

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 25-cv-62690-ALTMAN

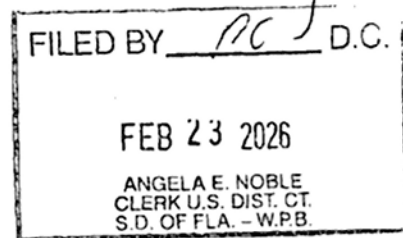
MERLIN YAMILETH
TURCIOS-PINEDA,

Petitioner,

v.

PAMELA BONDI, UNITED STATES
ATTORNEY GENERAL; et al.,

Respondents.



PETITIONER REPLY TO DEFENDANT'S RESPONSE

INTRODUCTION

1. Petitioner respectfully files this reply to Respondent's Response, showing cause as to why the instant Petition for Habeas Corpus should be granted and why the Respondent's fail to meet their burden.

2. Petitioner, Ms. Turcios-Pineda, appearing *pro se*, hereby petitions this Court for a writ of habeas corpus and seeks declaratory and injunctive relief to review the lawfulness of her detention by the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE), since that her detention violates: 1) the regulations set forth in 8 C.F.R. § 241.4(I)(1) and § 241.13(i); (2) Judge Ruiz's order in *Grigorian v. Bondi*, 2025 U.S. LEXIS 175489 (S.D. Fla. Sep. 9, 2025). And in support of this Petition and Complaint, petitioner alleges as follows:

3 Respondent conceded on subject matter jurisdiction, and do not contest jurisdiction. Jurisdiction exists in this Court pursuant to 28 U.S.C. § 2241 *et seq.*, 28 U.S.C. § 1331, the APA, 5 U.S.C. § 701 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1361.”Officials must comply with the requirements of applicable regulations...Because they failed to do here, Petitioner may demonstrate entitlement to a writ of habeas corpus...§ 2241 confers jurisdiction upon the federal courts to hear challenges to the lawfulness of immigration detention” *Grigorian v. Bondi*, 2025 U.S. LEXIS 175489 (S.D. Fla. Sep. 9, 2025). Accordingly this court has jurisdiction to hear “Petitioner’s claim that her detention is unlawful under 28 U.S.C. § 2241”.

4. The claims raised herein are not barred by 8 U.S.C. § 1252, as Petitioner is not challenging the validity of the final order of removal, but rather the legality of detention in the absence of a foreseeable removal and in violation of Due Process under the Fifth Amendment. See *Clark v. Martinez*, 543 U.S. 371 (2005) (extending *Zadvydas* to inadmissible aliens).

ARGUMENTS

I. RESPONDENT CONCEDED THAT THE DETENTION OF MS. TURCIOS-PINEDA’S WAS NOT IN COMPLIANCE WITH REGULATION, AS SUPPORTED BY THE RESPONDENT’S OWN EVIDENCE.

Respondent’s claim that ICE detention of Ms. Turcios-Pineda’s is not based in fact or supported by the evidence the Respondents themselves presented. Under this Circuit Law precedent, a party’s concession prompts this court to resolve an appeal without reaching a holding about how the underlying law works. *E.g., Wilkes v. United States*, 289 F.3d 684, 687 n.6 (11th Cir. 2002) (awarding relief “on the basis of these concessions, and not on the basis of a resolution of the legal issues).

Respondent’s concession prompts this court to resolve an appeal without reaching a holding about how the underlying law works, since that ICE detention of Ms. Turcios-Pineda’s is not based in fact or supported by the evidence the Respondents themselves presented, that her detention violates: “the regulations set forth in 8 C.F.R. § 241.4(I)(1) and § 241.13(i).”

First, there are statutory rules that must be followed in order to properly continue with her detention including the statutory requirements required to execute a change of venue as outlined in 8 C.F.R. § 1003.20(b). In detaining, Ms. Turcios-Pineda ICE violated her due process in failing to comply with the regulations, when the IJ transferred the petitioner's case to Cleveland Ohio, acting sua sponte and executing a change of venue; Failed to follow its own precedents and acted without jurisdiction, applying the Sixth Circuit Law in violation of this Board precedent in Matter of M-N-I-, 28 I. & N. Dec. 803 (BIA 2024). The petitioner was prejudice when was deprived of all the records and evidences necessary in her subsequently fear credible and asylum hearing upon the IJ sua sponte venue transfer without a motion, applying the Sixth Circuit law rather than Eleventh Circuit law, "the Immigration Judge misapplied choice of law precedent". Thus, any subsequent detention by ICE was and is unlawful.

Respondent conceded that ICE is detaining petitioners in violation of a Department of Homeland Security "DHS" regulation, 8 C.F.R. 1003.20(b), the USCIS Policy Manual, the *Accardi Doctrine* and the Due Process Clause of the Fifth Amendment to the United States Constitution; Petitioner reasonably relied on the agency regulations promulgated for her guidance by the filing of this Motion to terminate which is being applied the Sixth Circuit Law in violation of this Board precedent in Matter of M-N-I-, 28 I. & N. Dec. 803 (BIA 2024); The petitioner was prejudiced when the IJ applied the Sixth Circuit Law in violation of this Board precedent in Matter of M-N-I-, 28 I. & N. Dec. 803 (BIA 2024). The Respondents created an unfounded reason to a Ms. Turcios-Pineda's order of detention and did not comply with the statutory requirements for her detention.

