

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

**Giuliano Miguel GUTIERREZ
ZAPPATERRA,**

Petitioner,

v.

**Warden, ERO El Paso Camp East
Montana; Mary De Anda-Ybarra, Field Office
Director, El Paso Field Office, United States
Immigration and Customs
Enforcement; Todd M. Lyons, Acting
Director, United States Immigration and
Customs Enforcement; Kristi Noem,
Secretary of Homeland Security; Pamela Jo
Bondi, United States Attorney General, in
their official capacities,**

Respondents.

Civil Action No.: 3:26-cv-122-DB

**PETITIONER'S UNOPPOSED
EMERGENCY MOTION TO
SUPPLEMENT THE RECORD
WITH NEWLY ARISING
EVIDENCE AND TO EXPEDITE
RULING ON THE PENDING
PETITION FOR WRIT OF
HABEAS CORPUS**

I. INTRODUCTION

Petitioner Giuliano Miguel Gutierrez Zappaterra ("Petitioner") respectfully moves this Court, pursuant to Federal Rule of Civil Procedure 15(d), for leave to supplement the record in support of his pending Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. The Petition has been fully briefed, Respondents filed their Response, Petitioner filed his Reply, and the matter is ripe for decision.

After briefing closed, Petitioner was the victim of a violent, life-threatening assault inside the detention facility where he remains confined. On or about March 6, 2026, at approximately 6:00 a.m., another detainee fashioned a weapon from a broken plastic fork and used it to stab Petitioner in the back of the head while he slept. The attacker then repeatedly struck Petitioner in the head, attempted to stab him in the neck, and attacked his eyes. *See* Exh. B (*Photographs of the injured Petitioner*). Petitioner was transported to the hospital, where medical personnel documented multiple injuries including subconjunctival hemorrhage, corneal abrasion, left eye injury, and facial abrasion. *See* Exh. A (*Sworn Declaration of Gabriela Casas, dated March 7, 2026*).

Petitioner therefore seeks leave to supplement the record with the evidence attached hereto as Exhibits A and B, which bears directly on the urgency of the pending Petition, the irreparable harm Petitioner faces from continued detention, and the ongoing threat to his life and safety. This Motion does not seek to reopen merits briefing or raise new claims. It seeks only to place before the Court material evidence of a post-briefing occurrence as contemplated by Rule 15(d).

II. CERTIFICATE OF CONFERENCE

On March 10, 2026, the undersigned counsel conferred with counsel for Respondents regarding the relief sought in this Motion. Respondents do not oppose the Motion.

III. PROCEDURAL BACKGROUND

On January 22, 2026, Petitioner filed his Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, ECF No. 1, challenging his continued detention without an adequate bond hearing in violation of the Due Process Clause of the Fifth Amendment and in contravention of the statutory protections afforded to Temporary Protected Status ("TPS") beneficiaries under 8 U.S.C. § 1254a(d)(4). On January 22, 2026, the Court entered a temporary stay of removal while it considers

the habeas petition. ECF No. 2. On February 2, 2026, Respondents filed their Response in opposition. ECF No. 7. On February 5, 2026, Petitioner filed his Reply in support of the Petition. ECF No. 8. The Petition is now fully briefed and ripe for decision.

On or about March 6, 2026, while the Petition remained pending before this Court, Petitioner was attacked inside the ERO El Paso Camp East Montana detention facility at approximately 6:00 a.m. while he was sleeping. According to the Sworn Declaration of Gabriela Casas, Petitioner's sister, another detainee broke a plastic fork, fashioned it into a sharp weapon resembling a knife, and used it to stab Petitioner in the back of the head while he slept. Ex. A ¶¶ 2-4. The declaration further states that the attacker repeatedly struck Petitioner in the head, causing both individuals to fall to the floor during the struggle. Id. ¶ 4. The declaration also states that the attacker attempted to stab Petitioner in the neck, but Petitioner managed to seize the attacker's hand and deflect the strike. Id. ¶ 5. The declaration further states that the attacker attempted to gouge Petitioner's eyes while holding him by the neck. Id. ¶ 6.

According to the Sworn Declaration of Gabriela Casas, after the attack Petitioner was transported to the hospital, and medical personnel documented injuries identified as assault, subconjunctival hemorrhage, left eye injury, corneal abrasion, and facial abrasion. Ex. A ¶ 7.

The declaration further states that two facility officers later recommended that Petitioner not report the attack and that another detainee associated with the aggressor has continued to intimidate Petitioner by closely watching him. Id. ¶¶ 8-9. These sworn allegations materially heighten the urgency of the pending petition and underscore serious ongoing concerns regarding Petitioner's safety while he remains detained.

