

1 **Jessica Anleu, Esq.**
2 **ZAVA IMMIGRATION LAW GROUP, PLLC**
3 **5333 N. 7th Street, Suite B114**
4 **Phoenix, AZ 85014**
5 **Tel: (602) 795-5550**
6 **jessica@zavaimmigration.com**
7 **Attorney for Petitioner**

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX, ARIZONA**

Manuel Perez Perez

Petitioner,

v.

Markwayne Mullin, Secretary, U.S.
Department of Homeland Security; Pamela
Bondi, Attorney General of the United
States, Executive Office for
Immigration Review (EOIR); Corina
Almeida, Chief Counsel, Immigration and
Customs Enforcement (ICE), Office of
Principal Legal Advisor, Florence;
Christopher McGregor, Field Office
Director, ICE Enforcement and Removal
Operations, Florence; Luis Rosa, Jr,
Warden, Florence Correctional Center,

Respondents.

Case No. 2:26-cv-02088-DWL- CDB

Immigration Number: A 

**PETITIONER'S TRAVERSE TO
RESPONDENT'S RESPONSE**

I. INTRODUCTION

Respondents' opposition does not rebut the Petition nor meaningfully engage with Petitioner's core due process claims. Notably, Respondents do not address the procedural requirements governing re-detention, do not reconcile their inconsistent statutory positions, and do not dispute the material inaccuracies in their own evidentiary submission. Their response therefore fails to rebut the Petition.

1 Instead, Respondents rely almost entirely on a declaration that is materially
2 inaccurate, internally inconsistent, and based on undisclosed records that cannot be tested
3 through cross-examination. The Government attempts to justify Petitioner's continued
4 detention through an unverified agency narrative rather than reliable evidence or
5 constitutionally sufficient procedures.
6

7 At its core, this case presents a straightforward due process problem. The
8 Government seeks to deprive Petitioner of liberty based on a declaration that: (1) is not
9 based on firsthand knowledge of the critical facts; (2) relies on layered hearsay drawn from
10 undisclosed databases; and (3) contains multiple material inaccuracies. That is insufficient
11 to justify continued civil immigration detention.
12

13 Moreover, Respondents' own briefing underscores the absence of a lawful detention
14 framework. While invoking mandatory detention principles, they simultaneously suggest
15 that Petitioner may be entitled to a bond hearing under 8 U.S.C. § 1226(a), exposing the lack
16 of a coherent statutory basis for detention.
17

18 Even accepting Respondents' framing, the remedy they propose—a future bond
19 hearing—does not cure the constitutional violation already inflicted. The issue is not merely
20 the absence of a hearing, but the Government's unlawful re-detention of Petitioner without
21 notice or process after he had been living at liberty for years.
22

23 Due process requires more. This Court should order Petitioner's immediate release.
24
25
26
27
28

II. ARGUMENT

1. Respondents Fail to Rebut Petitioner's TVPRA Argument and Therefore Cannot Justify Mandatory Detention.

Petitioner's habeas petition squarely argued that he is not subject to mandatory detention under 8 U.S.C. § 1225(b) because he was designated as an unaccompanied alien child ("UAC") and placed into removal proceedings under the Trafficking Victims Protection Reauthorization Act ("TVPRA"), which does not mandate detention.

Respondents do not address this argument at all. They do not dispute Petitioner's UAC designation, do not engage with the statutory framework governing UACs under 8 U.S.C. § 1232, and do not explain how § 1225(b) could override that framework years after Petitioner's release into the United States. This failure to respond is telling.

It is well established that where the Government fails to respond to a dispositive legal argument in habeas proceedings, the Court may treat that argument as conceded. Respondents' silence is particularly significant here because the TVPRA establishes a distinct statutory scheme governing unaccompanied children—one that prioritizes release and does not impose mandatory detention.

Petitioner was designated as a UAC at entry, transferred to ORR custody, released to a sponsor, and placed into removal proceedings under 8 U.S.C. § 1229a—not expedited removal. That statutory framework controls. Respondents cannot retroactively reclassify him years later as an "applicant for admission" subject to mandatory detention under § 1225(b) in order to avoid providing due process.

