

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

Jose Alejandro Suarez-Garcia,
Petitioner,

v.

Case No. 2:26-cv-00687-KCD-DNF

WARDEN, Florida Soft Side South,
Alligator Alcatraz, et al.,
Respondents.

REPLY TO RESPONDENTS' RESPONSE

Petitioner, through undersigned counsel, respectfully submits this Reply to address material inconsistencies and reliability defects within Respondents' own submissions. The record reflects internal contradictions and procedural irregularities that undermine the administrative basis used to justify Petitioner's continued detention and Respondents' asserted custody authority.

ARGUMENT

Signature of BPA Y. Gomez is Materially Different

1. The Visa Waiver Program (VWP) Notice of Intent to Issue a Final Administrative Removal Order ("Notice of Intent"), submitted by Respondents on April 3, 2026, reflects inconsistent signatures attributed to BPA Y. Gomez in the "Certificate of Service" and the acknowledgment

section (“I acknowledge that I have received this Notice of Intent”), despite both being dated February 8, 2026 at 1630 hrs. *See* Document 14-1, page 2.

2. Respondents submitted a second Notice of Intent containing the same inconsistency in the signatures. *See* Document 14-2, page 3.
3. These inconsistencies undermine the reliability and authenticity of the Notice of Intent and, when used to support the issuance of a Final Administrative Removal Order (“Administrative Removal Order”), constitute a violation of Petitioner’s right to due process of law.

Inconsistencies in the Notice of Intent, the 48 hours policy, the Attestation, and the Detainee’s Location

4. The Notice of Intent reflects that the box stating: “I admit the allegations and charge(s)” while also stating that Petitioner “failed or refused to respond the allegations,” which is inconsistent on its face. *See* Document 14-1, page 2; Document 14-2, page 2.
5. The Notice of Intent provides that Petitioner is granted 48 hours from service to respond. *See* Document 14-1, page 1; Document 14-2, page 1.
6. Contrary to the above policy, Respondents allege that the Administrative Removal Order was completed on February 8, 2026, in Dania Beach, Florida, the same date as the Notice of Intent, and includes a Certificate

of Service dated the same day. *See* Document 14-1, page 3, and Document 14-2, page 4.

7. However, Document 14-1, page 3 also identifies BPA Aaron Porter as witnessing Petitioner's refusal to sign on April 1, 2026, while simultaneously certifying that the underlying events occurred on February 8, 2026.
8. The record reflects that on April 1, 2026, Petitioner was detained in Ochopee, Florida, while on February 8, 2026, Border Patrol personnel were in Dania Beach, Florida. *See* Document 14-1, pages 1, 3, 4; Document 14-2, pages 1, 4, 5.
9. Furthermore, Deportation Officer Alexander Santiago documented that on April 1, 2026, Petitioner refused to sign the Verification of Removal and provided a right index fingerprint, certifying these facts through his signature, name, title, and date. *See* Document 14-1, page 4.
10. Taken together, the record reflects material inconsistencies that undermine its reliability as a basis for detention or enforcement.

Failure of the Record to Establish Post-Order Custody Authority

11. The Notice of Intent contains internal inconsistencies that undermine the reliability of the administrative record upon which Respondents rely to justify continued detention under 8 U.S.C. § 1231(a). *See* Document 14-

1, page 2; Document 14-2, page 3. Accordingly, the record does not clearly establish a valid and enforceable post-order custody basis.

12. At minimum, the record does not clearly establish that detention is properly authorized under 8 U.S.C. § 1231(a) and instead requires evaluation under 8 U.S.C. § 1226(a).

