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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION

MARLON GUSTAVO ZAPATA AROSTEGUI, Petitioner, v. WARDEN, Broward Transitional Center, *et al.*, Respondents.	Case No. 26-CV-61281-DAMIAN **PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE**

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

INTRODUCTION

Respondents detained Petitioner after an interior arrest and provided no individualized custody process: no Form I-286, no bond advisal, no bond amount, and no adjudicator review. They then transferred him to California nine days after this petition was filed. The central question is whether a bond hearing now is an adequate remedy for weeks of detention that were unlawful from the start. It is not.

Under binding Eleventh Circuit precedent, § 1225(b)(2)(A) mandatory no-bond detention does not apply to an alien arrested in the interior who was not actively seeking admission. Section 1226(a) governs, and the Department of Homeland Security's ("DHS") own regulations mandated service of a Form I-286, a bond advisal, a bond amount, and access to immigration judge review upon Petitioner's arrest. None of those steps occurred. Under *Accardi*, that failure renders the detention unlawful, not merely deficient. And a belated bond hearing cannot retroactively legalize completed unlawful imprisonment. The only adequate remedy is immediate release under reasonable supervision.

Three holdings require that result. First, § 1226(a) governs this interior arrest under *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026), because Petitioner was not seeking admission. Second, DHS's failure to follow its own mandatory custody regulations renders the detention unlawful under *Accardi*, and the completed constitutional injury demands release, not a prospective hearing. Third, this Court properly retains jurisdiction and should not reward the post-filing transfer with a venue change.

ARGUMENT

I. BECAUSE PETITIONER WAS NOT SEEKING ADMISSION, § 1225(b)(2)(A) DOES NOT APPLY; § 1226(a) AND BOND ELIGIBILITY CONTROL UNDER ALVAREZ.

A. Alvarez Holds That No-Bond Detention Applies to Aliens Seeking Lawful Entry, Not to Aliens Simply Present in the Interior.

On May 6, 2026 — eight days before Respondents filed their Response — the Eleventh Circuit issued a binding decision directly on point. *Hernandez Alvarez*, 2026 WL 1243395. In that case, the Court held that § 1225(b)(2)(A) limits mandatory no-bond detention to applicants for admission who are actively "seeking admission" — meaning "seeking lawful entry following inspection and authorization by an immigration officer." *Id.* at *7 (quoting 8 U.S.C. § 1101(a)(13)(A)). Respondents' Response does not engage with this holding.

The *Alvarez* Court drew a dispositive textual distinction: "applicant for admission" under § 1225(a)(1) is a passive status — it requires no affirmative act by the alien. "Seeking admission," by contrast, is an active-conduct requirement. *Id.* An alien who is simply present in the interior, not engaged in any process of pursuing lawful entry, does not satisfy that requirement. *Id.* at *6. Such an alien's detention falls under the default rule of § 1226(a), which provides access to bond. *Id.* The majority stated the governing principle plainly: no-bond detention "generally applies to arriving aliens seeking lawful entry to the country, and not to aliens who are simply present here." *Id.*

B. Petitioner, Commuting to Work Years After Parole, Was Not Seeking Admission — § 1226(a) Controls.

Petitioner's arrest facts are indistinguishable from the *Alvarez* petitioners in every respect the Eleventh Circuit found controlling. On April 16, 2026, Petitioner was a passenger in a vehicle traveling to his place of employment. Doc. 1 at ¶ 20; Doc. 6-1. He was not at a port of entry. He was not undergoing inspection by an immigration officer. He was not applying for, requesting, or

pursuing any form of lawful entry. He was commuting to work — an act with no nexus to "seeking admission." *Alvarez* holds that § 1225(b)(2)(A) does not apply.

Because § 1226(a) governs, DHS's own regulations mandated — upon Petitioner's arrest — service of a Form I-286 setting the detention basis and any bond amount (8 C.F.R. § 236.1(b)); advisal of the right to seek bond redetermination before an immigration judge (8 C.F.R. § 236.1(c)(8)); and the opportunity to post bond (8 C.F.R. § 236.1(d)(1)). None of those steps occurred. That failure is not a procedural technicality — it is the complete absence of the only process Congress and the regulations provide.

C. Regulatory Labels Cannot Expand Mandatory Detention Beyond Aliens Actively Seeking Admission.

Respondents argue that the regulatory definition of "arriving alien" in 8 C.F.R. § 1.2 — which provides that a parolee "remains an arriving alien" even after parole — independently triggers § 1225(b)(2)(A) mandatory detention. Doc. 6 at 5-8. That argument conflates an administrative classification with a statutory predicate and cannot survive *Alvarez*.

