

United States District Court  
Southern District of Florida

Case No.: 1:25-CV-\_\_\_\_\_ (Civil Action)  
District Judge \_\_\_\_\_  
Magistrate Judge \_\_\_\_\_

ROBERTO DEIVIS PESTANA-CEPERO,  
A# Petitioner,

v.

MITCHELL DIAZ,  
in his official capacity as Assistant Field Office Director,  
U.S. Immigration and Customs  
Enforcement and Removal Operations;

CYNTHIA SWAIN,  
in her official capacity as Warden of  
Broward Transitional Center, a for-profit  
detention facility operated by The GEO  
Group, Inc.;

GARRETT RIPA,  
in his official capacity as Field Office Director of the  
Miami Field Office of the U.S. Immigration and Customs  
Enforcement and Removal Operations;

TODD LYONS,  
in his official capacity as Acting Director of the  
U.S. Immigration and Customs Enforcement;

KRISTI NOEM, Secretary,  
U.S. Department of Homeland Security, in her official capacity;

PAMELA BONDI, Attorney General of the  
United States, in her official capacity,

EXECUTIVE OFFICE for Immigration  
Review United States Department of Justice

Respondents.

\_\_\_\_\_ /

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**  
**AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND**  
**EMERGENCY MOTION FOR**  
**TEMPORARY RESTRAINING ORDER AND STAY OF REMOVAL PROCEEDINGS**

Petitioner, ROBERTO PESTANA CEPERO (“Petitioner”), by and through undersigned counsel, files this Emergency Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, Complaint for Declaratory and Injunctive Relief, and states as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over Petitioner’s claims pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, the Fifth Amendment to the United States Constitution, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

2. To the extent necessary to protect its jurisdiction and prevent irreparable constitutional injury, this Court also has authority under the All Writs Act, 28 U.S.C. § 1651(a), and Federal Rule of Civil Procedure 65.

3. The REAL ID Act channels direct review of final orders of removal to the courts of appeals, see 8 U.S.C. § 1252, but does not eliminate habeas jurisdiction over challenges to the legality of immigration detention and to the manner in which removal is carried out, including removal to an improper country and removal that would unlawfully extinguish access to meaningful review.

4. The Immigration Judge’s Order states that the Court does not have jurisdiction over the Petitioner, based on the DHS’s current policy and BIA’s decision in *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and has denied the Petitioner the opportunity to even present a case for bond amounting to indefinite and unlawful detention.

5. Venue is proper in this District under 28 U.S.C. §§ 1391(e) and 2241 because Petitioner is detained within the Jurisdiction of the ICE Miami Field Office and Jurisdiction of Miami Immigration Court, in the Southern District at the Broward Transitional Center, and the immediate custodian responsible for his detention and is located in this District.

6. It is respectfully submitted that District courts have the authority to grant writs of habeas corpus. See 28 U.S.C. § 2241(a). Habeas corpus is fundamentally "a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693, 128 S. Ct. 2207, 171 L. Ed.

2d 1 (2008) (citation omitted). A writ may be issued to a petitioner who shows that he is being held in custody in violation of the Constitution or federal law. *See* 28 U.S.C. § 2241(c)(3). The Court's jurisdiction extends to challenges involving immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001). *Boffill v Field Off. Director, Mia. Field Off.*, 2025 US Dist. LEXIS 228852, at 5 (S.D. Fl. Nov. 20, 2025, No. 25-cv-25179-JB).

## II. PARTIES

7. Petitioner, ROBERTO PESTANA CEPERO, is a native and citizen of Cuba, he is 35 years of age, born on [REDACTED] in Camaguey, Cuba, who entered the United States without inspection around February 11, 2022, at approximately Twenty-four (24) years of age, and has resided primarily in Hialeah, Florida, since that time. Petitioner is identified by Alien Registration Number A# [REDACTED]

8. Respondent MITCHELL DIAZ, as Assistant Field Office Director, U.S. Immigration and Customs Enforcement and Removal Operations, and is sued in his official capacity.

9. Respondent CYNTHIA SWAIN, as Warden of the Broward Transitional Center, and is sued in her official capacity.

10. Respondent GARRETT RIPA, Field Office Director of the Miami Field Office of the U.S. Immigration and Customs Enforcement and Removal Operations is responsible for immigration enforcement operations in this region, including Petitioner's detention and removal, and is sued in his official capacity.