IV. LEGAL STANDARD

Federal Rule of Civil Procedure 15(d) provides that, “[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” Fed. R. Civ. P. 15(d).

The rule is to be construed liberally. Leave to supplement under Rule 15(d) is governed by the same considerations as leave to amend under Rule 15(a), which directs that leave “shall be freely given when justice so requires.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). In the absence of undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, or futility, leave should be granted as the rules require. *Id.* The Fifth Circuit has recognized that Rule 15(a) “evinces a bias in favor of granting leave to amend,” and that unless there is a substantial reason to deny leave, “the discretion of the district court is not broad enough to permit denial.” *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 597–98 (5th Cir. 1981). The Supreme Court has confirmed that supplemental amendments under Rule 15(d) to cover events happening after suit are “well within the basic aim of the rules to make pleadings a means to achieve an orderly and fair administration of justice.” *Griffin v. Cnty. Sch. Bd. of Prince Edward Cnty.*, 377 U.S. 218, 227 (1964).

The decision to grant or deny leave is reviewed for abuse of discretion, *Dussouy*, 660 F.2d at 597, but that discretion is sharply constrained: unless there is a substantial reason to deny leave, ‘the discretion of the district court is not broad enough to permit denial.’ *Id.* at 598.

V. ARGUMENT

a. The Supplemental Evidence arises from events occurring after briefing closed and is directly relevant to the Pending Petition.

The assault Petitioner suffered on March 6, 2026, is precisely the type of post-filing "occurrence or event" that Rule 15(d) contemplates. This evidence is not cumulative of anything previously before the Court. Rather, it bears directly on the core issues raised in the Petition.

The evidence establishes that Petitioner faces irreparable harm from continued detention. Petitioner has already suffered documented physical injuries, including a stabbing wound to the back of the head, subconjunctival hemorrhage, and corneal abrasion, inflicted by another detainee who weaponized a common object inside the facility. The threat of further violence is not speculative. An associate of the attacker continues to intimidate Petitioner on a daily basis, and the facility has taken no discernible steps to ensure his safety.

The circumstances surrounding the assault further demonstrate the urgency of a prompt ruling. Facility officers affirmatively discouraged Petitioner from reporting the attack, raising serious concerns about the facility's willingness or ability to protect him. Each additional day of detention exposes Petitioner to conditions in which his safety cannot be guaranteed and in which he is discouraged from seeking accountability for violence inflicted upon him.

These events lay bare the present consequences of Petitioner's continued detention. Petitioner's habeas claim rests on the statutory prohibition against detention "on the basis of [his] immigration status" while TPS remains in effect. 8 U.S.C. § 1254a(d)(4). The assault and its aftermath are a direct product of the very detention the Petition challenges. The supplemental evidence before the Court confirms that the harm Petitioner suffers from continued confinement in violation of that statutory command is not abstract or procedural; it is physical, ongoing, and potentially fatal.

b. Supplementation Serves the Interests of Justice and Will Not Prejudice Respondents.

Granting leave to supplement will not prejudice Respondents. The proposed supplemental evidence is narrow in scope, limited to the March 6, 2026, assault and its aftermath, and does not alter the legal framework or claims raised in the Petition. Respondents will have full opportunity to respond to this Motion under the Local Rules. *See* W.D. Tex. Local R. CV-7(d)(2) (14-day response period). The evidence is offered solely to update the Court on material developments bearing on the urgency and consequences of Petitioner's continued detention, not to inject new legal theories.

Conversely, excluding this evidence would deprive the Court of critical, time-sensitive information bearing directly on the harm the Petition seeks to remedy. This is precisely the scenario Rule 15(d) was designed to address.

c. No Alternative Remedy Is Available.

Petitioner cannot raise this evidence through any other pending vehicle. Briefing on the Petition has closed, and no scheduling order governs discovery in this habeas proceeding. Requiring Petitioner to file a separate action to present evidence of harm occurring during the pendency of the very proceeding challenging his detention would accomplish nothing; it would merely set the case "back on the docket" and delay "disposition of the merits," a result that Rule 1 directs courts to avoid. *Dussouy*, 660 F.2d at 598. Such supplemental amendments are "well within the basic aim of the rules to make pleadings a means to achieve an orderly and fair administration of justice." *Griffin*, 377 U.S. at 227.

VI. RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests that this Court:

1. Grant Petitioner leave to supplement the record with the evidence attached hereto as Exhibits A and B;
2. Consider the supplemental evidence in connection with the pending Petition for Writ of Habeas Corpus; and
3. Rule promptly on the pending Petition in light of the exigent circumstances described herein.

Dated: March 10, 2026

Respectfully submitted,

BY: /s/ Hector Benitez Canas

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to:

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