This District court is bound by the Circuit rule that "a party has no standing to appeal an order or judgment to which he consented." *Hofmann v. De Marchena Kaluche & Asociados*, 657 F.3d 1184, 1187 (11th Cir. 2011)("Parties consenting to an order lacked standing to appeal it, unless they could show facts that would justify nullifying the consent). Moreover, where the respondent has failed to submit a factual statement in the form called for by the pertinent rule and thereby conceded the movant's version of the facts. See also *United States v. Olson*, 716 F.2d 850, 852 (11th Cir. 1983) ("The government's concession might well be the end of this case, but since the district court did not accept the government's concession filed with it and addressed the

matter at length”), See also *United States v. Valentine*, 21 F.3d 395, 397-98 (11th Cir.1994) (involving government concession of *Burns* violation where basis for upward departure was not mentioned until sentencing); the Government has failed to show the district court’s mandatory application of the Guidelines was harmless beyond a reasonable doubt.

Recent decisions support this conclusion. Similarly situated individuals throughout the country have recently faced the same constitutional violations and injustices perpetuated by the Respondents against the law, and Courts have ordered the release of those individuals pursuant to habeas corpus petitions. See *Grigorian v. Bondi*, 2025 U.S. LEXIS 175489 (S.D. Fla. Sep. 9, 2025) (“Officials must comply with the requirements of applicable regulations...Because they failed to do here, Petitioner may demonstrate entitlement to a writ of habeas corpus.”)

Second, Ms. Turcios-Pineda was detained by ICE. Now is in appeal proceedings pending without a decision by the Board of Appeal. She has maintained that the Notice of Detention, however, did not state as reason for the removal to “Guatemala”, a country no request by the Petitioner. This reason is preposterous because the BIA has not issued a decision. Ms. Turcios-Pineda availing herself of her due right to appeal a legal issue. The controlling regulation does not support a reason to the detention of Ms. Turcios-Pineda’s and did not comply with the statutory requirements for detention. ICE did not make the determination that she posed no danger to the public or risk of flight. There was no reason to continue to detain Ms. Turcios-Pineda beyond the removal period in accordance with 8 CFR § 241.4. Alternatively, or in conjunction with this determination to release, the government determined that there was no significant likelihood of removal in the reasonably foreseeable future (“SLRRFF”) to “Honduras”, since that was ordered her removal to “Guatemala”. Once this “SLRRFF” determination was made, the custody review procedures of 8 CFR § 241.4 would not apply. 8 CFR § 241.4(a)(4). Nonetheless, both regulatory sections and considerations compelled ICE to lift the immigration detainer and release Ms. Turcios-Pineda.

Petitioner may demonstrate entitlement to a writ of habeas corpus where the government failed to meet its burden of proof that there was a significant likelihood of removal in the reasonably foreseeable future “Honduras”); See *Phong Phan v. Moises Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at 6 (E.D. Cal. July 15, 2025) (“entitlement to a writ of

habeas corpus where the government failed to meet its burden of proof that there was a significant likelihood of removal in the reasonably foreseeable future”). See also *Liu v. Carter*, No. 25-3036-JWL, Memorandum and Order, at *3 (D. Kan. June 17, 2025 (ordering release of the petitioner pursuant to habeas corpus petition because detention was not effectuated per the statute for failure to provide a prompt interview and there were no changed circumstances leading officials to believe that petitioner would be removed in the foreseeable future). *Hernandez Escalante v. Noem*, No. 9:25-CV-00182-MJT (E.D. Tex. August 2, 2025) (ordering the release of petitioner over objections of the government as it failed to meet its burden of proof that it complied with the statutory requirements for a detention of the order of supervision and that removal was significantly likely in the reasonably foreseeable future). See also *Bautista v. Santacruz*, 2025 U.S. District LEXIS, 233085, Case: 5:25-cv-01875-SSS-BFM, 2025 LX 533872 (S.D. Cal. November 20, 2025) (Petitioners sought an order to prohibit Respondents from relocating Petitioners outside this District pending final resolution of this litigation, the court granted the application...the court ordered Respondents to provide Petitioners with an individualized bond hearing or release Petitioners from detention”). Comparing Respondent’s circumstances against the factors, her case for release on bond presents all the positive equities.

The rules must be followed in order to properly continue with her detention including proper notification for the reason of detention as well as an initial credible fear interview. Further Ms. Turcios-Pineda never had an credible fear interview that there is no significant likelihood that she will be removed in the reasonably foreseeable future to Honduras, as required by the statute. ICE cannot justify detention in order to effectuate removal if there is no removal to effectuate.

