

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
Western Division**

Gilberto Alonso-Portillo

Petitioner

v.

RICHARD JONES, Sheriff of Butler
County, et al

Respondents - Defendants

Case No. 1:25-cv-00306

Judge Michael R. Barrett

Magistrate Judge Kimberly A. Jolson

**PLAINTIFF'S AMENDED MOTION FOR RECONSIDERATION OF OPINION &
ORDER**

Petitioner Gilberto Alonso-Portillo, by and through undersigned counsel, and pursuant to FRCP 59 respectfully files this Amended Motion which amends the previous Motion for Reconsideration that is obsolete version inadvertently filed in error. Respondent has conferred with counsel for Respondent who has indicated he will not object to this Amended Motion.

By the Amended Motion, Petitioner respectfully requests the Court to reconsider its OPINION & ORDER (Doc #: 30 Filed: 08/28/25) and its JUDGMENT (Doc #: 31 Filed: 08/28/25) in light of *Kristi Noem, Secretary, Department of Homeland Security et al v, Pedro Vasquez Perdomo, et*

al, 606 U. S. ____ (2025) (No. 25A169 S. Ct. September 9, 2025). Hereinafter cited as *Vasquez Perdomo*.

Petitioner respectfully requests the Court, pursuant to *Vasquez Perdomo*, to amend the Court's findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

I. The Question of When Federal Agents May Question a Person for Immigration Status under the United States Constitution?

This very difficult constitutional question that is confronting the federal judiciary at the trial court, and the intermediate and final level of appeal. *Vasquez Perdomo* arose out of recent large scale federal enforcement of immigration law in and around Los Angeles, California.

Essentially, as noted by the Supreme Court:

The Government sometimes makes brief investigative stops to check the immigration status of those who gather in locations where people are hired for day jobs; who work or appear to work in jobs such as construction, landscaping, agriculture, or car washes that often do not require paperwork and are therefore attractive to illegal immigrants; and who do not speak much if any English. If the officers learn that the individual they stopped is a U. S. citizen or otherwise lawfully in the United States, they promptly let the individual go. If the individual is illegally in the United States, the officers may arrest the individual and initiate the process for removal. *Slip Op.* p2.

A class action lawsuit was filed in the U. S. District Court Case No. 2:25-cv-05605 (USDC for the Central District of California) and that court granted injunctive relief to the Plaintiffs. The Government appealed into the U. S. Court of Appeals for the Ninth Circuit, and that court on August 1, 2025

denied, except as to one clause, senior federal officials' emergency motion for a stay pending appeal of the district court's temporary restraining order in plaintiffs' putative class action alleging that detentive stops requiring—but not supported by—reasonable suspicion are being conducted as part of "Operation at Large" in the Los Angeles area. *Vasquez Perdomo* (No. 25-4312. 9th Cir. 8/1/2025).

The Government took the case into the United States Supreme and elicited this Order:

The application for stay presented to JUSTICE KAGAN and by her referred to the Court is granted. The July 11, 2025 order entered by the United States District Court for the Central District of California, case No. 2:25-cv-5605, is stayed pending the disposition of the appeal in the United States Court of Appeals for the Ninth Circuit and disposition of a petition for a writ of certiorari, if such a writ is timely sought. Should certiorari be denied, this stay shall terminate automatically. In the event certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court. . *Slip Op.* p1.

As noted *supra*, that supreme constitutional question presented in *Vasquez Perdomo* is "When Federal Agents May Question a Person for Immigration Status under the United States Constitution?"

II. The Undisputed Facts in *Gilberto Alonso-Portillo*.

Donald Thomas Pender, III, a Special Agent with the Federal Bureau of Investigation gave the following Affidavit to this Honorable Court (Doc #: 19-2 Filed: 06/12/25 Page: 2) which states at paragraphs 5 and 6:

5. On April 7, 2025, I was part of a group of HSTF personnel who effected the arrest of Alonso-Portillo pursuant to the referenced arrest warrant. On the morning of April 7, 2025, I, along with other HSTF personnel, surveilled a residence with an address associated with Alonso-Portillo. During the surveillance, an individual was observed exiting the residence and getting into a pickup truck in the driveway of the residence. This individual was later identified as Alonso-Portillo. Alonso-Portillo drove the Pickup away from the residence and then returned to the residence. Upon Alonso-Portillo's return, HSTF personnel encountered him after he parked the pickup truck in front of the residence in the driveway of the residence

