

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

Case No.: 3:26-cv-01107-
WWB-MCR

PABLO ADRIAN PEREZ ARREAGA

Petitioner

v.

WARDEN for North Florida Detention Center, U.S. Immigration and Customs Enforcement; **FIELD OFFICE DIRECTOR**, Jacksonville Sub Field Office, U.S. Immigration and Customs Enforcement; **GARRETT RIPA**, Director of Miami Field Office, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; **TODD LYONS**, Acting Director, U.S. Immigration and Customs Enforcement; **MARKWAYNE MULLIN** Secretary of the U.S. Department of Homeland Security; and **TODD BLANCHE**, Deputy Attorney General of the United States, in their official capacities.

Respondents.

**PETITIONER'S REPLY IN SUPPORT OF THE VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS**

Petitioner Pablo Adrian Perez Arreaga respectfully submits this reply to Respondents' Response to Petition for Writ of Habeas Corpus.

INTRODUCTION

Respondents' abbreviated response acknowledges that recent Eleventh Circuit decision rejected that 8 U.S.C. § 1225(b)(2)(A) categorically mandates mandatory detention for every noncitizen who entered without inspections and is physically present in the United States. [Doc. No. 10, PageID 157].

Respondent's response neither challenges any of the factual assertions submitted by Petitioner nor introduces any additional factual material that justified Petitioner's detention. It fails to present any substantive legal analysis addressing Petitioner's claims.

In the interest of completeness and judicial efficiency, Petitioner respectfully submits that resolving all issues raised in the petition for Writ of Habeas Corpus together is appropriate.

Respondents statement that Petitioner is present in the United States unlawfully is misleading, factually and legally incorrect. [Doc. No. 10, PageID 158]. Respondents chose to ignore that Petitioner has an approved SIJS petition with a grant of Deferred Action and a pending Affirmative Asylum filed with USCIS. [Doc.1, ¶¶ 6-10].

For these reasons, and those set forth below, the Court should grant the Petition and order Petitioner's immediate release. A bond hearing is not an adequate primary remedy because Petitioner should not have been detained in the first place: he is an aged-out UAC with a pending USCIS asylum application, prior ORR release, no criminal history, and no individualized finding of changed circumstances justifying re-detention. At minimum, if the Court declines immediate release, it should order a prompt individualized

custody hearing under the correct legal framework.

ARGUMENT

I. The Eleventh Circuit's Published Decision in *Alvarez* Forecloses Respondents' § 1225(b)(2)(A) Theory

Respondents claims that they might seek appellate review maintaining that Petitioner' detention is proper and reserves the right to appeal. [Doc. No. 10, PageID 158]. In *Alvarez*, the Eleventh Circuit held that § 1225(b)(2)(A) does not impose mandatory, no-bond, detention merely because a person is physically present in the United States without having been admitted. *Alvarez v. Warden, Fed. Det. Ctr. Miami*, 25-14065, 25-14075 (11th Cir. May 6, 2026).¹ The court reasoned that § 1225(b)(2)(A) applies only where an "immigration officer" determines that an "alien seeking admission" is not entitled to be admitted. The statutory phrase "seeking admission" does real work. It does not describe every person who is present without admission; it describes a person pursuing lawful entry, paradigmatically, an arriving alien at the border or port of entry. *Alvarez*, 25-14065, at 54, 55.

The Eleventh Circuit further rejected the Government's argument that a noncitizen becomes "seeking admission" simply by remaining in the United States after removal proceedings begin and stated that there are other ways to obtain lawful status that is not "admission." *Id* at 55. Further, the court did not accept the Government's broader claim that § 1225(b)(2)(A) authorizes no-bond detention for unadmitted noncitizens "simply

¹ This decision was just published on May 06, 2026; however, it is in line with the majority of District Court decisions across the country on this use.

present” in the interior. *Id.* The court instead affirmed habeas relief and held that Congress had not authorized such no-bond detention under the INA provisions invoked by the Government. *Id.* at 56.

This case is materially indistinguishable from *Alvarez* on the dispositive detention-authority question. Petitioner was not arrested at a port of entry on April 2026. He was not arriving at the border on April 2026. He was not appearing before an examining immigration officer to request admission on April 2026. He was living and working in Florida years after his childhood entry and was detained after a traffic stop where he was a passenger in a car. Under *Alvarez*, he is not detained under § 1225(b)(2)(A). He is detained unlawfully, or at a minimum under § 1226(a), which provides discretionary detention and permits release on bond.

Should the Court determine Petitioner is detained pursuant to 8 U.S.C. § 1226, the appropriate remedy is to order Respondents to provide Petitioner with a bond hearing before a neutral decision maker.