Respondents fail to meet their burden of proof that Ms. Turcios-Pineda’s detention is appropriate to enforce her order of removal to Honduras. It is clear the Respondents have no method of effectuating Ms. Turcios-Pineda’s removal order, so it is impossible for this detention to serve the purpose of enforcement. It is a gross mischaracterization by the Respondent to justify Ms. Turcios-Pineda’s detention as appropriate for enforcing the removal order. The government should not be allowed to detain individuals under the guise of enforcing a removal order that cannot be effectuated. Ms. Turcios-Pineda is afraid of torture and persecution in any third country; however, to hold her to speculate as to where one day the government may be able

to send her is an unconstitutional deprivation of liberty that has caused her the loss of her family in this country, where she pays her taxes to the US government, her savings, her ability to care of her extremely ill son as her only relative and caregiver, etc. Ms. Turcios-Pineda has a fear of persecution and fear in any country that is not the United States of America; however, the constitutional safeguard allowing her to apply for protection before the Immigration Court can only be triggered once a third country is identified. She is entitled to present her case in front of an immigration judge if Respondents are able to identify a third country of removal. Holding her until the government finds a country to accept her means there is no significant likelihood of removal in the reasonably foreseeable future. Her detention is unconstitutional and in violation of regulation. The government has not met its burden to show the court that the purpose of release has been served, that detention is appropriate to enforce a removal order, or that changed circumstances exist to believe they can removal her to a third country. Surely the court cannot allow ICE to continue to detain her for violating of the laws and regulations or for any conduct on Ms. Turcios-Pineda's part.

II. THE RESPONDENTS HAVE MADE ABSOLUTELY NO SHOWING THAT PETITIONER HAS NAMED IMPROPER PARTIES TO THIS SUIT.

The Respondents again conflate their own regulations, and failed to follow its own Policy Manual. The Section 8 U.S.C.S. 1252(b)(3)(A), establish that:

“The respondent is the Attorney General. The petition shall be served on the Attorney General”.

The Supreme Court had established that: “When the Government has promulgated “[r]egulations with the force and effect of law,” those regulations “supplement the bare bones” of federal statutes. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266, 268, 74 S. Ct. 499, 98 L. Ed. 681 (1954). Under the Due Process Clause, The Defendant violated the petitioner’s constitutional rights to the due process when it departed from a prior policy, since that a violation of the *Accardi* doctrine constitute “a violation of the Fifth Amendment's Due Process Clause, as follow:

1.- According to USCIS Policy Manual:

“[iii] Attorney General/DHS Is the Proper Custodian

Several courts continue to hold that the Attorney General or Secretary of Homeland Security is the proper custodian in immigration detention cases. 199 Some of these courts have reasoned that because the officials, in their official capacity, transact business within the courts territorial jurisdiction, they can be reached by service of process. 200 Furthermore, because habeas petitions generally challenge the imposition, rather than the execution, of particular policies, it is the actions of the Attorney General or Secretary, not those of the warden of any particular facility, that are being challenged. 201 Courts have also noted that the Attorney General or Secretary could direct his or her subordinates to carry out any order to produce or release the petitioner. 202 These courts also reason that if a habeas corpus petition could be heard only where the petitioner was detained, the Attorney General or Secretary could seriously undermine the remedy of habeas corpus by detaining illegally a large group of persons in one facility so that the resulting torrent of habeas corpus petitions would overwhelm the local court. 203” See Exhibit A Attach - *Part 9 Special Alert Adjudicators Field Manual Incorporated in USCIS Policy Manual, CHAPTER 104, Judicial Review *, 104.04 Habeas Corpus, [5] Jurisdiction, [b] Determining the Proper Custodian, [iii] Attorney General/DHS Is the Proper Custodian*).

2.- According to case law precedents:

“The proper respondent for habeas petition must be someone who has authority over the detention of the prisoner, and in the immigration context, this authority often lies with the U.S. Attorney General or the Secretary of the Department of Homeland Security” *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488 (S.D.N.Y. 2009) (Attorney General and DHS Secretary are proper respondents (citing *Rumsfeld v. Padilla*, 542 U.S. 426, 436 n.8 (2004)); *Somir v. United States*, 354 F. Supp. 2d 215 (E.D.N.Y. 2005) (Attorney General remains proper custodian post-*Padilla*); *Mandarino v. Ashcroft*, 318 F. Supp. 2d 13 (D. Conn. 2003) (Attorney General is proper custodian).

Here, the Defendant’s violation of the *Accardi* doctrine by the statements gave: “Petitioner Failed to Name the proper respondent” was a violation of the *Accardi* doctrine, and constitute a violation of the Fifth Amendment's Due Process Clause. See *United States v. Teers*, 591 F. App'x 824, 840 (11th Cir. 2014) (recognizing that an *Accardi* violation may be a due process violation,); *Jean v. Nelson*, 727 F.2d 957, 976 (11th Cir. 1984) (“Agency deviation from its own regulations and procedures may justify judicial relief”). A violation of the *Accardi* doctrine, constitute a violation of the Fifth Amendment's Due Process Clause. (“[I]t is incumbent upon agencies to follow their own procedures . . . even where [they] are possibly more rigorous than

otherwise would be required."). " An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515, 129 S. Ct. 1800, 173 L. Ed. 2d 738 (2009).