Pending Asylum and Due Process Concerns

13. Even assuming *arguendo* that the Notice of Intent is valid, Respondents acknowledged that Petitioner has a pending, unadjudicated asylum application and that Form I-863, Notice of Referral to Immigration Judge, has been issued. See Document 9, pages 1–2; Document 9-1, page 2; Document 14-1, page 3; Document 14-2, page 4.
14. The Administrative Removal Order itself recognizes that it is not enforceable if a stay of removal is ordered or if an asylum application is pending. See Document 14-1, page 3; Document 14-2, page 4.
15. Therefore, the record does not clearly establish a final and executable order of removal sufficient to support detention under § 1231(a), and detention must instead be evaluated under § 1226(a).
16. Respondent’s Amended Response at page 3 acknowledges that according to OPLA Petitioner “may have been removed”, underscoring the lack of clarity in the custody basis.

17. Removal prior to adjudication of Petitioner's asylum application would deprive him of due process.

Material Reliability Defects in Form I-213

18. Respondents' reliance on Form I-213 to continue detaining Petitioner is undermined by reliability concerns affecting its probative value. *See* Document 9-1, pages 1-3.
19. Form I-213 alleges that "all subjects admitted to being [...] illegally present in the United States," an uncorroborated assertion not supported by independent evidence. *See* Document 9-1, page 2.
20. While Form I-213 may be presumed reliable in limited contexts, that presumption is rebutted where reliability is called into question. *See Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1988). Here, the alleged admission is unverified, and counsel has been unable to meet with Petitioner due to ICE's refusal to permit access despite repeated efforts. *See* Document 1-9; *see also* Exhibit A.
21. Respondents should not be permitted to rely on an unverified statement while preventing its verification or rebuttal. Accordingly, Form I-213 alone is insufficient to establish a reliable factual basis for continued detention, implicating due process concerns under the Fifth Amendment.

22. Form I-213 also lists “8 U.S.C. § 1227 – Deportable Alien” under “Current Criminal Charges,” despite federal databases (ABIS, EARM, NCIC, TECS, NGI) reflecting no criminal history. *See* Document 9-1, page 2.

23. Because 8 U.S.C. § 1227 is a civil immigration provision, not a criminal charge, this labeling further undermines the document’s reliability.

Continued Detention and Material Interference with Access to Counsel Resulting in Impairment of Due Process

24. Respondents’ response misconstrues Petitioner’s claim. Petitioner challenges his continued detention under 28 U.S.C. § 2241 insofar as it, under the present conditions, deprives him of due process, including material interference with access to counsel and the ability to prepare and present his claims.

25. The Fifth Amendment guarantees due process, which includes the opportunity to consult with counsel and pursue habeas relief. *See* U.S. Const. amend. V; 8 U.S.C. § 1362.

26. Petitioner’s ability to communicate with counsel and prepare evidentiary submissions has been materially constrained, including the lack of confidential attorney-client access. *See* Document 1-9; *see also* Exhibit A.

27. Respondents’ reliance on *Vaz v. Skinner*, 634 F. App’x 778 (11th Cir. 2015), is unavailing. As an unpublished decision, it is non-binding and

fact-dependent, and does not control where the record reflects ongoing and documented interference affecting litigation of habeas claims.

28. Continued detention under these conditions substantially impairs Petitioner's right to counsel, thereby affecting his ability to meaningfully pursue his claims in this habeas proceeding.

CONCLUSION

For the foregoing reasons, Respondents' reliance on an internally inconsistent and unreliable administrative record fails to establish a lawful basis for continued detention. The record does not clearly support custody under 8 U.S.C. § 1231(a), and instead requires evaluation under 8 U.S.C. § 1226(a). Accordingly, Petitioner respectfully requests that this Honorable Court grant a stay of removal and order Petitioner's immediate release or, in the alternative, an individualized bond hearing pursuant to 8 U.S.C. § 1226(a).

Respectfully submitted on April 17th, 2026.

/s/ Bonnie Smerdon
Bonnie Smerdon (FL Bar No. 123933)
Luce Law PLLC
22966 Overseas Hwy
Cudjoe Key, FL 33042
Phone: (954) 624-2622
Email: bsmerdon@lucelawpllc.com

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply to Respondents' Response was served on Respondents via CM/ECF on April 17th, 2026.

/s/ Bonnie Smerdon
Bonnie Smerdon (FL Bar No. 123933)