted the petition. Doc. 10. The Court held that it has jurisdiction, that exhaustion is excused as futile, and that Petitioner’s detention is governed by 8 U.S.C. § 1226(a)—not § 1225(b)(2). Doc. 10 at 2–3. The Court ordered Respondents to, within ten days, either bring Petitioner for an individualized bond hearing or release him. *Id.* at 4. The Court specified that the hearing “must include—and the resulting order must reflect—consideration of evidence properly submitted by the petitioner and the factors announced in *In re Guerra*, 24 I. & N. Dec. 37 (BIA 2006).” Doc. 10 at 3. Petitioner’s counsel was to receive at least 48 hours’ notice. *Id.*

The Court was unequivocal: “[S]ubjecting Zamora Porres to mandatory detention under § 1225(b)(2) is unlawful. If the respondents are unable to ensure Zamora Porres receives a bond hearing that complies with this Order within ten days, they must release him.” Doc. 10 at 4. Respondents have not appealed or moved to stay this Court’s Order. No notice of appeal or motion to stay appears on the docket as of the date of this filing.

Following this Court's Order, the U.S. Department of Homeland Security ("DHS") took no steps to schedule a bond hearing for Petitioner. It was Petitioner's counsel—not Respondents—who requested a custody redetermination hearing before the Miami Krome Immigration Court. The hearing was scheduled for April 7, 2026, before Immigration Judge Liviu Lungu. See Exhibit ("Exh.") A, Bond Order.

On April 7, 2026, Petitioner's counsel appeared at the Miami Krome Immigration Court, ready, willing, and able to proceed with the individualized bond hearing this Court ordered. See Exh. B, Counsel's Declaration. However, Petitioner was not present. Respondents—who have physical custody of Petitioner at Florida Soft Side South and control his transportation—failed to produce him at the hearing. DHS did not facilitate Petitioner's transportation to the immigration court and did not ensure his presence by any other means. *Id.*

Because Petitioner was absent, the Immigration Judge presented Petitioner's counsel with two options: (1) proceed with the bond hearing without Petitioner present, or (2) take no action. *Id.* Counsel chose the no-action disposition rather than hold a hearing about Petitioner's liberty in Petitioner's absence—a choice compelled by due process and basic fairness. *Id.* The Immigration Judge entered an order reflecting "No action at the respondent's request," checked "Other," and both DHS and Petitioner waived appeal. See Exh. A. Because both parties waived appeal, there is no administrative bond order to defer to or review—no bond was set, no individualized determination was made regarding flight risk or danger to the community, no evidence was considered, and the *In re Guerra*, 24 I. & N. Dec. 37 (BIA 2006), factors were not addressed.

The causal chain is straightforward: Petitioner's counsel secured the hearing; DHS, which controls Petitioner's custody and transportation, failed to transport Petitioner from Florida Soft Side South to the Miami Krome Immigration Court; the Immigration Judge could not conduct a

meaningful proceeding; and no bond determination was made. Respondents' own failure to act is the sole reason the condition precedent to continued detention was not satisfied.

As of the date of this motion, the ten-day deadline imposed by this Court's April 2, 2026 Order has expired. Petitioner has not received the individualized bond hearing this Court ordered. He has not been released. He remains detained at Florida Soft Side South.

ARGUMENT

I. Respondents Have Failed a Clear Condition Precedent to Petitioner's Continued Detention

This Court's Order imposed a condition precedent on Petitioner's continued detention: within ten days, Respondents were required to ensure Petitioner received an individualized bond hearing satisfying 8 U.S.C. § 1226(a) and *In re Guerra*, 24 I. & N. Dec. 37 (BIA 2006), or release him. Doc. 10 at 3–4. The Order further provided that if Respondents were “unable to ensure” a compliant hearing, “they must release him.” *Id.* at 4. This structure was deliberate: the Court anticipated that the Executive Office for Immigration Review (“EOIR”)—which “is not a party to this action”—“may decide not to hold a hearing that satisfies these requirements,” and placed the release obligation squarely on Respondents—the federal officials who control Petitioner's custody and transportation—in that event. *Id.* at 3–4.

The condition has failed. The April 7 “no action” order was not a bond hearing. It resulted directly from Respondents' failure to produce Petitioner—whom they physically hold and whose transportation they control—at the proceeding his own counsel had to arrange. No evidence was weighed. No *Guerra* factors were considered. No individualized determination was made. Both parties waived appeal, leaving no administrative order to defer to or review. See Exh. A. The ten-

day deadline expired on April 12, 2026, without a compliant hearing. The self-executing release clause is triggered.

II. Respondents' Failure to Produce Petitioner Violated Both This Court's Order and Petitioner's Due Process Rights

This Court's Order required an "individualized bond hearing" in which the immigration judge considers evidence and applies the *In re Guerra*, 24 I. & N. Dec. 37 (BIA 2006), factors—flight risk, danger to the community, ties to the community, and the equities specific to Petitioner's circumstances. Doc. 10 at 3. Each of these factors necessitates the individual's presence: assessing flight risk requires testimony about community ties and compliance history; evaluating danger requires direct inquiry into the individual's circumstances; and weighing equities requires an opportunity to present evidence in the individual's presence. None of these assessments can be meaningfully made without the individual before the court.

Due process requires, at minimum, that a person be present and afforded an opportunity to be heard before a court rules on his continued detention. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Respondents cannot force Petitioner's counsel to arrange the bond hearing, fail to transport the detainee to that hearing, and then claim compliance with this Court's Order.