The Respondent changed the policy, as established in the Part 9 Special Alert Adjudicators Field Manual Incorporated in USCIS Policy Manual, CHAPTER 104, Judicial Review *, 104.04 Habeas Corpus, [5] Jurisdiction, [b] Determining the Proper Custodian, [iii] Attorney General/DHS Is the Proper Custodian. This change in policy with regard to the Petitioner (1) was arbitrary and capricious; (2) was contrary to law and agency rules; and (3) unreasonably delayed or unlawfully withheld adjudication of Petitioner imprisonment, and "was arbitrary and capricious under the APA because the Acting Secretary offered no reason for terminating the forbearance policy, did not consider alternatives that were within the ambit of the existing forbearance policy. The Respondent changed the policy and violated the petitioner's constitutional rights as guarantee by the fifth Amendment of the United States Constitution, since that a fundamental principle of federal law is that a federal agency must follow its own procedures.

III. MS. TURCIOS-PINEDA'S DETENTION CONSTITUTES A TANGIBLE DUE PROCESS VIOLATION, AND HER CLAIMS ARE COGNIZABLE UNDER 28 U.S.C. § 2241.

The Respondent's detention of Ms. Turcios-Pineda, constitute a clear, non-speculative violation of Ms. Turcios-Pineda's due process, as it results in the unlawful deprivation of Ms. Turcios-Pineda's life and liberty. Ms. Turcios-Pineda's detention without following the appropriate statutory requirements was a violation of her due process rights. Further, Ms. Turcios-Pineda' claims falls with the Supreme Court decisions in *Eagles v. United States*, 329 U.S. 304, 67 S. Ct. 313, 91 L. Ed. 308, 1946 U.S. LEXIS 1582 (1946) ("The function of habeas corpus is exhausted when it is ascertained that the agency under whose order the petitioner is being held had jurisdiction to act"). As 2241 extended jurisdiction to claims concerning to "questions of law" and the application of a legal standard to undisputed or established facts. *See Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229, 140 S. Ct. 1062, 206 L. Ed. 2d 271 (2020) ("provision, 1252(b)(9), which we have called a "'zipper clause.'" *INS v. St. Cyr*, 533 U.S. 289,

313, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001). We have explained that Congress intended the zipper clause to "consolidate judicial review of immigration proceedings into one action".)

This district court has clearly established that her claims are cognizable under 28 U.S.C. § 2241. See *Grigorian v. Bondi*, 2025 U.S. LEXIS 175489 (S.D. Fla. Sep. 9, 2025) ("Violates both ICE's own regulations and the Fifth Amendment Due Process Clause...This compel the petitioner's release"), and because the petitioner challenged the duration of her confinement without a bond hearing, and the petitioner is in custody in violation of the Constitution and the laws or treaties of the United States, 28 USC 2241(c)(3) as Respondent also conceded that ICE is detaining petitioners in violation of a Department of Homeland Security "DHS" regulation, 8 C.F.R. 1003.20(b). Her claims are cognizable under 28 U.S.C. § 2241.

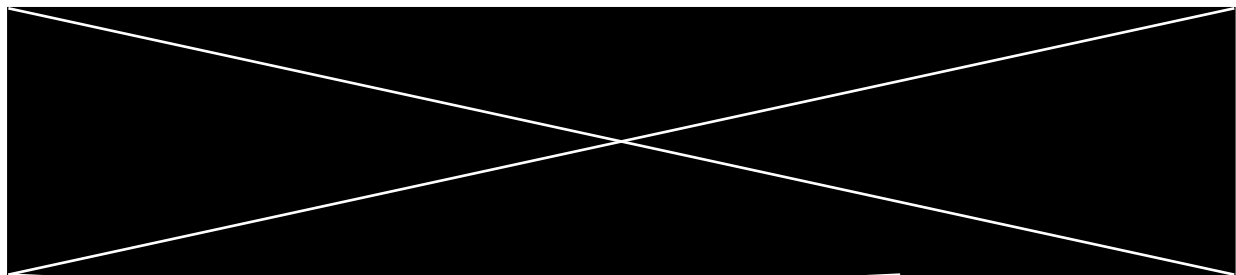
The harm to Ms. Turcios-Pineda is tangible. She has lost her son and family due to her detention. Her ill son who suffered from significant health issues, at will, the demanding effects of the Petitioner's detention are real and significant. Yet no government purpose justifies her expensive detention. Such an approach not only disregards the statutory and constitutional limits imposed by the conditions of her confinement which were inadequate and dangerous, as also undermines the stability and due process protections to which individuals under supervision are entitled. The Courts finding violations of the Suspension Clause were confronted with an obvious lack of adequate substitutes. For example, in *Compere v. Nielsen*, the court found that the Suspension Clause would be violated when petitioner had a right to file a motion to reopen his case with the BIA, but it would be impossible for him to litigate his motion to reopen after he was deported to Haiti. 358 F. Supp. 3d 170, 178-81 (D.N.H. 2019); see also *Joshua M. v. Barr*, 439 F. Supp. 3d 632, 675-77 (E.D. Va. 2020) (finding no adequate substitute for habeas where petitioner would be unable to litigate motion to reopen upon returning to Honduras due to dangerous conditions). The Petitioner is now facing no adequate substitute for habeas where petitioner would be unable to litigate her motion to reopen upon her deportation order to Guatemala due to dangerous conditions. Moreover, Ms. Turcios-Pineda's detention constitutes a tangible due process violation, and her claims are cognizable under 28 U.S.C. § 2241.