By failing to engage with this statutory argument, Respondents have not met their burden of establishing a lawful basis for Petitioner's continued detention.

1 2. Respondents Do Not Rebut Petitioner’s Core Claim: Re-detention Without
2 Due Process.

3 Critically, Respondents do not address Petitioner’s central claim: that he was re-
4 detained without the procedural safeguards required by the Fifth Amendment. The
5 declaration confirms that ICE previously exercised discretion to release Petitioner and “took
6 no action” despite knowledge of his criminal history.

7
8 Yet Respondents identify no procedure by which that liberty was later revoked. They
9 do not allege that Petitioner was provided notice, an opportunity to respond, or any
10 individualized determination prior to re-detention. Instead, the Government relies solely on
11 a retrospective narrative to justify a present deprivation of liberty.

12
13 Due process does not permit the Government to re-detain an individual who has been
14 previously released without affording basic procedural protections. *See Mathews v.*
15 *Eldridge; Morrissey v. Brewer*. Respondents’ failure to address this issue is telling—and
16 dispositive.

17
18
19 3. Respondents Fail to Provide a Reliable Factual Basis for Detention.

20 Respondents’ justification for detention rests almost entirely on the Declaration of
21 Deportation Officer Nellie Martinez. But the declaration is neither reliable nor the best
22 evidence available. It is based on secondhand review of undisclosed databases, contains no
23 firsthand observations, and is not subject to meaningful testing. The Government’s failure
24 to provide the underlying records—when they are plainly available—creates a substantial
25 risk of error. Those records—including custody determinations, USCIS notices, and
26 immigration court filings—are uniquely within the Government’s control, yet Respondents
27
28

1 chose not to produce them and instead rely on a summary declaration. That choice further
2 undermines the reliability of their evidentiary submission. Under *Mathews v. Eldridge*, due
3 process requires more than unverified hearsay to justify the deprivation of liberty.
4

5 The Court should reject Officer Martinez's declaration as an unreliable and
6 incompetent basis to justify Petitioner's detention, or at minimum assign it little to no
7 evidentiary weight. The declaration is not based on firsthand testimony about the critical
8 facts at issue, but instead on a post hoc compilation of unspecified databases, records, and
9 agency information. By its own terms, the declarant states that the declaration is based not
10 only on alleged "personal knowledge," but also on her "review of government databases
11 and documentation" and "electronic data including case records." That is not competent
12 proof of the underlying facts; it is layered hearsay presented in summary form, without the
13 underlying records attached, authenticated, or subjected to any meaningful adversarial
14 testing.
15
16

17 This matters because the Government is attempting to justify Petitioner's present re-
18 detention through a declaration that cannot be cross-examined, relies on undisclosed
19 records, and contains multiple factual inaccuracies on material points. Due process does not
20 permit the Government to deprive a person of liberty based on a shifting and error-ridden
21 agency narrative that counsel cannot meaningfully test. Where the Government seeks to
22 justify ongoing civil immigration detention, the factual basis for that detention must be
23 reliable. This declaration is not.
24
25

26 First, the declaration materially misstates Petitioner's immigration history. For
27 example, it asserts that, on January 11, 2023, USCIS "approved Mr. Perez' Form I-360 and
28

1 granted him Lawful Permanent Residency as a (SL6 class) Special Immigrant Juvenile.”
2 That statement is incorrect. Approval of a Form I-360 SIJ petition does not itself confer
3 lawful permanent resident status. The declaration thus reflects either a misunderstanding of
4 Petitioner’s immigration posture or an imprecise and misleading summary of agency
5 records. That error is especially significant because Respondents rely on the declaration as
6 an authoritative account of Petitioner’s status and custody history.
7

