

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

GILBERTO ALONSO-PORTILLO, Petitioner, v. RICHARD JONES, Sheriff of Butler County, <i>et al.</i> , Respondents.	Case No. 1:25-cv-00306 Judge Michael R. Barrett Magistrate Judge Kimberly A. Jolson
---	---

**PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO AMEND ORIGINAL
HABEAS CORPUS MOTION**

INTRODUCTION

Petitioner Gilberto Alonso-Portillo filed Petitioner's Motion for Leave to Amend Habeas Corpus Petition (Motion for Leave, Doc. 22). Respondent's answer was filed on July 12, 2025 (Respondent's Opposition to Amend Original Habeas Corpus, Doc. 24).

Respondent asserts that the amended petition fails to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6), that administrative remedies were not exhausted, and that Petitioner's First Amendment claim is without merit. However, Respondent's arguments rely on factual matters not contained in the record and therefore raise material issues of fact that require discovery and further factual development.

Petitioner has exhausted all available administrative remedies. The claims raised in this habeas petition are separate and independent from any bond proceedings before the Immigration Court. This petition challenges the legality of the Petitioner's arrest and ongoing detention, arguing that the detention was unlawful from the outset. The remedy of bond would not redress these claims. Detention itself lacks legal justification. Because the habeas petition raises constitutional and statutory issues unrelated to bond eligibility, administrative exhaustion related to bond is not applicable.

Accepting bond as an appropriate remedy would necessarily imply that detention was lawful in the first place, a premise the Petitioner firmly rejects. Habeas corpus is the proper vehicle for challenging unlawful and unconstitutional detention. The relief and remedies sought herein is a determination that the detention was unauthorized under statues and regulations, and furthermore is unconstitutional. Such relief and remedies are totally separate from and independent from any remedy accorded by a request for bond.

Furthermore, the Respondent's reliance on Rule 12(b)(6) is misplaced because their arguments rest on factual assertions not present in the pleadings. The Court must accept the well-pleaded allegations in the amended petition as true. Any disputes concerning the facts or credibility must be resolved through discovery and evidentiary proceedings, not through premature dismissal. Petitioner's opposition, by raising these factual issues, only reinforces the need for the Court to allow the case to proceed.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On April 7, 2025, Petitioner Gilberto Alonso-Portillo was arrested at his home by agents from the Department of Justice (FBI), Homeland Security Investigations (HSI), and Immigration and Customs Enforcement (ICE). Agents entered Petitioner's residence without a judicial warrant, without voluntary consent, and without any known exigent circumstances. (Petitioner's Affidavit, Doc. 21-1, PageID 207). At the time of the arrest, Petitioner was not subject to a removal order and no criminal charges have been filed against him to date. (Petitioner's Affidavit, Doc. 21-1, Page ID 208 ¶ 17).

Following his arrest, Petitioner was asked about his immigration status and then his home was searched. (Doc 19-2 FBI Affidavit – Page ID 172). Petitioner disputes making any admission at that time. He was not shown a warrant at any time and was coerced into allowing a search of his home. (Petitioner's Affidavit, Doc. 21-1, PageID 207 ¶ 8-10). After his arrest, removal proceedings were initiated, and he was issued a Notice to Appear. (NTA, Doc. 19-1 PageID 102-04). The government's claim of "reliable evidence" justifying the warrant remains entirely unsupported, and this unexplained assertion creates a factual dispute requiring discovery. (Respondent's Opposition to Amend Original Habeas Corpus, Doc. 24 PageID, 414 ¶ 2).

Petitioner's current detention stems from an arrest and search unsupported by a warrant, a removal order, or probable cause. The petitioner must be released from illegal detention because the arrest and subsequent detention was illegal under the U.S. Constitution.

ARGUMENT

I. Administrative Remedies Have Been Exhausted.

This habeas petition challenges the legality of detention itself, not merely the denial of his application for bond or any procedural error during his removal proceedings. To suggest that release on bond is an adequate remedy would require accepting the premise that the detention was lawful at its inception. Petitioner expressly rejects that premise and seeks a determination that the detention was unlawful *ab initio*, a question squarely within the scope of habeas corpus relief.