II. Immediate Release Is the Proper Primary Remedy Because Petitioner Should Not Have Been Detained in the First Place

Respondents ask the Court to treat a bond hearing as the only possible remedy if § 1226(a) applies. That is too narrow. A bond hearing may be an alternative remedy where the only defect is that the Immigration Judge applied the wrong detention statute. But Petitioner’s claim is broader: Respondents had no lawful basis to re-detain him in the first place without honoring the UAC/TVPR/J.O.P. framework, without considering the least restrictive setting under § 1232(c)(2)(B), and without any individualized changed-circumstances determination.

Courts confronting analogous re-detention of protected youth have ordered immediate release to restore the status quo, rather than requiring the petitioner to pass through a belated bond process. In *Sarmiento v. Perry*, the Eastern District of Virginia ordered immediate release of a youth who had entered as an unaccompanied minor, had been released by ORR after a danger-and-flight-risk assessment, was later re-detained by ICE without adequate pre-deprivation process, and granted bond by an IJ which DHS appealed. The court held that immediate release was appropriate to cure the due process violation and restore the status quo, and it enjoined re-detention absent a pre-deprivation hearing at which the Government bore the burden to show changed circumstances justifying re-detention. *Sarmiento v. Perry*, Civil Action 1:25-cv-01644-AJT-WBP (E.D. Va. Jan. 19, 2026). Likewise, *Lopez v. Sessions* granted habeas relief and restored a former UAC to his pre-detention custodial arrangement after ICE re-detained him without the process required by the TVPRA and the Fifth Amendment. *Lopez v. Sessions*, 18 Civ. 4189 (RWS) (S.D.N.Y. Jun. 12, 2018).

This case warrants the same relief. ORR previously determined that Petitioner could be released to his uncle. Petitioner has no criminal history, has complied with the immigration framework applicable to him, has SIJS Deferred Action, a pending USCIS asylum application, and was re-detained as a passenger after a traffic stop. Respondents identify no lawful process stripping his UAC-based protections, no valid redetermination extinguishing the J.O.P./TVPRA framework before his USCIS asylum filing, and no changed circumstances justifying secure detention. Requiring Petitioner to seek release through a bond process would reward the Government for unlawful re-detention and would not restore the status quo ante.

Accordingly, the Court should order Petitioner's immediate release from ICE custody and enjoin Respondents from re-detaining him absent lawful authority, written notice, and a pre-deprivation hearing at which Respondents bear the burden of establishing changed circumstances, danger, or flight risk by clear and convincing evidence, and of showing that no less restrictive alternative would suffice. Only in the alternative should the Court order a § 1226(a) custody hearing.

III. The Warden's Motion to Dismiss Should Be Denied Because the Warden Exercises Day-to-Day Physical Control Over Petitioner and Is a Proper Immediate Custodian

The Warden separately moves under Rule 12(b)(6) to dismiss himself from this case, arguing that the ICE field office director—not the Warden—is the only proper respondent. The motion should be denied. This Petition challenges Petitioner's present physical detention at the North Florida Detention Center. The Warden's own motion admits that Petitioner is currently detained at that facility and that the facility houses federal immigration detainees under a 287(g) memorandum of understanding with ICE. As alleged in the Petition, Petitioner is currently detained at North Florida Detention Center in Sanderson, Florida ("Facility"). The Facility is a non-federal detention facility operated by the Florida Division of Emergency Management and private contractors that houses federal immigrant detainees pursuant to a memorandum of understanding with U.S. Immigration and Customs Enforcement ("ICE") under 8 U.S.C. § 1357(g). That is enough to make the Warden a proper respondent under the traditional immediate-custodian rule.

The habeas statute requires the writ to be directed to the person having custody of the detained person. 28 U.S.C. §§ 2242, 2243. Under *Rumsfeld v. Padilla*, when a

petitioner challenges present physical confinement, the default rule is that the proper respondent is the warden of the facility where the petitioner is being held—the person with day-to-day control and practical ability to produce the body. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004). The Warden’s motion itself quotes this controlling rule: when a petitioner challenges “present physical confinement, the default rule is that the proper respondent is the warden of the facility where the prisoner is being held. *Padilla*, 542 U.S. at 435.” [Doc. 9, PageID 64]

The Warden’s attempt to avoid that rule by pointing to ICE’s ultimate immigration authority conflates legal authority to authorize custody with physical custody over the detainee. Courts applying *Padilla* in the immigration context have rejected that same argument. In *Kholyavskiy v. Achim*, the Seventh Circuit held that an immigration detainee challenging excessive detention was required to name the warden of the county detention facility where he was held, even though ICE officials had authority over release and transfer decisions. The court explained that the ICE official’s power to arrange release did not make the ICE official the immediate custodian; for a core challenge to present physical confinement, the proper respondent is the official maintaining custody day to day. *Kholyavskiy v. Achim*, 443 F.3d 946 (7th Cir. 2006). Similarly, *Doe v. Garland* held that an immigration detainee pursuing a core § 2241 challenge must name the facility administrator/de facto warden, not remote federal supervisory officials, even where the facility was operated under contract. *Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024).