Furthermore, Respondents disclose to this court that it is ICE's policy if they receive diplomatic assurances that Ms. Turcios-Pineda will not be tortured or persecuted in a third

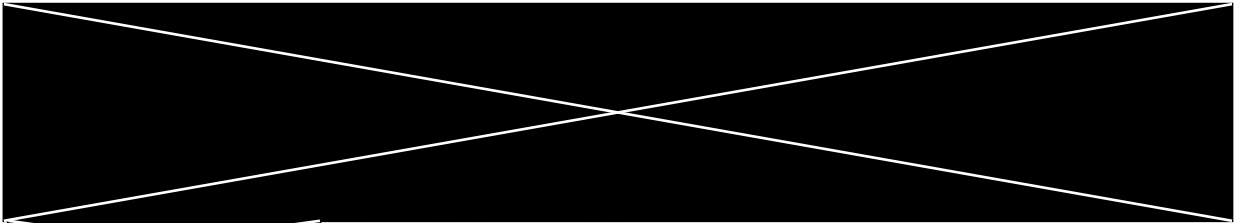
country that is willing to accept to her, then she will be removed without the need for further procedures. See Department of Homeland Security, Policy Memorandum, Guidance Regarding Third Country Removals (March, 30, 2025). However, where the United States is currently offering six-figure payments to third countries in exchange for accepting deportees, any assurances provided by those countries are inherently compromised and cannot be regarded as unbiased or credible. Such financial arrangements raise serious concerns about the reliability of diplomatic assurances and further call into questions the legitimacy of any claim that removal is appropriate or safe under the Convention Against Torture. This Court must protect due process and order the Respondents to afford Ms. Turcios-Pineda notice of a third country of removal and opportunity to be heard, even in light of diplomatic assurances from a country being paid by the United States. When and if identified, Ms. Turcios-Pineda will pursue her right to appear before an immigration judge as provided in 8 CFR § 1231(b).

IV. MS. TURCIOS-PINEDA'S DETENTION CONSTITUTES A TANGIBLE DUE PROCESS VIOLATION, AND PETITIONER HAD SHOWED DELIBERATE INDIFFERENCE TO A SERIOUS MEDICAL NEED, THE ISSUE IS NOT MOOT.

Respondent alleged that: "petitioner is no longer pregnant, and her refused to undergo future treatment, including but not limited to mental health treatment. Therefore, the issue is moot." Petitioner had showed deliberate indifference to her serious medical need, and the issue is not moot, as follows:



[REDACTED] BTC Medical personnel's response to that need exhibited deliberate indifference to the petitioner's health and welfare. She was described as [REDACTED] not eating appropriately, and being easily



The medical arm of the Correctional Facility, denied the respondent request to the proper food and vitamins for pregnant woman despite that respondent state that she was not eating appropriately. Respondent testified she made almost daily requests of medical and correctional staff members, including Wardens and ICE's complaints through the dispositive electronics, without a response until now, which would create a greater risk of the pregnant female's death or a serious risk of substantial impairment of a major bodily function of the pregnant female. Ms. Turcios-Pineda is being held at Broward Transitional Center with no significant or lawful likelihood of removal in the reasonably foreseeable future, and continued detention violates her constitutional protections.

2. Petitioner if is released of custody, would be pregnant again and "faced the threat of re-arrest and detention... Petitioner still maintain a live controversy" See *Bautista v. Santacruz*, 2025 U.S. District LEXIS, 233085, Case: 5:25-cv-01875-SSS-BFM, 2025 LX 533872 (S.D. Cal. November 20, 2025). And according to Supreme court decision in *FBI v. Fikre*, 601 U.S. 234, 240-41, 144 S. Ct. 771, 218 L. Ed. 2d 162 (2024), "A defendant's speculation about a plaintiff's actions cannot make up for a lack of assurance about its own... Case was not moot, under U.S. Const. art. III, because respondent contended that government placed him ...constitutionally impermissible reasons... and government's representation that it would not relist respondent based on currently available information may have meant that his past actions were not enough to warrant his relisting, but none of that spoke to whether government might relist him if he did same or similar things in future."). Applying these principles to the uncontested factual allegations here, this case is not moot.