Under 28 U.S.C.A. § 2254 (b)(1)(B)(ii) exhaustion of administrative measures is not required where “circumstances exist that render such process ineffective to protect the rights of the applicant.” The Supreme Court has recognized that Habeas Corpus is the proper remedy in all cases of illegal detention. See *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 490 (1973). The exhaustion requirement “should not be applied mechanically without regard to factual setting.” *Pate v. Holman*, 343 F.2d 546, 547 (5th Cir., 1965). If bond proceedings are ineffective to protect the rights of the prisoner, then the requirement of exhaustion is inapplicable to them. *Id.* Where administrative remedies would be futile or ineffective, as here, exhaustion is excused. See *Turner v. Bagley*, 401 F.3d 718, 724 (6th Cir., 2005); *Lucas v. People of the State of Michigan*, 420 F.2d 259, 262 (6th Cir.1970).

Respondents concede that Petitioner admitted to unlawful presence only after his arrest. Petitioner disputes making this admission at that time. As a result, there is no credible basis to assert DHS had probable cause at the time of arrest. Petitioner's arrest was the product of a warrantless seizure unsupported by legally sufficient evidence—a direct violation of his constitutional rights.

The Fourth Amendment's protections extend to “the people,” which includes individuals with substantial ties to the United States.” See *U.S. v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990). In *Verdugo-Urquidez* the Court considered involvement in the community and compliance with social obligations to determine if the Petitioner could be considered among “the people” of the

United States. *Id.* at 273. Petitioner has resided in the U.S. since at least 2007, is married with two U.S. citizen children, pays taxes, and owns property. The Petitioner has accepted societal obligations and qualifies as part of "the people" entitled to constitutional protection, including freedom from unreasonable search and seizure.

Petitioner is in immigration proceedings as a result of a warrantless search and seizure, based on either a nonexistent or legally insufficient administrative arrest warrant. Petitioner's Writ of Habeas Corpus seeks relief from his illegal confinement, which is the constitutional purpose of the action. *Braden*, 410 U.S. 484, 490 (1973). Bond, if granted, would grant liberty to the Petitioner while undergoing removal proceedings, but is unrelated to the fact that Petitioner's detention is illegal *ab initio*. The Petitioner seeks the protection and recognition of his constitutional rights as part of the people of the United States, not simply permission to undergo immigration proceedings while unconfined.

As alleged by the Petitioner throughout the filings in this case, prior to the Petitioner's arrest, the Department of Homeland Security could not have had reliable evidence to suspect that the Petitioner was in this country illegally. DHS states that they obtained the Petitioner's admission of his unlawful presence immediately after his arrest (see Respondent's Return of Writ, Doc. 19, PageID, 80 ¶ 3). The Petitioner disputes making this admission at this time (see Petitioner's Affidavit, Doc. 21-1, PageID 207 ¶ 6-7). Thus, because probable cause was not present before the arrest, bond would be futile to address the violation of Petitioner's rights by the warrantless search and seizure. The exhaustion of the bond process is not required nor appropriate to the claims made by Petitioner in this case.

If Petitioner was arrested without a warrant, then his arrest falls under INA 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A) rendering Petitioner ineligible for bond. *Matter of Q, Li*, 29 I&N Dec. 66 (BIA 2025). As such, pursuing bond is not only ineffective—it is impossible. If the measure is futile, "[i]t cannot be used as a blunderbuss to shatter the attempt at litigation of constitutional claims without regard to the purposes that underlie the doctrine and that called it into existence." *Braden*, 410 U.S. 484, 490 (1973). Requiring exhaustion of a process that offers no relief is inherently futile and should not bar habeas review.

Finally, to require exhaustion under these circumstances would be to elevate form over substance and deny access to a remedy for unlawful detention—precisely what habeas corpus is

designed to prevent. As the Supreme Court emphasized in *Braden*, habeas is an "imperative remedy" for those subject to unlawful restraint. *Id.*

II. Even Assuming a Warrant Existed, Detention Remains Constitutionally Deficient

Respondent's Opposition to Amend Original Habeas Corpus, admits that the reason for the warrant's issuance was not a statement made voluntarily by the subject to an immigration officer, but "other reliable evidence." (Respondent's Opposition to Amend Original Habeas Corpus, Doc. 24, PageID 414). Respondent has failed to disclose what this alleged "reliable evidence" was, or how it could have established probable cause *prior* to the arrest. Without a prior removal order or criminal history, Petitioner is left to assume that the Respondents could not have had valid probable cause, unless this "other reliable evidence" is provided. Furthermore, the Petitioner has sworn under penalty of perjury that he was not presented with this warrant at the time of his arrest (Petitioner's Affidavit, Doc. 21-1, PageID 207). Warrants require probable cause supported by oath or affirmation and the Respondent has not provided evidence of this probable cause. There is no lawful foundation for asserting that probable cause for arrest existed because the admission of the Respondent's lack of immigration status was allegedly obtained post-arrest.

