

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

JOSE ALEJANDRO SUAREZ-GARCIA,

Petitioner,

v.

Case No. 2:26-cv-687-KCD-DNF

WARDEN, FLORIDA SOFT SIDE SOUTH
et al.,

Respondents.

_____ /

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Jose Alejandro Suarez-Garcia challenges his detention by U.S. Immigration and Customs Enforcement (ICE), arguing he is entitled to immediate release or a bond hearing under 8 U.S.C. § 1226. *See generally* Pet., ECF No. 1. Because Petitioner waived his right to contest any action for his removal when he entered the United States, Federal Respondents argue his petition should be denied.

FACTS

Jose Alejandro Suarez-Garcia is a national and citizen of Venezuela, as well as a citizen of Spain, who lawfully entered the United States on March 10, 2021, through the Visa Waiver Program. Ex. 1 at 2 (2026 I-213). That same day, U.S. Customs and Border Protection issued Petitioner an I-94 Arrival/Departure Record, informing him that he was admitted to the United States until June 7, 2021. Ex. 2 (2021 I-94). At

some point that day or thereafter, ICE represents that Petitioner was issued a Form I-863, Notice of Referral to Immigration Judge (“I-863”) for “asylum-only proceedings.”¹ Petitioner overstayed his admission expiration date and remained in the United States without authorization after June 7, 2021. Ex. 1 at 2.

ICE represents that on April 6, 2025, Petitioner applied for Temporary Protected Status (TPS), which was granted.² ICE also represents that, on November 20, 2025, Petitioner’s TPS was terminated by Federal Register Notice.³

On February 8, 2026, Petitioner was arrested by Diplomatic Security Service (DSS) Special Agents incident to a multi-agency operation on the Miami River in Miami, Florida. Ex. 1 at 2. Miami Sector Border Patrol Agents responded to the arrest location and identified themselves to the individuals detained incident to this operation, including Petitioner. *Id.* Petitioner admitted to the Border Patrol Agents that he was unlawfully present in the United States and was arrested thereafter. *Id.* On February 20, 2026, Petitioner had a custody regermination hearing, in which the immigration judge denied bond for lack of jurisdiction pursuant to 8 C.F.R. § 1236.1(d). Ex. 4 (2026 Bond Order).

¹ The undersigned has asked for documents to support this assertion but has not received them as of the date of this filing. ICE has represented to the undersigned that they are not in possession of Petitioner’s A-File, which would contain Petitioner’s I-863 and which, ICE represents, needs to be retrieved from the National Records Center. If the undersigned receives these documents before the Court rules, she will supplement this response with the same.

² The undersigned has asked for documents to support this assertion but has not received them as of the date of this filing. If the undersigned receives these documents before the Court rules, she will supplement this response with the same.

³ *Id.*; see also Ex. 3 (TPS Termination Confirmation).

On March 11, 2026, Jose Alejandro Suarez-Garcia filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act. *See* Pet. ¶¶ 66-115. He is currently detained at Florida Soft Side South.⁴

CERTIFIED HABEAS RETURN

ICE represents it is detaining Jose Alejandro Suarez-Garcia under 8 U.S.C. § 1187 and 8 C.F.R. § 1208.2(c)(iv). *See* 28 U.S.C. § 2243 (“The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Petitioner “has the burden of establishing his right to federal habeas relief and of proving all facts necessary to show a constitutional violation.” *Romine v. Head*, 253 F.3d 1349, 1357 (11th Cir. 2001).

ARGUMENT

I. Petitioner is Lawfully Detained

On March 20, 2021, Petitioner lawfully entered the United States through the Visa Waiver Program (VWP). Ex. 1 at 2. VWP, which is administered by the Department of Homeland Security (DHS) in consultation with the State Department, permits citizens of 42 countries, including Spain, to travel to the United States for

⁴ *See Online Detainee Locator System*, U.S. Immigr. & Customs Enft, <https://locator.ice.gov/odls/#/search> (last accessed April 1, 2026) (enter Petitioner’s A-Number and Venezuela as Country of Birth under “Search by A-Number”).

business or tourism for stays of up to 90 days without a visa.⁵ 8 U.S.C. § 1187(a)(1). Accordingly, Petitioner was admitted to the United States until June 7, 2021. Ex. 2. As part of his entry under the VWP, Petitioner waived “any right (1) to review or appeal under this chapter of an immigration officer’s determination as to the admissibility of the alien at the port of entry into the United States, or (2) to contest, other than on the basis of an application for asylum, any action for removal of the alien.” 8 U.S.C. § 1187(b). So, Federal Respondents argue that, because ICE has taken the action of detaining Petitioner for removal, Petitioner has waived his right to contest his detention. *Id.*

Moreover, ICE represents that, according to 8 C.F.R. § 1208.2(c), Petitioner is not entitled to removal proceedings under section 240 of the INA. Rather, ICE represents he is entitled to an asylum-only proceeding in which the immigration judge has exclusive jurisdiction over his asylum application, but not over other aspects of the proceedings, such as admissibility, eligibility for waivers, or other forms of relief. Accordingly, ICE represents that the immigration judge does not have the delegated authority from the Attorney General, and, therefore, does not have jurisdiction to conduct a bond redetermination hearing pursuant to 8 C.F.R. § 1236.1(d), as Petitioner requests. Rather, ICE represents that the regulations only provide

⁵ See also *Visa Waiver Program*, U.S. Customs & Border Protect’n, <https://www.cbp.gov/travel/international-visitors/visa-waiver-program> (last modified Nov. 12, 2024).

immigration judges with the ability to redetermine conditions of custody “with respect to aliens against whom an arrest warrant has been issued in conjunction with the service of a[n NTA] relating to removal proceedings pursuant to 8 C.F.R. Part 1240.” *See Matter of A-W*, 25 I&N Dec. 45 (BIA 2009); *see also* 8 USC § 1187; 8 CFR §§ 1208.2(c)(1)(iii) & 1236.1(a)-(d).