V. THE RESPONDENT ERRED ALLEGING THAT THE “PETITIONER FALLS SQUARELY WITHIN THE STATUTORY DEFINITION”, PURSUANT SECTION 8 U.S.C. 1225(A) AND THEREFORE § 1225(B) MANDATES PETITIONER BE DETAINED”

Petitioner detention is based on an erroneous assumption that this “court cannot consider Petitioner’s constitutional and statutory Challenges to the Immigration court’s orders and findings.” This case also contains several crucial factual and procedural similitude from the case that *Bernal v. Morris*, 2025 U.S. Dist. LEXIS 268793, case No.: 25-25159-CV-WILLIAMS, 2025 LX 694504 (S.D. Fla. November 19, 2025), where this court found: “This court finds no reason to depart from these decision here... *Merino v. Ripa*, 2025 U.S. Dist. LEXIS 206662, case No.: 25-23845-CIV-MARTINEZ, 2025 LX 451385 (S.D. Fla. October 15, 2025)”. In *Merino v. Ripa*, this court found: “the court must determine whether Petitioner’s continued detention violates his due process rights... the IJ made such a determination...the court find that ...does not satisfy due process, because it allows for the most severe deprivation of liberty without a hint of a process to challenge such deprivation”).

In *Bernal v. Morris*, this court “rejected the Government’s expansive interpretation of § 1225, finding it contradicted the statute and decades of precedent. The court cited *Jennings v. Rodriguez*, which distinguished between § 1225 (applicable to noncitizen seeking admission) and § 1226 (applicable to noncitizens already in the country). At the time of this application, the petitioner had not been removed, Section 1231 does not apply. This court should finds no reasons to depart from these decisions and rejected the Government’s expansive interpretation of § 1225. The Petitioner is not mandatorily detained under § 1225, and because the respondent conceded that the petitioner was “already in the country,” the section § 1226 govern and is applicable here. Petitioner continued detention without a bond hearing is unlawful.

VI. THE BAUTISTA CLASS ACTION ENTITLE PETITIONER TO RELIEF

The Respondent conceded that the petitioner is a member of the Bautista Class action, and alleged that: “On December 18, 2025, the United States immediately filed an appeal of the Bautista order to the United States Court of Appeals, the court Vacate the DHS policy and the Respondent remains being a member of the Bautista Class action, despite of an appeal filed, the Declaratory Judgment remains having a preclusive effect upon this Circuit Court Law.

VII. THE RESPONDENT ERRED ALLEGING THAT THE PETITIONER FAILED TO EXHAUST HER ADMINISTRATIVE REMEDIES.

The Supreme Court has determined that: “A noncitizen need not request discretionary forms of administrative review, like reconsideration of an unfavorable Board of Immigration Appeals determination, in order to satisfy 1252(d)(1)'s exhaustion requirement because Board reconsideration is not available “as of right,” and 1252(d)(1) does not require a noncitizen to pursue it” Santos-Zacaria v. Garland, 598 U.S. 411, 143 S. Ct. 1103, 215 L. Ed. 2d 375 (2023) (“A noncitizen need not request discretionary forms of administrative review”). “Petitioner has exhausted any and all administrative remedies to the extent required by law, “because the “alien in streamlined removal proceedings cannot seek review of her final administrative removal order (FARO) before the immigration judge or the BIA, the period to seek review expires as soon as the FARO is issued – meaning that the order becomes final immediately upon issuance... (Petitioner’s) FARO constituted “the final order of removal” Riley v. Bondi, 145 S.Ct. 2190 22 L.Ed. 2d 497 (2025).

Here, the detention order or FARO constituted “the final order of removal.” Petitioner has exhausted any and all administrative remedies to the extent required by law, “because the “alien in streamlined removal proceedings cannot seek review of her final administrative removal order (FARO) before the immigration judge or the BIA. Exhaustion was not required due to its ultimate futility and inadequate remedy.

Moreover, this court has determined that where Petitioner is being held in detention in violation of the law. She is entitled to immediate release. She has exhausted all available administrative remedies and there are no further administrative remedies available to her. However ICE failed to comply with the required procedures, thereby violating the Petitioner’s due process rights. In the light of the decision rendered in Grigorian v. Bondi, 2025 U.S. LEXIS 175489 (S.D. Fla. Sep. 9, 2025) (“Petitioner has exhausted all available administrative remedies”) her detention is unlawful because her detention violates the regulations. Which the petitioner is in custody “in violation of the Constitution and laws or treaties of the United States” *Id.* § 22419(C)(3). She has exhausted all available administrative remedies.