Section 1.2 defines who qualifies as an "arriving alien" for the INA's definitional scheme. It does not and cannot override the active-conduct requirement that § 1225(b)(2)(A) separately imposes — that the alien be "seeking admission" — as construed by *Alvarez*. An executive regulation cannot expand the scope of a mandatory detention statute beyond the limits Congress embedded in its text. See *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) (courts must exercise independent judgment on statutory meaning). The government may not use a definitional regulation to convert a border-inspection detention statute into a warrant for no-bond detention of any parolee arrested in the interior, years after parole was granted.

Respondents also rely on 8 C.F.R. § 1003.19(h)(2)(i)(B), which provides that an immigration judge "may not" redetermine custody conditions for arriving aliens. Doc. 6 at 7-8.

That regulation constrains *immigration judge* authority — it says nothing about this Court's habeas power under 28 U.S.C. § 2241, which operates independently of the administrative hierarchy. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001) (emphasis added). The rule that ties the IJ's hands does not tie this Court's hands.

D. Respondents' Quotation of Alvarez Inverts the Majority's Holding.

Respondents quoted *Alvarez* for the proposition that no-bond detention "generally applies to arriving aliens seeking lawful entry to the country, and not to aliens who are simply present here." Doc. 6 at 8. Respondents offered this as support for their position. It is the opposite. That sentence is the Eleventh Circuit's own statement of why § 1225(b)(2)(A) is a border statute limited to aliens seeking lawful entry. Petitioner, commuting to work three years after his parole was granted and a thousand miles from any port of entry, was not "seeking lawful entry." The quoted passage applies to him as one of the aliens "simply present here" to whom no-bond detention does not apply.

II. WEEKS OF DETENTION WITH NO I-286, NO BOND ADVISAL, AND NO ADJUDICATOR REVIEW VIOLATES DUE PROCESS AND ACCARDI — IMMEDIATE RELEASE IS THE ONLY ADEQUATE REMEDY.

A. The Constitutional Injury Is the Detention Already Suffered; a Belated Bond Hearing Cannot Cure It.

Respondents' Response does not address the *Accardi* claim at all. That silence is a concession on the dispositive ground for relief.

The Fifth Amendment's Due Process Clause protects against deprivations of liberty without adequate process *at the time the deprivation occurs. Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)(emphasis added). Freedom from imprisonment "lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690-91. A bond hearing ordered today does not cure the constitutional violations that have already occurred. It only determines what happens next.

The injury is the detention that has already taken place — weeks of imprisonment without any process — not the absence of a hearing going forward.

Under *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265-68 (1954), an agency's failure to follow its own mandatory procedural regulations renders the resulting action void — not merely voidable upon provision of the omitted procedure. DHS's own rules are mandatory: it "shall" serve Form I-286 on arrest (8 C.F.R. § 236.1(b)); "shall" advise of the right to bond redetermination (8 C.F.R. § 236.1(c)(8)); and the alien "shall" have the opportunity to post bond (8 C.F.R. § 236.1(d)(1)). None happened here. Respondents do not address this *Accardi* violation. The detention is unlawful, and the remedy for unlawful detention is release.

B. The Accardi Violations Were Total, Not Technical, and Were Never Remedied.

The Form I-286 is not administrative paperwork — it is the foundational document that triggers the entire § 1226(a) custody process. It sets the legal basis for detention, establishes any bond amount, and opens access to review by an immigration judge. Without it, Petitioner had no basis to know what statutory authority was being invoked for his imprisonment. Without the bond advisal, he received no information about his procedural rights. Without a bond amount, he could not post bond even if he had attempted to. These omissions were total. They were not corrected after arrest, after this petition was filed, after the government responded, or as of this filing. The constitutional deprivation is ongoing.

C. The Constitutional Injury Is Cumulative; Each Day Without Process Is an Independent Wrong.

Petitioner has been imprisoned since April 21, 2026 — through his first master calendar hearing at the Broward Immigration Court, through the filing of this petition, through a government-initiated transfer to California on May 9, 2026, and through the government's Response filed May 14, 2026. Doc. 1 at ¶¶ 20-22; Doc. 6-3. Ordering a bond hearing at this stage

does not undo any of that. It does not restore his employment at City Engineering Construction, Inc., where he has worked since February 2025. Doc. 1 at ¶ 17. It does not remedy the prejudice to his asylum preparation while detained and separated from counsel. It does not return the time lost with his elderly U.S. citizen mother, for whom he provides care. Doc. 1 at ¶ 18. These harms are tethered specifically to the weeks of detention without process — they are not generalized detention burdens.

