

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

NELSON PIRES DOS SANTOS  
(A-NUMBER )

Petitioner,

v.

WARDEN OF FLORIDA SOFT SIDE  
SOUTH (ALLIGATOR ALCATRAZ);  
KRISTI NOEM, as United States Secretary  
of Homeland Security; GARRETT J. RIPA,  
as Field Office Director, U.S. Immigration  
and Customs Enforcement; and PAM  
BONDI, as United States Attorney General.

Respondents.

Case No.: 2:26-cv-832-SPC-DNF

**REPLY TO FEDERAL RESPONDENTS' RESPONSE  
TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, NELSON PIRES DOS SANTOS (“Petitioner”), by and through undersigned counsel, replies to the Federal Respondents’ (“Respondents”) Response to Petition for Writ of Habeas Corpus (the “Response”) (DE-9), and states:

The Response confirms, rather than undermines, Petitioner’s entitlement to relief. Respondents do not meaningfully engage the controlling reasoning already adopted by this Court and others within this District but instead rely on non-binding out-of-circuit authority and incorporation by reference to prior filings.

First, Respondents’ reliance on *Buenrostro-Mendez* and *Avila* is misplaced. Those decisions are not binding in this Circuit and do not displace this Court’s prior analysis in *Garcia v. Noem*, which rejected the Government’s interpretation of 8 U.S.C. §

1225(b)(2) as applied to long-term interior noncitizens. Respondents acknowledge *Garcia*, yet offer no substantive basis to depart from it. That omission is telling.

Second, Respondents' invocation of *Matter of Yajure Hurtado* does not resolve the issue. As Petitioner explained, the agency's interpretation has been subject to judicial rejection, and courts within this District have repeatedly declined to adopt the Government's position in materially indistinguishable circumstances. Respondents do not confront that body of authority.

Third, the Government's jurisdictional arguments are presented only by incorporation to prior filings, in express contravention of Local Rule 3.01(h). Even setting that defect aside, those arguments have already been considered and rejected by this Court in similar cases, including *Garcia*. Respondents provide no new analysis warranting a different result here.

Fourth, Respondents do not dispute the critical facts: Petitioner was arrested within the interior of the United States after decades of residence, was not encountered at or near the border, and was placed in full removal proceedings under INA § 240. Those facts place Petitioner squarely within the detention framework of 8 U.S.C. § 1226(a), not § 1225(b)(2).

Respondents' submission is also notable for what it omits: any response to Petitioner's independent due process claim. The Petition alleges that Petitioner's continued detention violates the Fifth Amendment because it rests on procedures that fail to provide meaningful notice and a genuine opportunity to be heard. Petitioner's assertion of violation of his procedural due process rights is not incidental, and

Respondents offer no answer to that claim. That failure alone warrants habeas relief. The Government bears the burden of justifying continued detention and has not attempted to demonstrate that the procedures applied here satisfy constitutional requirements. Instead, the Response advances only a statutory argument, relying on out-of-circuit decisions such as *Buenrostro-Mendez* (Fifth Circuit) and *Avila* (Eight Circuit) to assert that mandatory detention under 8 U.S.C. § 1225(b)(2) applies regardless of whether the noncitizen is already present in the United States. Even within the Fifth Circuit, however, notwithstanding *Buenrostro-Mendez*, district courts have granted habeas relief and ordered immediately release for similarly situated petitioners based on as-applied procedural due process violations. *See, e.g., Azua-Zuniga v. Bondi*, 2026 WL 482453 (W.D. Tex. Feb. 20, 2026) (applying *Matthews* factors to procedural due process analysis and ordering immediate release).<sup>1</sup>

In fact, Respondents' own submissions further confirm that the process underlying Petitioner's detention has not functioned in a reliable or constitutionally adequate manner. The Notice to Appear (DE-9-1, at 2) reflects that on March 19, 2026, Petitioner was purportedly served with notice of a March 26, 2026 hearing. Upon information and belief, however, Petitioner was not aware of any such hearing in

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<sup>1</sup> Courts within the Middle District of Florida have likewise recognized that immediate release—rather than a bond hearing—is warranted when a detainee is unlawfully detained. *See e.g., Gimenez Rivero v. Mina*, 2026 WL 199319, at \*4-5 (M.D. Fla. Jan. 27, 2026) (Dalton, J.) (“Forcing a detainee to wait for a hearing for days or weeks more in custody—under who knows what conditions—when he is not lawfully detained in the first place would gut the purpose of habeas review.”).

advance and was brought before the Immigration Judge without prior notice or any meaningful opportunity to contact counsel. Whether the hearing date was included at the time of service or added thereafter, the critical point remains the same: Petitioner did not receive meaningful notice sufficient to allow him to access counsel, or to prepare for or participate in his own proceedings.

The record reflects a similar breakdown in the accuracy of the information underlying Petitioner's detention. The Form I-831 (DE-9-1 at p. 5 ("FAMILY ISSUES")) indicates that Petitioner has no spouse or children in the United States. Those assertions are incorrect. Petitioner is married to a United States citizen, and that fact has been documented in this proceeding through the filing of his marriage certificate. (DE-1-3). Even if the I-831 was completed prior to the filing of the Petition, Respondents have continued to rely on a custody record containing a material inaccuracy that bears directly on community ties and flight risk, without correction or clarification.

These are not isolated defects. Taken together, they demonstrate that the procedures on which Respondents rely are not merely incomplete in theory but unreliable in practice. Petitioner has been detained without accurate factual inputs, without meaningful notice of proceedings, and without a functional opportunity to invoke available protections, including access to counsel. Under these circumstances, further administrative process would not cure the defect. The Constitution does not require Petitioner to endure continued detention while awaiting a process that has already failed to operate in a reliable manner.

For these reasons, and those set forth in the Petition, immediate release is warranted in light of Respondents' failure to justify Petitioner's detention under either statutory or constitutional standards. At a minimum, the Court should order Respondents to provide Petitioner with a prompt and meaningful custody determination under 8 U.S.C. § 1226(a).

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 1, 2026, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will contemporaneously serve notice of filing and a downloadable copy of the filed documents to the following CM/ECF participants: Carolyn B. Tapie, Assistant United States Attorney, 400 North Tampa Street, Suite 3200, Tampa, FL 33602 at the email address: [Carolyn.B.Tapie@usdoj.gov](mailto:Carolyn.B.Tapie@usdoj.gov); and Nicholas J. P. Meros, c/o Shutts & Bowen LLP, 215 South Monroe Street, Suite 804, Tallahassee, FL 32301, at the email addresses: [nmeros@shutts.com](mailto:nmeros@shutts.com); [chill@shutts.com](mailto:chill@shutts.com); [tkessep@shutts.com](mailto:tkessep@shutts.com); [jstafford@shutts.com](mailto:jstafford@shutts.com); and [trosenberger@shutts.com](mailto:trosenberger@shutts.com).

Respectfully submitted,

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