11. Respondent TODD LYONS, Acting Director of the U.S. Immigration and Customs Enforcement is responsible for immigration enforcement operations in the United States and is sued in his official capacity.

12. Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security (DHS), the agency responsible for enforcing the immigration laws. She is sued in her official capacity.

13. Respondent PAMELA BONDI is the Attorney General of the United States and the head of the Department of Justice, which includes the Executive Office for Immigration Review (EOIR), United States Department of Justice. She is sued in her official capacity.

### III. STATUS OF PETITIONER

14. Petitioner has been held in detention since approximately October 27, 2025, and should not be held in custody, and should be given a bond hearing at a minimum, until his appeal of the Order is adjudicated.

15. Petitioner should be afforded the opportunity to place a bond to be released from detention during the pendency of these proceeding. 8 U.S.C. §1226(a); *Boffill v. Field Off. Dir., Mia. Field Off.*, 2025 U.S. Dist. Lexis 228852 (S.D. Fl., November 20, 2025, Judge Becerra); *J.L.R.R. v Warden, Stewart Dety. Ctr.*, 2025 U.S. Dist. Lexis 233070 (M.D. Ga. November 26, 2025); *J.S.A. v Warden, Stewart Dety. Ctr.*, 2025 U.S. Dist. Lexis 233094 (M.D. Ga. November 25, 2025); *Doe v. Facility*, 2025 U.S. Dist. Lexis 231699, S.D. Ga. November 25, 2025); *Garcia v. Immigr. & Customs Enf 't Dept. of Homeland Sec.*, 2025 U.S. Dist. Lexis 228236 (M.D. Fl. November 20, 2025).

16. Petitioner entered the United States on or about February 11, 2022, seeking Asylum. At the time of entry, he was issued a Notice to Appear alleging he had violated the Immigration and Naturalization Act. The Petitioner was placed in removal proceedings and then filed an Application for Asylum and for Withholding of Removal, with the EOIR on or about July 20, 2022, within one year of his arrival in compliance with the law. **(See – INS Form I-589 – Application for Asylum and for Withholding Removal, dated July 13, 2022, and filed with the U.S. Citizenship and Immigration Services).**

17. The Petitioner married his US citizen girlfriend on June 12, 2024, and she filed an I-130 Petition for Alien Relative on August 2, 2024, with the United States Citizenship and Immigration Service. The Petitioner was detained by ICE while his Petition was pending approval.

18. On December 19, 2025, a Bond Redetermination Request was filed with EOIR, requesting that the Court grant the Petitioner bond pending the processing of his case, however, on January 2, 2026, Immigration Judge Abraham Burgess issued an order stating that the Court lacked jurisdiction to hear the request based on the Matter of *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). **(See - Order of Immigration Judge dated January 2, 2026).**

19. On January 13, 2026, a Motion to Terminate removal proceedings was filed on behalf of the Petitioner due to his marriage to a US citizen and his pending I-130 Petition for Alien Relative. The Immigration Judge Stuart Siegel denied this request on January 22, 2026.

**(See- Order of Immigration Judge dated January 22, 2026).**

20. Petitioner has resided in the United States for over four (4) years, he has multiple relatives who are supporting him, he has worked legally in the US to support himself and his family, and he has multiple letters of support from various relatives, friends, and community members. **(See- Letters of Recommendation and Affidavit of Support from Sponsor).**

21. The Petitioner is pending removal proceedings and is scheduled to go before the Court again on March 11, 2026. The Department of Homeland Security has filed a Motion to Pretermit his Asylum application in an effort to circumvent the Asylum process and send him to a third country. The Petitioner has been detained for approximately three (3) months without cause and in violation of due process. This Habeas Petition has been filed to temporarily enjoin Petitioner's continued removal proceedings until a hearing on bond can be held.

#### **IV HISTORY**

22. Petitioner is a native and citizen of Cuba who has lived in the United States for over four (4) years, since entering the United States on February 11, 2022, and is presently detained by ICE at Broward Transitional Center, under the jurisdiction of the Miami ICE Field Office and Miami Immigration Court.

23. For this purpose of this petition, this Court has jurisdiction to order that Petitioner be given the opportunity to seek bond, that he be immediately released, and that his removal proceedings be enjoined until such time.

24. Petitioner has lived an exemplary life in the United States as evidence by his letters of support and his employment history. He is not a threat to the public and is not a flight risk. He has a US citizen wife, a pending I-130 petition filed on his behalf by his wife, and a sponsor who has agreed to assist with any financial needs and ensure his compliance with all immigration proceedings.