The failure to produce Petitioner at the April 7 hearing renders that proceeding a nullity. This Court's Order cannot reasonably be read to permit Respondents to hold a hearing about Petitioner in Petitioner's absence. The causal chain is unbroken: counsel secured the hearing; DHS, which controls custody and transportation, did not transport Petitioner; the Immigration Judge could not conduct a meaningful proceeding; no *Guerra*-factor analysis occurred; both parties waived appeal; and the ten-day deadline expired on April 12, 2026, with Petitioner still detained. Respondents' own failure to act is the sole reason the condition precedent was not met. The Order

assigned the duty to “ensure” the hearing to Respondents precisely to prevent EOIR non-cooperation from frustrating the writ. Doc. 10 at 3–4.

III. Immediate Release Is the Only Adequate Remedy

This Court has already granted the writ and ordered a conditional remedy: a compliant bond hearing within ten days, or release. Doc. 10 at 4. The bond-hearing alternative has failed through Respondents’ own non-compliance. What Petitioner seeks now is not new or modified relief but enforcement of the release alternative that the Order already granted—a matured, self-executing remedy triggered by the expiration of the deadline without a compliant hearing. The Court is executing its original judgment, not altering it.

The Court retains inherent authority to effectuate its own unstayed judgment and protect the efficacy of the writ. The All Writs Act, 28 U.S.C. § 1651(a), authorizes federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions.” Habeas courts retain authority to enforce release where necessary to give effect to the writ. *See Harris v. Nelson*, 394 U.S. 286, 300 (1969) (recognizing habeas courts’ authority to “fashion appropriate modes of procedure” to dispose of habeas matters); *Boumediene v. Bush*, 553 U.S. 723, 787 (2008) (“[T]he habeas court must have sufficient authority to . . . issue an appropriate order of release.”).

Because no appeal has been filed and no stay has been entered—no such filings appear on the docket as of the date of this motion—the Order is final and enforceable. *See Nken v. Holder*, 556 U.S. 418, 428 (2009). Ordering any further hearing opportunity would reward administrative evasion and render this Court’s original deadline meaningless.

Courts in this district have ordered release in materially identical circumstances. *See Cuevas Medina v. Noem*, No. 2:26-CV-00116-SPC-NPM, 2026 WL 496755, at *1 (M.D. Fla. Feb. 23, 2026) (“[T]he only appropriate habeas relief now is release from custody.”); *Fernandez*

Alvarez v. Noem, No. 2:26-CV-00313-SPC-DNF, 2026 WL 598614, at *1 (M.D. Fla. Mar. 4, 2026) (“[T]he Court’s prior Opinion and Order thus requires the respondents to release [Petitioner] from custody.”). This Court relied on its own decisions in *Hinojosa Garcia v. Noem*, No. 2:25-cv-879-SPC-NPM, 2025 WL 3041895, at *6 (M.D. Fla. Oct. 31, 2025) (ordering bond hearing or release), and *Vasquez Carcamo v. Noem*, No. 2:25-cv-922-SPC-NPM, 2025 WL 3119263, at *2 (M.D. Fla. Nov. 7, 2025) (same), in granting the habeas petition. It should reach the same result now in enforcing it.

IV. Petitioner’s Continued Detention Constitutes Ongoing Irreparable Harm

This Court has already adjudicated that Petitioner’s detention under § 1225(b)(2) is unlawful. Doc. 10 at 4. Every additional day of detention following that final order constitutes a continuing due process violation. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”); *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1218–19 (11th Cir. 2016).

The record-specific facts confirm the harm and, notably, map directly onto the *In re Guerra*, 24 I. & N. Dec. 37 (BIA 2006), factors that a compliant hearing would have required the immigration judge to consider. As to danger to the community: Petitioner has no criminal record, and the government’s own 2022 I-213 noted that he “does not appear to be a threat to national security, border security, or public safety.” Doc. 4-1 at 3. As to flight risk: no individualized finding of flight risk has ever been made, and Petitioner complied with the conditions of his release on recognizance for nearly four years before his re-detention. As to community ties and equities: Petitioner has a minor child who is a United States citizen, a pending I-589 asylum application, a pending I-485 adjustment-of-status application, and a valid Employment Authorization Document

through January 15, 2030. He has been detained for twenty-nine days as of the date of this motion. A compliant hearing considering these factors would likely have resulted in his release—yet Respondents ensured no such hearing could take place. There is no legitimate governmental interest in continuing to detain Petitioner in defiance of this Court’s Order.

CONCLUSION

This Court’s Order established a clear condition precedent: a compliant bond hearing within ten days, or release. The condition has failed—not because of any action by Petitioner, but because Respondents failed to produce him at the only hearing that was scheduled, a hearing that Petitioner’s own counsel had to arrange. The self-executing release clause has been triggered. No appeal or stay exists. This Court is not being asked to modify its judgment but to execute the alternative remedy it already granted.

Petitioner respectfully requests that this Court:

- (1) Find that Respondents have failed to comply with this Court’s April 2, 2026 Opinion and Order (Doc. 10);
- (2) Order the immediate release of Petitioner—within twenty-four (24) hours of this Court’s order—under reasonable conditions of supervision, consistent with the fallback provision of the April 2, 2026 Order;
- (3) Order Respondents to provide written notice to Petitioner’s counsel of the date, time, and location of Petitioner’s release, and to coordinate with counsel for Petitioner’s pickup from the detention facility;
- (4) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Arno J. Lemus
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Dated: April 13, 2026

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 13, 2026, a true and correct copy of the foregoing **PETITIONER'S EMERGENCY MOTION TO ENFORCE THIS COURT'S ORDER GRANTING HABEAS CORPUS AND FOR IMMEDIATE RELEASE** was filed via CM/ECF, which will automatically serve all counsel of record.

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