Ultimately, ICE represents that because the Petitioner entered under the VWP and was issued an I-863, not an NTA, he is only entitled to asylum-only proceedings and the immigration judge’s “authority over the applicant is now expressly limited to a determination whether the applicant is eligible for asylum or withholding of removal.” *Matter of A-W* (citing 8 C.F.R. § 1208.2(c)(3)(i)).

II. Petitioner Lacks Standing to Bring an APA Claim

Petitioner briefly argues his denial of bond violates the Administrative Procedure Act (APA). Pet. ¶¶ 103-05. However, Petitioner does not have standing to bring his APA claim. By the APA’s terms, it is available only for final agency action “for which there is no other adequate remedy in court.” 5 U.S.C. § 704. Thus, Petitioner’s APA claim is independently barred by this limitation in 5 U.S.C. § 704. In *Trump v. J.G.G.*, the U.S. Supreme Court held that where the claims for relief, as here, “necessarily imply the invalidity of their confinement” those claims “must be brought in habeas.” 145 S. Ct. 1003, 1005 (2025) (cleaned up).

Here, as in *J.G.G.*, habeas is an “adequate remedy” through which Petitioner can challenge his detention. Even if Petitioner’s APA claim had merit, which it does

not, the result would be the same as that in habeas—release from detention. The Supreme Court’s holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234- 35 (1953)); *see also Tran v. Warden, Florida Soft Side South et al.*, No. 2:25-cv-1224-KCD-NPM 2026 WL 672969, at *6-7 (M.D. Fla. Mar. 10, 2026).

III. Petitioner’s Access to Counsel and Conditions of Confinement Claims are Misplaced

Petitioner argues he has been denied meaningful access to counsel and also appears to challenge his conditions of confinement. *See* Pet. ¶¶ 106-15. However, his claims are not cognizable in a habeas action. First, the Court does not have jurisdiction over Petitioner’s access to counsel claim in a habeas petition. “Habeas is at its core a remedy for unlawful executive detention.” *Munaf v. Geren*, 553 U.S. 674, 128 (2008). “Claims so far outside the ‘core’ of habeas may not be pursued through habeas. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 119 (2020). Because Petitioner’s claim challenges his access to counsel while in confinement, rather than the fact or duration of his confinement, habeas relief—which is, ordinarily, release—is not available. *See Hidalgo v. Parra*, No. 2:25-cv-01214-SPC-NPM, 2026 WL 113587, at *1 (M.D. Fla. Jan. 15, 2026) (“Claims challenging the conditions of confinement, rather than the fact or duration of confinement, are not grounds for habeas relief.”). Accordingly, this claim is misplaced and should be dismissed.

Second, and similarly, “release from imprisonment is not an available remedy for a conditions-of-confinement claim.” *Vaz v. Skinner*, 634 F. App’x 778, 781 (11th Cir. 2015 (per curiam)); *see also Hidalgo*, 2026 WL 113587, at *1. Indeed, in *Gomez v. United States*, the Eleventh Circuit stated that if conditions of confinement violate a prisoner’s constitutional rights, “[t]he appropriate Eleventh Circuit relief . . . is to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment.” 899 F.2d 1124, 1126-27 (11th Cir. 1990). The Eleventh Circuit has further indicated that its holding in *Gomez* applies to civil detainees in ICE custody. *See Vaz*, 634 F. App’x at 781-82 (noting that a detained alien could not obtain release based on his conditions of confinement claim). This district has further refused to permit any exception for civil detainees in ICE custody. In *St. Louis v. Martin*, the court found “release under § 2241 unavailing when the alleged constitutional violation is predicated upon the conditions of a petitioner’s confinement.” No. 2:20-cv-349-FTM-60-NPM, 2020 WL 3490179, at *7 (M.D. Fla. June 26, 2020). Because Eleventh Circuit precedent precludes the Court from ordering release from custody, Petitioner’s arguments on the basis of his conditions of confinement should also be rejected.

IV. Outright Release is Inappropriate

Finally, Federal Respondents contend that should this Court determine that Petitioner’s detention is subject to 8 U.S.C. § 1226, outright release is inappropriate. To the extent the Court orders a bond hearing before an Immigration Judge for the

purpose of determining whether Petitioner is a flight risk or danger to the community—see, e.g., *Hernandez-Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM, 2025 WL 3022245, at *5 (M.D. Fla. Oct. 29, 2025)—Federal Respondents aver that, as this Court is aware, such bond hearings are not conducted or managed by ICE, rather by the Executive Office for Immigration Review, which is not a proper party to this suit. See *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (“[I]n habeas challenges to present physical confinement . . . the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.”).

CONCLUSION

Federal Respondents argue Jose Alejandro Suarez-Garcia’s Petition for Writ of Habeas Corpus should be denied.

DATED this 1st day of April, 2026.

Respectfully submitted,

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