The absence of this information leaves Petitioner to speculate that the initial administrative warrant was the product of unconstitutional targeting based on race or national origin. As the Sixth Circuit held in *U.S. v. Avery*, 137 F.3d 343 (6th Cir. 1997), initiating an investigation based solely on race violates the Equal Protection Clause. Habeas corpus remains the appropriate remedy to address this constitutional violation.

If the warrant was obtained or executed based on such discriminatory profiling, then Petitioner's constitutional rights were violated regardless of any bond-related remedies that might be available. In such circumstances, habeas corpus—not bond—is the appropriate and necessary vehicle to challenge the legality of detention and vindicate the constitutional rights at issue.

III. Approval of Respondent's Argument Would Risk Broad Constitutional Violations Against All, Including United States Citizens

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and

no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const., amend. IV. The Fifth Amendment further guarantees that “[n]o person shall (...) be deprived of life, liberty, or property, without due process of law (...)” U.S. Const., amend. V. The protections of these amendments apply to *all persons* on U.S. soil, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *Oscar v. Ripe*, 751 F.Supp.3d 1324, 1329 (S.D. Florida, 2024). An arrest or search lacking a warrant, probable cause, or exigent circumstances violates these protections.

Yet Respondent seeks to justify an arrest and subsequent search that lacked a valid warrant, probable cause, or exigent circumstances. Even if an administrative warrant existed, it did not meet constitutional standards. Respondent concedes that no admission of unlawful presence by Petitioner occurred prior to arrest and instead relies vaguely on “other reliable evidence” to justify the seizure (Respondent’s Opposition to Amend Original Habeas Corpus, Doc. 24, PageID 414). No such evidence has been produced. The absence of a removal order, criminal record, or any disclosed basis for probable cause raises grave constitutional concerns—particularly when Petitioner has attested under oath that he was not shown a warrant, and his consent to search was obtained under threat and duress.

Immigration enforcement may arrest an individual with a removal order without a warrant, such as arrests, but only be used when the alien is likely to escape before a warrant can be obtained. *Arizona v. U.S.*, 567 U.S. 387, 408 (2012) and 8 U.S.C. § 1357(a)(2). In this case, critically, there was no removal order, and there was no risk of escape by the intended target, the Petitioner.

IV. Immigration Proceedings Do Not Nullify Constitutional Duties and Overreach Threatens the Rights of U.S. Citizens

Allowing constitutional violations against noncitizens opens the door to similar abuses against citizens, particularly those of Latin ancestry who may be mistakenly targeted. The Supreme Court warned in *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884–86 (1975), that racial profiling in immigration enforcement threatens the constitutional rights of all.

While the Court in *I.N.S. V. Lopez-Mendoza* held that the exclusionary rule does not apply to immigration proceedings, on the basis that removal proceedings are civil and not criminal, this

does not relieve immigration officers of their obligation to comply with the Fourth and Fifth Amendments. 468 U.S. 1032, 1039 (1984). But these considerations do not erase the government's obligation to comply with the Fourth and Fifth Amendment due process obligations. Immigration Officers must obtain a valid warrant or meet recognized exceptions before arresting or detaining someone. *Id.* at 1051; see also *Brignoni-Ponce*, 422 U.S. at 878.

Permitting violations of constitutional rights against one group risks exposing all—including U.S. citizens—to the same unlawful practices. The powers granted to immigration officers cannot be used to undermine the Fourth Amendment rights of citizens who may be mistaken for noncitizens. *Id.* at 884. This is particularly concerning in a society where many citizens share the ethnic or racial characteristics commonly associated with immigrant populations.