D. Immediate Release Under Supervision Is the Only Remedy Commensurate with the Violation.

Section 2241 authorizes this Court to order release from custody upon finding that detention violates the Constitution or laws of the United States. *Zadvydas*, 533 U.S. at 699-700. That is the remedy the writ has always provided. Release under reasonable conditions of supervision — Immigration and Customs Enforcement ("ICE") check-ins, electronic monitoring, reporting obligations — fully preserves any legitimate government interest in ensuring Petitioner's appearance at future proceedings, while providing the only remedy commensurate with the completed violation.

Petitioner's record establishes that release poses no risk to any legitimate government interest. No criminal record — in Nicaragua, the United States, or anywhere. Doc. 1 at ¶ 23(d). Continuous lawful residence since May 2023. Doc. 1 at ¶ 17. Lawful employment throughout, with taxes paid. Doc. 1 at ¶ 23(b)-(c). Appearance at every required immigration appointment, including the March 28, 2025 biometrics appointment. Doc. 1 at ¶ 23(e). A pending asylum application and a pending Form I-130 filed by his U.S. citizen mother — both powerful incentives to remain and litigate through proper channels. Doc. 1 at ¶¶ 3-4. Arrested as a passenger commuting to work, having committed no offense. Doc. 1 at ¶ 20. Willingness to comply with any

supervisory condition this Court imposes. Doc. 1 at ¶ 23(h). There is no basis on this record to conclude that supervision is insufficient.

Respondents' reliance on *Thuraissigiam v. DHS*, 591 U.S. 103 (2020), Doc. 6 at 8-12, does not change this analysis. *Thuraissigiam* addressed the Suspension Clause in the narrow context of expedited removal of an alien apprehended twenty-five yards from the border. It did not hold that an alien who entered lawfully under a federal humanitarian parole program, resided in the United States for three years, and was arrested in the interior has no Fifth Amendment right to any process upon civil detention. The government's attempt to extend *Thuraissigiam* into a general rule eliminating due process for all parolees arrested anywhere in the country, at any time after entry, finds no support in that decision's reasoning or its facts.

III. JURISDICTION ATTACHED ON APRIL 29, 2026 AND REMAINS WITH THIS COURT; TRANSFER WOULD REWARD THE GOVERNMENT'S POST-FILING CONDUCT.

Jurisdiction attached on April 29, 2026, when Petitioner filed naming his immediate custodian — the Warden of the Broward Transitional Center in this District. Respondents concede this. Doc. 6 at 3. *Padilla* is unambiguous: "[W]hen the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004). The government's transfer of Petitioner to California on May 9, 2026 — nine days after filing, after this Court issued its Order to Show Cause — did not strip jurisdiction.

Transfer under 28 U.S.C. § 1404(a) is discretionary, not mandatory. *Vasquez Vega v. United States Attorney General*, No. 25-cv-61632-RAR, Doc. 14 (S.D. Fla. Jan. 22, 2026). The interests of justice favor retention. The arrest occurred in this District. The process failures — no

I-286, no advisal, no bond, no IJ review — occurred in this District. Petitioner's counsel is in Miami. The government initiated the transfer; granting it the benefit of that transfer by shifting venue would discourage petitioners from filing here and incentivize strategic relocation of detained petitioners after filing. This Court should retain jurisdiction and decide this petition on the merits.

CONCLUSION

Because § 1226(a) governs this interior arrest under *Alvarez*, and DHS failed to provide any of the mandatory custody procedures its own regulations require, Petitioner's detention is unlawful. A bond hearing now cannot cure the weeks of completed constitutional injury. The Court should retain jurisdiction and order immediate release under reasonable supervision. In the alternative, it should require an individualized bond hearing within seven days.

Petitioner Marlon Gustavo Zapata Arostegui respectfully requests that this Court: (1) retain jurisdiction over this Petition; (2) grant the Petition and order Petitioner's immediate release under reasonable conditions of supervision, including ICE check-ins, electronic monitoring, and/or reporting obligations as this Court deems appropriate; or in the alternative, (3) order Respondents to present Petitioner before an immigration judge for an individualized bond hearing within seven (7) days of this Court's Order; and (4) grant any further relief this Court deems just and proper.

Respectfully submitted,

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Dated: May 18, 2026

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 18, 2026, a true and correct copy of the foregoing Reply was electronically filed with the Clerk of the Court using CM/ECF and served upon all counsel of record via electronic notification generated by CM/ECF.

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