.6. Alonso-Portillo was placed under arrest near the parked pickup truck. In connection with his arrest, a HSTF member questioned Alonso-Portillo regarding his immigration status. Alonso-Portillo stated that he was illegally in the United States. Doc #: 19-2 Filed: 06/12/25 Page: 2

Here the Respondents, through FBI Special Agent Pender III admit that (1) the encounter with Alonso-Portillo occurred in the driveway of the residence after he parked his truck in front of the [his] residence, (2) the encounter was made without any form of a search warrant, administrative or judicial, (3) there is no statement as to what reasonable suspicion caused the encounter, (4) no reason was articulated for the arrest of Alonso-Portillo, (5) Alonso-Portillo was promptly arrested, (6) no reason was articulated to support the arrest, (7) **after** he was arrested, only then was Alonso-Portillo questioned regarding his immigration status.

Respondents through its Administrative Warrant Doc #: 19-1 Filed: 06/12/25 Page: 14 has conceded that this warrant was issued based on

statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.
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These facts are corroborated by the Affidavit of FBI special agent Pender:

4. DHS Homeland Security Investigations ("HSI") Supervisory Special Agent Joseph R. Stewart signed an administrative arrest warrant (Form I-200), dated April 7, 2025, for Gilberto Alonso-Portillo ("Alonso-Portillo"). The arrest warrant states that a determination had been made that there is probable cause to believe that Alonso-Portillo is removable from the United States based upon "statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law." Doc #: 19-2 Filed: 06/12/25 Page:

There is no dispute that Respondents did not possess any type of warrant before and at the time their agents entered in the curtilage of the driveway connected to Respondent's home and had the encounter with Respondent. There is no evidence that before and during the encounter these agents had actual information as to the name and other identity status of the Respondent they confronted. The constitutional question remains as "Did Respondents have any Warrant to enter the curtilage of his home to have an encounter with him *ab initio*?" If the Court finds the answer to this question to be in the negative, then the Fourth Amendment was violated, and accordingly, Respondent respectfully requests a Judgment granting release under a Writ of Habeas Corpus.

III. The Critical Importance of Reasonable Suspicion in Immigration Law Enforcement.

Critically, Justice Kavanagh, concurring in the grant of the Government application for stay before the Supreme Court, emphasized:

Immigration officers “may briefly detain” an individual “for questioning” if they have “a reasonable suspicion, based on specific articulable facts, that the person being questioned . . . is an alien illegally in the United States.” 8 CFR §287.8(b)(2) (2025); see *United States v. Brignoni-Ponce*, 422 U. S. 873, 884 (1975); *United States v. Arvizu*, 534 U. S. 266, 273 (2002). The reasonable suspicion inquiry turns on the “totality of the particular circumstances.” *Brignoni Ponce*, 422 U. S., at 885, n. 10; *Arvizu*, 534 U. S., at 273. . *Slip Op.* pp 1-2.

Respecting “the totality of particular circumstances,” Justice Kavanagh explained that

Immigration stops based on reasonable suspicion of illegal presence have been an important component of U. S. immigration enforcement for decades, across several presidential administrations. In this case, however, the District Court enjoined U. S. immigration officers from making investigative stops in the Los Angeles area when the stops are based on the following factors or combination of factors: (i) presence at particular locations such as bus stops, car washes, day laborer pickup sites, agricultural sites, and the like; (ii) the type of work one does; (iii) speaking Spanish or speaking English with an accent; and (iv) apparent race or ethnicity. *Slip Op.* pp 2-3.

IV. The Encounter with Alonso-Portillo Occurred in the Curtilage of His Home, And Not in a Workplace or Other Public Place.

The Pender Affidavit, *supra*, concedes that the personal encounter with Alonso-Portillo occurred in “the driveway of the residence after he parked his truck in front of the [his] residence.”

Accordingly, Alonso-Portillo respectfully seeks a reconsideration and entry of a new judgment from this Honorable Court in light of the above limitation suggested by the Supreme in *Vasquez Perdomo, supra*. Respondent respectfully seeks a clarification of his constitutional rights when federal immigration enforcement agents encounter him without any warrant whatsoever in the driveway of his home after parking his truck in the driveway.