The Equal Protection Clause prohibits targeting individuals based solely on race or apparent ancestry. Enforcement practices that rely on these characteristics to initiate stops, arrests, or investigations are unconstitutional. *Id.* at 886. If left unchecked, such practices would open the door to widespread racial profiling and unequal treatment under the law, directly contrary to the Fourteenth Amendment.

This leads directly to the First Amendment Concern.

Respondent has repeatedly pointed to a sign posted on Petitioner's private property as one of the bases for further interrogation and search. The sign, which warned trespassers about the presence of firearms, was a lawful expression of opinion and a deterrent against unlawful entry. It did not contain threats, incitement, or any content outside the protections of the First Amendment. (See FBI Evidence, Affidavit of Donald Pender, Doc. 19-2, PageID 175, and see ICE Evidence, Declaration of Luke Affholter, Doc. 19-1, PageID 94).

The sequence of events—as laid out by Respondent—makes clear that the arrest occurred first, and then the questioning about firearms began, apparently triggered by the sign. (See FBI Evidence, Doc. 19-2, PageID 171). To permit government agents to use expressive content on private property as the basis for searching someone's home discourages the protected exercise of free speech, for anyone regardless of immigration status. It is apparent that Respondent was approached and arrested by federal agents because of his brown complexion and concurrently because he had posted the firearms warning sign outside his house.

Government action taken in response to protected expression—even absent a criminal act—can constitute a First Amendment violation if it chills lawful speech. *Rodgers v. Bryant*, 942 F.3d 451, 454 (8th Cir., 2019) citing *Care Comm. v. Arneson*, 638 F.3d 621, 627 (8th Cir., 2011). When law enforcement responds to protected expression with punitive or investigative action—especially in the absence of any criminal act—it not only violates the speaker's rights but deters others from engaging in similar expression.

In this case, Petitioner alleges that Respondents were attracted to his home because of the firearms sign, coupled with observations of his skin color and obvious ethnicity, and then decided to first arrest him and then search his property for firearms. It is apparent that Respondents had admitted this much in their filings with this Court. At the time of his arrest, the federal agents had no evidence that Petitioner actually owned firearms. It seems they made an inference regarding his immigration status to arrest him without actual probable cause, then interrogated him based on the content of a sign on his property. They used this sign as a basis to invade his home without a judicial warrant or exigent justification, traumatizing him and his family, including his U.S. citizen children. Were the petitioner white and with a similar sign, it is doubtful that these enforcement actions would have been taken, beginning with the unlawful arrest without probable cause (or on the basis of undisclosed “probable cause”).

The First Amendment is the most crucial amendment among the Bill of Rights, and indeed to the entire United States Constitution, as amended. The First Amendment underpins and protects our democracy per se. The last line for the vindication of the First Amendment lies with the federal judiciary.

CONCLUSION

Petitioner has sufficiently pled and presented to this Honorable Court fully viable constitutional claims. This action must proceed to further discovery which is necessary to resolve material factual disputes—particularly surrounding the basis of the arrest, the existence and scope of any warrant, and the alleged “reliable evidence.” All administrative remedies have either been exhausted or are legally inapplicable and Habeas Corpus can proceed concurrently while the immigration bond issues can proceed independently and separately in the Board of Immigration Appeals.

Critically, the continued detention of Petitioner under these circumstances violates the First, Fourth, Fifth, and Fourteenth Amendments. If such treatment is allowed to stand, it risks setting a precedent that permits racial profiling, retaliatory searches based on speech, and the erosion of constitutional protections for all persons in the United States, including citizens.

For the reasons stated, the Court should grant Petitioner's Motion for Leave to Amend the Habeas Corpus Petition and permit the case to proceed to discovery and a judicial decision on the merits after an evidentiary hearing.

Respectfully submitted,

___/s//Julia Healy//_____

Julia Healy, Esq.
Counsel for Petitioner
Law Office of Nazly Mamedova
11260 Chester Rd #310
Cincinnati, OH 45246
julia@nazlylaw.com
(513) 456-2959

___/s//Charleston C.K. Wang//___

Charleston C.K. Wang
Trial Attorney for Plaintiff
The Wanglaw building
6924 Plainfield Rd
Cincinnati, OH 45236
charlestonwang@wanglaw.net
(513) 793-7776

