

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:26-20350-CIV-SMITH

JULIO ALARCON GOMEZ,

Petitioner,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, *et al.*,

Respondents.

DISMISSAL OF HABEAS CORPUS PETITION - 28 U.S.C. § 2241

This matter is before the Court upon Petitioner, Julio Alarcon Gomez's *pro se* Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241. ("Pet.") [DE 1]. The Petition was filed by Petitioner's wife, Yaremis Bergel, who has listed herself as Petitioner's "next friend." As relief, the Petition seeks release from the custody of United States Immigration and Customs Enforcement (ICE), a bond hearing, and injunctive relief to prevent Petitioner's removal from the United States. Because it is evident that Bergel, who does not allege to be a licensed attorney, cannot bring this action on Petitioner's behalf, and summary dismissal pursuant to Rule 4 of the Rules Governing Section 2254¹ Proceedings is warranted, no order to show cause has been issued.

I. Procedural History

According to the Petition, Petitioner was taken into custody when he reported to his annual ICE check-in meeting on November 3, 2025. (Pet. at 2.) The Petition alleges that Petitioner

¹ Pursuant to Rule 1(b) of the Rules Governing Section 2554 Cases in the United States District Courts, Rule 4 may be applied to cases brought pursuant to 28 U.S.C. § 2241.

possesses valid employment authorization and a Social Security number, has no criminal record, has extensive family and community ties, acts in a parental role to a minor child, and has suffered anxiety and depression due to prolonged detention. (*Id.* at 2–3.) Finally, the Petition alleges a denial of medical care and basic human necessities.² (*Id.*)

II. Discussion and Applicable Law

Federal Rule of Civil Procedure 17(c)(2) provides that an incompetent person who does not have a duly appointed representative may sue by a “next friend.” To proceed as next friend, the filing party must establish standing to act on behalf of the real party in order to invoke the jurisdiction of the federal courts. *Whitmore v. Arkansas*, 495 U.S. 149, 162 (1990).

In *Whitmore*, the Supreme Court explained the requirements, emphasizing that “next friend standing is by no means granted automatically to whomever seeks to pursue an action on behalf of another.” *Id.* at 163. First, the proposed next friend must prove that the real party in interest cannot pursue his own cause due to some disability such as mental incompetence or lack of access to court. *Id.* at 163–65. Second, the next friend must show some relationship or other evidence that would suggest that the next friend is truly dedicated to the interests of the real party in interest. *Id.* at 163–64. Ultimately, “the burden is on the ‘next friend’ clearly to establish the propriety of his status, and thereby justify the jurisdiction of the court.” *Id.* at 164; *see also Lonchar v. Zant*, 978 F.2d 637 (11th Cir. 1992) (applicability to habeas corpus cases).

Here, Bergel has not alleged any reason why Petitioner cannot pursue his own cause. Furthermore, even if Bergel could establish that she should be permitted to proceed as “next

² Even if Petitioner had filed the Petition himself, he could not challenge the conditions of his confinement in a habeas corpus action. *See Nelson v. Campbell*, 541 U.S. 637, 643 (2004) (“[C]onstitutional claims that merely challenge the conditions of a prisoner’s confinement, . . . fall outside of th[e] core [of habeas corpus] and may be brought pursuant to [*Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 389 (1971)].”

friend,” she is not a lawyer; therefore, she cannot bring this action on Petitioner’s behalf. *See Weber v. Garza*, 570 F.2d 511, 513 (5th Cir. 1978)³ (“individuals not licensed to practice law by the state may not use the ‘next friend’ device as an artifice for the unauthorized practice of law”). In a similar situation, the Eleventh Circuit found that a mother, who was not an attorney, could not act as legal counsel for her minor child. *Fuqua v. Massey*, 615 F. App’x 611 (11th Cir. 2015) (citing *Devine v. Indian River Cnty. Sch Bd.*, 121 F.3d 576, 581 (11th Cir. 1997)). Since Bergel cannot proceed as the attorney for the named petitioner, any filings by her are a nullity.

Accordingly, the instant case should be dismissed without prejudice. A dismissal without prejudice does not prevent a party from amending the complaint nor does it prevent a real party from asserting his habeas claims on his own behalf, if he is able to litigate his own cause.

III. Certificate of Appealability

A prisoner seeking to appeal a district court’s final order denying a petition for writ of habeas corpus has no absolute entitlement to appeal but must obtain a certificate of appealability. 28 U.S.C. § 2253(c)(1); *Harbison v. Bell*, 556 U.S. 180 (2009). This Court should issue a certificate of appealability only if the petitioner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where a district court has rejected a petitioner’s constitutional claims on the merits, the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). However, when the district court has rejected a claim on procedural grounds, the petitioner must show that “jurists of reason would find it debatable whether the petition states

³ Decisions of the United States Court of Appeals for the Fifth Circuit handed down prior to the close of business on September 30, 1981, are binding as precedent in the Eleventh Circuit. *Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1207 (11th Cir. 1981).

a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* Upon consideration of the record, this Court denies a certificate of appealability.

IV. Conclusion

It is therefore **ORDERED AND ADJUDGED** as follows:

1. The Petition [DE 1] is **DISMISSED without prejudice**;
2. Petitioner’s Motion for Immediate Release, or in the alternative, for Supervised Release [DE 3] and Motion to Expedite Consideration of the Petition [DE 4] are **DENIED AS MOOT**;
3. No Certificate of Appealability shall issue;
4. The Clerk shall **CLOSE** this case.

DONE AND ORDERED in Fort Lauderdale, Florida, this 28th day of January, 2026.



RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc:
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A#
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