Conclusion

To be clear, Petitioner is not before this Court contesting the Respondent's right to identify a third country of removal, nor is she contesting their right remove her to a third country after the proper procedures are followed and it is determined that she will be free from persecution and torture. She is merely asking to be placed on supervised release pending possible removal pursuant to the immigration regulations. This is a very different situation than if a suitable third country (one where Ms. Turcios-Pineda is free from the fear of torture or persecution) was identified for Ms. Turcios-Pineda's removal and her removal could realistically be carried out. The regulations clearly show that it is the Service's burden to show a significant likelihood that the alien may be removed. Imposing the burden of proof on the alien each time she is re-detained would lead to an unjust result and serious due process implications. The Respondents have failed to prove they made the required regulatory efforts of revoking an order of supervision, and they have given no evidence to show a significant likelihood of removal within the reasonably foreseeable future.

Other recent decisions support this conclusion. Similarly situated individuals throughout the country have recently faced the same constitutional violations and injustices perpetuated by the Respondents against the law, and Courts have ordered the release of those individuals pursuant to habeas corpus petitions. See *Grigorian v. Bondi*, 2025 U.S. LEXIS 175489 (S.D. Fla. Sep. 9, 2025) ("Officials must comply with the requirements of applicable regulations...Because they failed to do here, Petitioner may demonstrate entitlement to a writ of habeas corpus ...where the government failed to meet its burden of proof that there was a significant likelihood of removal in the reasonably foreseeable future."); *Phong Phan v. Moises Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at 6 (E.D. Cal. July 15, 2025); *Liu v. Carter*, No. 25-3036-JWL, Memorandum and Order, at *3 (D. Kan. June 17, 2025 (ordering release of the petitioner pursuant to habeas corpus petition because detention was not effectuated per the statute and there were no changed circumstances leading officials to believe that petitioner would be removed in the foreseeable future). *Hernandez Escalante v. Noem*, No. 9:25-CV-00182-MJT (E.D. Tex. August 2, 2025) (ordering the release of petitioner over objections of the government as it failed to meet its burden of proof that it complied with the statutory requirements for a detention and that removal was significantly likely in the reasonably foreseeable future). See also *Bautista v.*

Santacruz, 2025 U.S. District LEXIS, 233085, Case: 5:25-cv-01875-SSS-BFM, 2025 LX 533872 (S.D. Cal. November 20, 2025) (Petitioners sought an order to prohibit Respondents from relocating Petitioners outside this District pending final resolution of this litigation, the court granted the application...the court ordered Respondents to provide Petitioners with an individualized bond hearing or release Petitioners from detention”).

For the foregoing reasons, this Honorable Court should:

- A.** Grant the Petitioner’s Petition for Writ of Habeas Corpus.
- B.** Immediately order the release of the Petitioner from Respondent’s custody on a reinstated order of supervision;
- C.** Order the Respondent’s to not re-detain the Petitioner until and unless they can meet their burden in demonstrating her removal become likely in the reasonably foreseeable future; and
- D.** Provide the Petitioner with sufficient notice no shorter than 30 days of a third country of removal once it has been identified and an opportunity to be heard to present a case of fear of persecution or torture if one exists.
- E.** Grant any other and further relief this Court may deem appropriate.

OATH

UNDER PENALTIES OF PERJURY, I, MERLIN YAMILETH TURCIOS-PINEDA, declare that I have read the foregoing document, and I Understand its content; this document is filed in good faith and is timely filed, I understand its content in English, has potential merit, and that facts contained in the documents are true and correct.

Date: February 17, 2026

Merlin turcios
MERLIN YAMILETH TURCIOS-PINEDA
Pro se Petitioner
A#: 
Broward Transitional Center
3900 N. Powerline Rd.
Pompano Beach Fl. 33073

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct original of the foregoing document has been furnished by U.S. Mail-postage prepaid to The Clerk of the District Court Southern District of Florida, to, Immigration and Custom Enforcement. Department of Homeland Security, Chief Counsel, Deputy Chief Counsel, Assistant Chief Counsel, Office of the principal Legal Advisor at Broward Transitional Center.3900 N. Powerline Road, Pompano Beach, Fl 33073, to the U.S. Dpt. of Justice, 950 Pennsylvania Av. NW. Office of the Attorney General, Room 5114, Washington DC. 20530-0001, and all the lawyers on record via e-filing court system, on this day, February 17, 2026.

Respectfully Submitted:


Merlin turcios
MERLIN YAMILETH TURCIOS-PINEDA
Pro se Petitioner
A#: 
Broward Transitional Center
3900 N. Powerline Rd.
Pompano Beach Fl. 33073

EXHIBIT A

Part 9 Special Alert Adjudicators Field Manual Incorporated in USCIS Policy Manual

With the May 21, 2020 Technical Update, <https://www.uscis.gov/policy-manual/updates>, USCIS moved any remaining Adjudicators Field Manual (AFM) content to its corresponding USCIS Policy Manual Part, in PDF format, until the relevant AFM content can be properly incorporated into its corresponding USCIS Policy Manual Part. This transition will be reflected in the Treatise as USCIS curates and finalizes the content.

The Treatise will continue to include the publicly available redacted AFM content in Volumes 1516. When the AFM is fully incorporated in the USCIS PM, it will be moved to the Publishers Archived Version.