25. This petition is being filed on an emergency basis because Petitioner has been unlawfully detained for approximately three (3) months and has a pending Court hearing on March 11, 2026, which could result in him being ordered deported.

26. Petitioner brings this action to (a) challenge the lawfulness of his detention and the threatened execution of his removal without constitutionally adequate process, and (b) request an immediate Temporary Restraining Order and stay of removal proceedings so that he

may pursue available administrative and judicial review, including adjustment of status as a US Citizen spouse.

## **V. CLAIMS FOR RELIEF**

### **COUNT I - (Habeas Corpus – Unlawful Detention and Threat of Imminent Removal in Violation of the Fifth Amendment and INA § 241)**

27. Petitioner re-alleges paragraphs 1–26 as though fully set forth herein.

28. Petitioner is “in custody” within the meaning of 28 U.S.C. § 2241 and the Suspension Clause because he is physically detained at Broward Transitional Center and subject to imminent removal based on his pending removal proceedings and upcoming Hearing on March 11, 2026, before Immigration Judge Stuart Siegel.

29. The threatened Petitioner’s removal—particularly to Cuba, a country of which he alleges he has suffered persecution—without affording him a meaningful opportunity to pursue and obtain review of the Immigration Judge’s decision to deny him bond violates the Due Process Clause of the Fifth Amendment and the statutory framework governing removal, including INA § 241(b).

30. Continuing removal proceedings before Petitioner has a full opportunity to pursue his administrative rights and, if necessary, petition for release under bond would unlawfully infringe on his due process rights.

31. Respondents’ actions and threatened actions are arbitrary, capricious, contrary to law, and in excess of their statutory authority, and they warrant habeas relief and injunctive relief staying removal proceedings.

### **COUNT II - (All Writs Act / Rule 65 – TRO and Stay of Removal)**

32. Petitioner re-alleges paragraphs 1–26 as though fully set forth herein.

33. Petitioner satisfies the standard for temporary and preliminary injunctive relief.

34. Under the All Writs Act and Rule 65, this Court may and should temporarily restrain Respondents from removing Petitioner, or taking any steps to remove him, to any country while this Court considers the merits of this Petition and while Petitioner pursues available appellate remedies.

## **VI. PRAYER FOR RELIEF**

**WHEREFORE**, Petitioner respectfully requests that this Court:

A. Assume jurisdiction over this matter;

B. Issue an immediate Temporary Restraining Order, without prior notice if necessary, continuing Petitioner's removal proceedings and preventing any removal action by the Department of Homeland Security;

C. Order Respondents to show cause why the writ of habeas corpus should not be granted;

D. After full consideration, issue a writ of habeas corpus declaring that Respondents' actions are unlawful and a violation of the Petitioner's due process rights by not allowing the Petitioner to file for and receive a full bond hearing on the merits, and give the Petitioner the opportunity to pursue his Asylum and administrative relief as a US Citizen spouse free from detention and the hardship it has caused.

E. In the alternative, order Petitioner's immediate release from custody under appropriate conditions of supervision pending the outcome of his immigration and federal court proceedings; and

F. Grant such other and further relief as this Court deems just and proper.

After reviewing the facts and researching applicable legal principles, I certify that this motion in fact presents a true emergency due to the prolonged detention the Petitioner has suffered, the denial of his due process rights and the impending March 11, 2026, hearing on his removal proceedings.

Date: February 17, 2026

Respectfully submitted,

Ramona M.Hupp

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Attorneys for Petitioner

ROBERTO PESTANA CEPERO

VERIFICATION

I, Roberto Pestana Cepero, declare under penalty of perjury under the laws of the United States of America that the factual statements in this Petition are true and correct to the best of my knowledge and belief.

Executed on January 19, 2026, at Pompano Beach, Florida.

  
\_\_\_\_\_  
Roberto Pestana Cepero

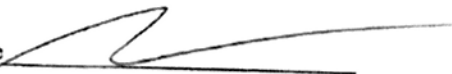
STATE OF FLORIDA        )  
COUNTY OF BROWARD    )

On 1/19/2026, before me, a Notary Public, personally appeared, Roberto Pestana Cepero, ~~Herberto Jimenez Ramirez~~, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument by means of physical presence.

I certify under PENALTY OF PERJURY under the laws of the State of Florida that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Dated: 1/19/2026

Signature   
Notary Public in and for the State of Florida

My Commission Expires:

3/3/2028