8 Second, the declaration states that on April 2, 2026, ICE received a “USCIS asylum
9 UAC Decision Notice for Non-Eligibility” and that ICE “served Mr. Perez the decision.”
10 Yet, at the time Respondents filed their Response, neither counsel—who represented
11 Petitioner during the USCIS interview—nor the Immigration Court had been notified of any
12 such decision. Indeed, at Petitioner’s hearing held today, neither undersigned counsel nor
13 the Court had received notice of this purported adjudication, and as of the filing of this
14 Traverse, government counsel still has not served the alleged decision or filed it with the
15 Court. Respondents cannot rely on a purported asylum adjudication as a material fact
16 supporting detention while simultaneously withholding that information from both counsel
17 and the tribunal. This failure not only undermines the reliability of the declaration but raises
18 serious due process concerns where the Government relies on undisclosed evidence to
19 justify continued detention. At minimum, this discrepancy further undermines the reliability
20 of the declaration and highlights the impropriety of accepting its assertions at face value.
21

22 Third, the declaration misstates the date of Petitioner’s next hearing, asserting that
23 the “next hearing before the IJ is scheduled for January 21, 2026.” That is plainly impossible
24 on the declaration’s own timeline, given that the declaration was executed in April 2026,
25
26
27
28

1 and the actual next hearing, at the time of filing, was April 8, 2026¹. This is not a minor
2 clerical detail. It is further evidence that the declaration is not a careful or reliable recitation
3 of the facts relevant to Petitioner's present custody, but instead a sloppily assembled
4 narrative compiled from incomplete or outdated sources.
5

6 Fourth, the declaration presents Petitioner's criminal history in a misleading manner
7 that exaggerates the basis for detention. Respondents' filing repeatedly foregrounds arrests
8 and charges in a way that suggests new or escalating recent misconduct. In reality, however,
9 the DUI-related charges referenced by Respondents arise from alleged conduct dating back
10 to approximately November 2024—over a year and a half ago—not recent events. Those
11 charges were not promptly filed with the Mesa Municipal Court, and Petitioner was not
12 notified of them at the time. Thus, what Respondents portray as recent criminal conduct is,
13 in fact, delayed misdemeanor charging based on older alleged conduct.
14
15

16 Respondents further distort the record by fragmenting what is, in reality, a single
17 incident into multiple entries to create the appearance of repeated encounters with law
18 enforcement. The declaration lists: (1) Petitioner's June 22, 2023 arrest; (2) the August 21,
19 2023 conviction arising from that same incident; and (3) ICE's September 9, 2023 encounter
20 with Petitioner while he was in custody for that same offense. Presented in this manner, the
21 declaration suggests a pattern of separate events, when in fact all three entries stem from a
22 single underlying incident. By disaggregating one incident into multiple "encounters,"
23 Respondents create the false impression of repeated misconduct and heightened recidivism.
24
25
26
27

28 ¹ The next hearing is now scheduled for April 17, 2026 at 10:00AM.

1 This framing is particularly misleading given that the Government was fully aware
2 of this conduct and nevertheless exercised prosecutorial discretion to release Petitioner. The
3 declaration itself acknowledges that, following this incident, ICE “took no action” and
4 allowed Petitioner to remain at liberty. Respondents offer no explanation for what materially
5 changed between that discretionary release and the present re-detention—other than their
6 repackaging of stale allegations as if they reflect current dangerousness.
7

8 But even setting aside these distortions, Respondents’ position fails for a more
9 fundamental reason: nothing in the declaration establishes that the Government followed the
10 procedures required to re-detain Petitioner. The declaration does not identify any lawful
11 basis for revoking Petitioner’s prior release, does not reference any notice provided to
12 Petitioner, and does not reflect any individualized determination justifying re-detention.
13 Instead, it simply recites a sequence of events and assumes that re-detention was
14 permissible.
15

16 Due process requires more. Where the Government has already exercised discretion
17 to release an individual, it cannot later re-detain him—particularly based on stale or
18 repackaged allegations—without affording the procedural protections required for that
19 deprivation of liberty. Respondents cannot cure that failure by reframing older conduct as
20 recent or by inflating a single incident into multiple events.
21

22 The declaration is also defective on its face. It contains repeated numbering errors,
23 including duplicate paragraph numbers, disordered chronology, and obvious drafting
24 irregularities. These errors reinforce that the declaration is not a trustworthy evidentiary
25 submission. They also underscore Petitioner’s inability to test what source material was
26
27
28

1 used, whether those records were complete, and whether the declarant accurately
2 summarized them.