To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, **the updated information in the Policy Manual prevails**. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

To find remaining AFM content in the publicly available online version of the USCIS Policy Manual found at <https://www.uscis.gov/policy-manual>, refer to the crosswalk between the AFM and the Policy Manual, as provided by USCIS. The crosswalk is reproduced below.

CHAPTER 104 Judicial Review *

104.04 Habeas Corpus

[5] Jurisdiction

[b] Determining the Proper Custodian

[iii] Attorney General/DHS Is the Proper Custodian

Several courts continue to hold that the Attorney General or Secretary of Homeland Security is the proper custodian in immigration detention cases. 199 Some of these courts have reasoned that because the officials, in their official capacity, transact business within the courts territorial jurisdiction, they can be reached by service of process. 200 Furthermore, because habeas petitions generally challenge the imposition, rather than the execution, of particular policies, it is the actions of the Attorney General or Secretary, not those of the warden of any particular facility, that are being challenged. 201 Courts have also noted that the Attorney General or Secretary could direct his or her subordinates to carry out any order to produce or release the petitioner. 202 These courts also reason that if a habeas corpus petition could be heard only where the petitioner was detained, the Attorney General or Secretary could seriously undermine the remedy of habeas corpus by detaining illegally a large group of persons in one facility so that the resulting torrent of habeas corpus petitions would overwhelm the local court. 203

The reorganization of immigration enforcement duties under the DHS has made the proper custodian even less clear. The Ninth Circuit has ruled that [u]ntil the exact parameters of the Attorney Generals power to detain aliens under the new Homeland Security scheme are decisively delineated, we believe it makes sense for immigration habeas petitioners to name the Attorney General *in addition* to naming the DHS Secretary as respondents in their habeas petitions. 204

199

Farez-Espinoza v. Chertoff, 600 F. Supp. 2d 488 (S.D.N.Y. 2009) (Attorney General and DHS Secretary are proper respondents (citing Rumsfeld v. Padilla, 542 U.S. 426, 436 n.8 (2004)); Somir v. United States, 354 F. Supp. 2d 215 (E.D.N.Y. 2005) (Attorney General remains proper custodian post-Padilla); Mandarino v. Ashcroft, 318 F. Supp. 2d 13 (D. Conn. 2003) (Attorney General is proper custodian).

200

So v. Reno, 251 F. Supp. 2d 1112, 1128 (E.D.N.Y. 2003) (There is personal jurisdiction over the Attorney General in New York, since he or she regularly transacts business in New York in an official capacity.); Small v. Ashcroft, 209 F. Supp. 2d 294 (S.D.N.Y. 2002); Cinquemani v. Ashcroft, 2001 U.S. Dist. LEXIS 12163 (E.D.N.Y. Aug. 16, 2001) (There is no question that the Attorney General is a legal custodian of [a habeas petitioner being held in DHS custody].); Mojica v. Reno, 970 F. Supp. 130, 16667 (E.D.N.Y. 1997) (the Attorney General is one of several custodians), *affd on other grounds sub nom.* Henderson v. INS, 157 F.3d 106, 12228 (2d Cir. 1998); Nwankwo v. Reno, 828 F. Supp. 171, 17374 (E.D.N.Y. 1993); *see also* Ali v. Ashcroft, 213 F.R.D. 390, 408 (W.D. Wash. 2003) (Attorney General and INS Commissioner were appropriately named as respondents for class action challenging Attorney Generals statutory authority to remove large numbers of unidentified Somalis located across the country), *affd*, 346 F.3d 873 (9th Cir. 2003), *vacated sub nom.* Ali v. Gonzales, 421 F.3d 795 (9th Cir. 2005).

201

Chavez-Rivas v. Olsen, 194 F. Supp. 2d 368, 374 (D.N.J. 2002).

202

Lee v. Ashcroft, 216 F. Supp. 2d 51, 5455 (E.D.N.Y. 2002) (collecting cases and noting that: (1) the Attorney General had the power to produce, detain, and release petitioners and was the ultimate decision-maker on removal matters; (2) Congress had designated the Attorney General as legal custodian of noncitizens; and (3) there is a compelling practical interest in protecting local district courts from becoming overwhelmed with habeas petitions); Mojica v. Reno, 970 F. Supp. 130, 167 (E.D.N.Y. 1997) (quoting Nwankwo v. Reno, 828 F. Supp. 171, 175 (E.D.N.Y. 1993)), *affd on other grounds sub nom.* Henderson v. INS, 157 F.3d 106, 12224 (2d Cir. 1998).

203

Lee v. Ashcroft, 216 F. Supp. 2d 51, 5455 (E.D.N.Y. 2002).

204

Armentero v. INS, 340 F.3d 1058, 1073 (9th Cir. 2003) (emphasis in original), *vacated*, 382 F.3d 1153 (9th Cir. 2004) (discussing previous Supreme Court and circuit precedent).