The same reasoning applies here. Whatever ICE’s role in selecting, transferring, or releasing immigration detainees, the Warden is the official with immediate, practical, day-to-day control over Petitioner’s physical confinement at the North Florida Detention

Center. The Warden controls the doors, housing, access, movement, and physical production of Petitioner. If this Court orders production of the body or release from the facility, the Warden is the official who can physically comply or facilitate compliance. That is the function the immediate-custodian rule is designed to capture.

The Middle District's recent decision in *Aramburo v. Warden*, Baker County Jail confirms that dismissal of the Warden is not warranted in this precise context. There, the court denied a warden's motion to dismiss in an immigration detention habeas case, explaining that although the warden might not control the detainee's ultimate immigration custody status, the warden remained the "immediate custodian" and the individual who, upon ICE's direction, opens the door to release the detainee. *Aramburo v. Warden*, Baker County Jail, 3:26-cv-219-MMH-PDB (M.D. Fla. Apr. 16, 2026).

At minimum, the Warden is a proper respondent alongside the federal respondents. The Petition names both the Warden and multiple ICE/DHS officials, including the ICE field office officials Respondents contend have legal authority over detention. Because at least one named respondent has both physical or legal authority to effectuate relief, the proper course is not dismissal with prejudice. If the Court concludes that the ICE field office director is also necessary or preferable, the Court should retain the Warden, substitute or add any additional official under Rule 25(d) or the habeas rules, or treat the named federal respondents as sufficient—not dismiss a live habeas petition challenging ongoing unlawful detention.

CONCLUSION

Respondents' response should be rejected. Respondents failed to address the full

UAC statutory framework by the 2008 TVPRA and § 1232(c)(2)(B)'s specific protections for aged-out UACs. Furthermore, Respondent's reliance on their new interpretation of § 1225(b)(2)(A) does not eliminate Constitutional safeguards.

Petitioner respectfully requests that the Court grant the Petition and order his immediate release from ICE custody because he should not have been detained in the first place. Petitioner further requests that the Court enjoin Respondents from re-detaining him absent lawful authority, written notice, and a pre-deprivation hearing at which Respondents bear the burden to establish changed circumstances, danger, or flight risk by clear and convincing evidence, and to show that no less restrictive alternative will suffice. Only in the alternative, if the Court declines immediate release, Petitioner requests that the Court order Respondents to provide, within seven days, a custody redetermination hearing before a neutral decisionmaker under 8 U.S.C. § 1226(a), with consideration of § 1232(c)(2)(B), alternatives to detention, danger, flight risk, and the least restrictive setting available.

Respectfully submitted,

/s/ Vanessa McCarthy
Vanessa McCarthy, Esq.
FL Bar 109072
mccarthy@orlandjustice.org
ORLANDO CENTER FOR JUSTICE
1300 N. Semoran Suite 120
Orlando, FL 32807

Counsel for Petitioner

Dated: May 17th 2026

CERTIFICATION REGARDING USE OF GENERATIVE ARTIFICIAL INTELLIGENCE

Pursuant to the Court's Standing Order regarding Use of Generative Artificial Intelligence ("AI"), undersigned counsel certifies that a paid specialized legal AI tool was used in the drafting of this Reply filed before this court. Counsel further certifies that any language drafted by AI was personally reviewed and edited by the undersigned counsel for accuracy and compliance with applicable law and rules, and that all legal citations reference actual, non-fictional authority and accurately reflect the contents of such authority.

Date: May 17th, 2026

Respectfully submitted,

By: /s/ Vanessa McCarthy
Vanessa McCarthy, Esq.
FL Bar 109072
mccarthy@orlandjustice.org
ORLANDO CENTER FOR JUSTICE
1300 N. Semoran Suite 120
Orlando, FL 32807

Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 17, 2026, the foregoing was electronically filed with the Clerk of Court by causing a copy to be electronically filed via the CM/ECF system, which will send notice of the filing to all attorneys of record.

/s/ Vanessa McCarthy
Vanessa McCarthy
Attorney for Petitioner