3 Nor should the Court permit the Government to cure these defects by characterizing
4 the declaration as an ordinary agency summary. The issue here is liberty. Respondents seek
5 to justify ongoing detention with a declaration that: (1) is not based on firsthand knowledge
6 of the critical events; (2) relies on undisclosed and unauthenticated records; (3) contains
7 material factual inaccuracies; and (4) cannot be meaningfully cross-examined in its present
8 form. That is insufficient. Even in immigration custody cases, due process requires a reliable
9 factual basis for detention. A declaration that is internally inconsistent and materially
10 inaccurate cannot satisfy that standard.

11 Accordingly, the Court should either strike the Martinez Declaration or assign it
12 minimal evidentiary weight. At a minimum, the Court should decline to rely on the
13 declaration for any disputed factual proposition concerning Petitioner's immigration status,
14 the alleged asylum non-eligibility decision, the posture of the removal proceedings, or the
15 asserted basis for continued detention. If Respondents wish to rely on those propositions,
16 they should be required to produce the underlying records and, if necessary, competent
17 testimony subject to adversarial testing.

18 For these reasons, the Government's response does not rebut the Petition. To the
19 contrary, the unreliability of Respondents' principal evidentiary submission reinforces
20 Petitioner's core claim: that the Government is attempting to justify detention through an
21 untested and shifting administrative narrative, rather than through the process and reliable
22 factual showing that due process requires.

1 Where the Government seeks to justify re-detention and ongoing detention, it must
2 provide a reliable factual basis. Respondents have failed to do so.

3
4
5 4. A Bond Hearing is Not an Adequate Remedy.

6 Respondents suggest that the appropriate remedy is a bond hearing under 8 U.S.C. §
7 1226(a). But that position does not cure the constitutional violation at issue.

8 The problem here is not simply the absence of a bond hearing—it is the unlawful re-
9 detention itself. Petitioner was previously released, and Respondents have failed to
10 demonstrate that his liberty was lawfully revoked. A subsequent bond hearing cannot
11 retroactively cure an unconstitutional deprivation of liberty.

12
13 Where detention is imposed without due process, the appropriate remedy is release—not
14 merely a future hearing. To hold otherwise would permit the Government to detain first and
15 justify later, a result incompatible with the Fifth Amendment.

16
17
18 5. The Non-Custodial Respondents Are Proper Because Effective Relief Requires
19 Action Beyond the Warden’s Authority.

20 Respondents rely on *Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024), to argue that
21 only the facility warden is a proper respondent. That argument misapplies *Doe* and ignores
22 the nature of the relief sought in this case.

23
24 In *Doe*, the Ninth Circuit applied the immediate-custodian rule to a “core” habeas
25 challenge seeking release from confinement. But the court did not hold that supervisory
26 officials are improper respondents in every immigration detention case, nor did it address
27 circumstances where effective relief requires action beyond the physical jailer.

1 This case is materially different.

2 Petitioner does not merely seek an order directing the facility to “open the jail door.”
3
4 Petitioner seeks relief that the Warden of a contract detention facility lacks authority to
5 provide, including:

- 6 • an order requiring a constitutionally adequate custody determination or
7 hearing;
- 8 • protection against transfer outside this District during adjudication of this
9 Petition;
- 10 • relief from continued detention imposed by ICE enforcement officials; and
- 11 • such other prospective relief necessary to remedy ongoing constitutional
12 violations.

13 The Florence Service Processing Center is operated by a private contractor. The Warden
14 functions as a physical custodian only and does not decide:

- 15 • whether a detainee will remain in ICE custody,
- 16 • whether a detainee will be released,
- 17 • whether a detainee will be transferred,
- 18 • whether removal will be pursued, or
- 19 • whether removal will be pursued, or
- 20 • whether statutory custody procedures will be invoked.

