

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

<p>MIGUEL ALVAREZ,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">5:24-CV-05013-RAL</p> <p style="text-align: center;">OPINION AND ORDER DISMISSING PETITION</p>
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Petitioner Miguel Alvarez filed a petition for writ of habeas corpus under 28 U.S.C. § 2241. Doc. 1. Alvarez's petition was incomplete. Id. This Court ordered Alvarez to file a complete § 2241 petition. Doc. 6. Alvarez also filed a motion to proceed without prepayment of fees, and a certified prisoner trust account report, Doc. 3.

**I. Motion to Proceed without Prepayment of Fees**

Alvarez's motion to proceed without prepayment of fees is incomplete. See Docs. 2, 6. Although Alvarez did not comply with this Court's order to file a complete motion to proceed without prepayment of fees, Doc. 6, the Court considers his motion because his certified prisoner trust account report, Doc. 3, is complete.

In the District of South Dakota, if a § 2241 petitioner has in excess of \$25.00 on deposit in the prisoner's trust account, the petitioner must pay the initial filing fee to proceed with a 28 U.S.C. § 2241 case. D.S.D. Civ. LR 83.8(B). According to Alvarez's certified prisoner trust account report, the balance does not exceed \$25.00. See Doc. 3. Thus, Alvarez's motion to proceed without prepayment of fees, Doc. 2, is granted.

## **II. Procedural Background**

On January 19, 2023, a five-count superseding indictment was filed in the District of South Dakota charging Alvarez with sexual exploitation of a minor, enticement of a minor using the internet, distribution of child pornography, receipt of child pornography, and possession of child pornography. United States of America v. Miguel Antonio Alvarez, 5:22-CR-50149-RAL, Doc. 47. On January 25, 2024, this Court adopted Magistrate Judge Wollmann’s report and recommendation and accepted Alvarez’s plea of guilty to counts 2 and 4 of the superseding indictment. Id. at Doc. 89. Alvarez’s sentencing hearing is scheduled for April 25, 2024. Id. at Doc. 95. Alvarez has been in custody at the Pennington County Jail and Winner City Jail since his initial appearance. Id. at Doc. 96 at 5; Doc. 15; Doc. 19.

## **III. Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241**

Alvarez’s initial pleading in this action included pages 2, 6, 8, and 10 of the form petition for a writ of habeas corpus under 28 U.S.C. § 2241 prescribed by the District of South Dakota. Doc. 1. This Court ordered Alvarez to file a complete § 2241 petition. Doc. 6. Although Alvarez did not file a “complete” § 2241 petition, he supplemented his initial pleading with pages 3, 4, 5, and 7 of the form § 2241 petition prescribed by the District of South Dakota. Doc. 7. Alvarez has substantially complied with this Court’s order, Doc. 6, and this Court now screens Alvarez’s petition.

This Court is to “forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled” to relief. 28 U.S.C § 2243. Thus, this Court must screen Alvarez’s petition and dismiss the petition if it “plainly appears from the petition . . . that the petitioner is not entitled to relief in the district court[.]” Rule 4 of the Rules Governing Section

2254 Cases; see Rule 1(b) of the Rules Governing Section 2254 Cases (extending the screening rule to petitions filed under § 2241).

In accordance with 28 U.S.C. § 2241(c)(3), this Court has authority to issue a writ of habeas corpus if a prisoner “is in custody in violation of the Constitution or laws or treaties of the United States.” Alvarez’s petition does not contain any colorable argument that he is in custody in violation of the Constitution or laws of the United States. Alvarez’s petition seeks compassionate release because he is disabled and has not previously been in trouble with the law. Doc. 7 at 1–3. He alleges that he did not hurt anyone and that they “want to put [him] away for no reason.” Doc. 1 at 2; Doc. 7 at 4. Thus, he just wants “one more chance.” Doc. 1 at 3. From a reading of the petition itself, this Court can determine with confidence that it “plainly appears” that Alvarez is not entitled to the relief he seeks. Therefore, it is hereby

ORDERED that Alvarez’s motion to proceed without prepayment of fees, Doc. 2, is granted. It is further

ORDERED that Alvarez’s § 2241 petition, Doc. 1, is dismissed. It is further

ORDERED that Alvarez’s motion for appointment of counsel, Doc. 8, is denied as moot.

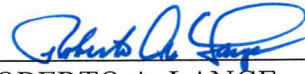
It is finally

ORDERED that the Clerk of Court shall provide a copy of the petition, Docs. 1, 7, this Opinion and Order, and the accompanying judgment to the United States Attorney for the District

of South Dakota and mail a copy of this Opinion and Order and the corresponding judgment to Alvarez.

DATED this 24<sup>th</sup> day of April, 2024.

BY THE COURT:



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ROBERTO A. LANGE  
CHIEF JUDGE