In *Collins v. Virginia*, 584 U.S. 586 (2018), the Supreme Court held that the "automobile exception," which allows for warrantless searches of vehicles on public roads, does not apply to a vehicle located within a home's curtilage, that vehicle being parked a few feet from the house that is otherwise visible from off the property. Here federal agents surveilled the house and driveway in open field and plain view from a public street, but Alonso-Portillo was clearly located in the driveway of his home when the encounter occurred.

Closer to home, in the Sixth Circuit a warrant is required to enter a home's curtilage for a "knock and talk" under the Fourth Amendment, as this area immediately surrounding the home is considered part of the home itself and protected from unreasonable searches. In *Morgan v. Fairfield County*, 903 F.3d 553 (6th Cir. 2018), the Sixth Circuit guided by *Collins* found that the government's "knock and talk" violated the Fourth Amendment when officers walked onto the backyard of the house because the area surrounding a home was curtilage, and curtilage is treated as part of the home for Fourth Amendment purposes and further held that officers' entry onto the curtilage could be justified only by a warrant or one of the recognized exceptions to the warrant requirement (such as a pat down of the person for weapons for the safety of the officer

which did not occur here). Once again, the scrutiny of this Court is invited to the particular limitation identified in *Vasquez Perdomo*, i.e. “ locations where people are hired for day jobs; who work or appear to work in jobs such as construction, landscaping, agriculture, or car washes.” The private home and its curtilage is not in the reckoning of *Vasquez Perdomo*.

V. Clarification on the Suppression of Evidence and Other Remedies.

Indispensable to a successful action is the availability of relief that a court may grant. This Honorable Court is clearly troubled by this dilemma. The Court opined that

In any event, “[t]he ‘body’ or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that the unlawful arrest, search, or interrogation occurred.” *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984); *De Oliveira v. Joyce*, No. 2:25-CV-291, 2025 U.S. Dist. LEXIS 125776, at *11 (D. Me. July 2, 2025). Thus, without expressing any opinion as to the merits of Alonso-Portillo’s underlying Fourth Amendment claims, the Court concludes that Alonso-Portillo’s ongoing detention under the INA’s discretionary detention scheme may stand.

The apparent conundrum here is that unlike a murder weapon or a stash of narcotics, the identity and immigration status is difficult if not impossible to suppress. However, the Court may provide relief from detention by a violation of the Fourth Amendment. Alonso-Portillo is currently in the accelerated detained docket with administrative requirements of speedy removal

in a matter of weeks, routine conducted by audio video WEBEX. However, there has always existed a non-detained removal docket. If he is ordered released from ICE detention in the Butler County jail, this does not interfere with removal proceedings in the Cleveland immigration court. His removal proceeding will be transferred to the non-detained docket which will afford Alonso-Portillo and the immigration lawyers defending him from removal more time and access for more thorough preparation. Alonso-Portillo presently has filed for the relief of Cancellation of Removal before the immigration court and under available immigration statutes for relief.

The remedy available through the great writ of Habeas Corpus is an order to release the detainee from unlawful detention. *INS v. St. Cyr*, 533 U.S. 289 (2001); *Boumediene v. Bush*, 553 U.S. 723 (2008). On another plane is the right to bond. See Eighth Amendment to the United States Constitution. The purpose right to bail or bond is to ensure a balance of the liberty interest of the detainee to liberty with that of the government to *lawfully* detain a person. See, *United States v. Salerno*, 481 U.S. 739 (1997); *Stack v. Boyle*, 342 U.S. 1 (1951). The completion of a bond hearing before Cleveland immigration court under the detained immigration removal docket has no relevance and does not do provide an adequate remedy that is only available under Habeas Corpus. As noted supra, this Court may provide the remedy of release from unlawful detention without cancelling or impairing the removal proceeding other than moving that proceeding from the detained docket to the non-detained docket of the Cleveland immigration court via WEBEX.

CONCLUSION

WHEREFORE, Plaintiffs prays for the Court upon reconsideration to direct a new Judgment granting the Writ of Habeas Corpus.

Respectfully submitted,
//Charleston CK Wang//signed
Trial Attorney for the Petitioner
WANGLAW
6924 Plainfield Road
Cincinnati OH 45236
Phone 513 793 7776
Fax 513 793 7779
charlestonwang@wanglaw.net

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September 2025, I filed the foregoing Amended Motion for Reconsideration with the Clerk of Court using the CM/ECF system, which will send notification to all counsel of record.

//Charleston CK Wang//signed
Trial Attorney for the Plaintiff
WANGLAW