21 Those decisions are made by ICE Enforcement and Removal Operations (“ERO”) and DHS
22 leadership. Accordingly, limiting this action to the Warden would risk rendering any relief
23 incomplete or ineffective.
24

25 Additionally, District of Arizona courts are well aware that detainees at Florence SPC
26 are held pursuant to ICE authority, not the independent judgment of the facility operator.
27

28 Petitioner’s detention was ordered by ICE officers, not by the Warden. ICE officers

1 transported Petitioner across state lines, maintain custody authority, and control whether he
2 remains detained or is released. The Warden cannot unilaterally release Petitioner absent
3 authorization from ICE. Because the officials responsible for Petitioner's detention are
4 federal immigration authorities—not the contract-facility jailer—those officials are
5 appropriate parties to ensure effective relief.
6

7 Even the Supreme Court's decision in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), did
8 not adopt a rigid rule applicable to all detention contexts. The Court expressly noted that the
9 immediate-custodian rule had not been applied uniformly outside traditional criminal
10 confinement and declined to resolve its application to immigration detention.
11

12 Immigration custody differs fundamentally from criminal incarceration because legal
13 authority over detention resides with federal immigration officials rather than the physical
14 custodian. Where relief requires action by those officials, courts retain authority to direct
15 relief accordingly.
16

17 Petitioner seeks relief that necessarily involves ICE decisionmakers, including:

- 18 • termination of unlawful federal detention,
- 19 • constitutionally adequate custody review,
- 20 • restraint on transfer that could defeat this Court's jurisdiction, and
- 21 • enforcement of statutory and constitutional limits on detention authority.
22

23 The Warden alone cannot provide this relief. Absent the presence of ICE officials
24 with legal authority over Petitioner's custody, any order could be evaded through transfer
25 or non-implementation by the agency controlling detention decisions.
26

27 Because these forms of relief involve discretionary agency actions and statutory
28

1 duties specifically assigned to the ICE Field Office Direct and DHS Secretary, dismissing
2 these parties would render any order by this Court unenforceable against the actual decision
3 makers. Retaining the officials who control Petitioner's custody ensures that any order
4 issued by this Court will be meaningful and enforceable.
5

6 7 III. CONCLUSION

8 For all the foregoing reasons, Respondents have failed to establish any lawful basis
9 for Petitioner's continued detention. Petitioner was designated as an unaccompanied alien
10 child and placed into removal proceedings under the Trafficking Victims Protection
11 Reauthorization Act ("TVPRA"), a statutory framework that does not impose mandatory
12 detention. Respondents have not rebutted this argument and cannot retroactively reclassify
13 Petitioner as subject to 8 U.S.C. § 1225(b) to justify his custody.
14

15 Even more fundamentally, Respondents do not dispute that Petitioner was previously
16 released into the community and then re-detained without notice, without a hearing, and
17 without any individualized determination. That re-detention violated the Fifth Amendment.
18 The Government cannot revoke an individual's liberty and then attempt to justify that
19 deprivation after the fact through an unreliable and untested declaration.
20

21 Because Petitioner's detention is both unauthorized by statute and constitutionally
22 deficient, continued detention cannot be sustained. The appropriate remedy for unlawful
23 detention is release—not a belated attempt to cure the violation through additional process.
24 The Government cannot detain first and justify later.
25
26
27
28

1 Accordingly, Petitioner respectfully requests that this Court grant the Petition and
2 order his immediate release. In the alternative, if the Court declines to order immediate
3 release, Petitioner requests that the Court order a prompt individualized custody hearing
4 before a neutral decisionmaker at which the Government bears the burden of justifying
5 continued detention.
6

7
8 RESPECTFULLY SUBMITTED this 8th day of April 2026.
9

10 By: s/ Jessica Anleu, Esq.

11 Jessica Anleu, Esq.
12 Attorney for Petitioner
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28