

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
PETITION FOR WRIT OF HABEAS CORPUS – 28 U.S.C. § 2241.**

DENNIS GUTIERREZ,

A 

Petitioner,

Civil Action No. Case No. 2:26-CV-628-SPC-NPM

v.

Warden, Alligator Alcatraz Detention Facility;

Kristi Noem, Secretary of Homeland Security;

Todd M. Lyons, Acting Director, U.S. Immigration and Customs Enforcement;

Field Office Director, ICE Enforcement and Removal Operations, Miami Field Office,

Respondents.

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PETITIONER'S PRELIMINARY TRAVERSE

EXECUTIVE SUMMARY

Petitioner, a long-term U.S. resident, former LPR, certified crime victim, and pending U visa applicant with no recent criminal history, challenges the legality of his continued detention by Respondents. Detention under §§ 236(c), 236(a), and 1231(a) has not been justified by competent evidence, individualized review, or consideration of less restrictive alternatives. Procedural errors, including misstatements regarding filing fees and denial of a meaningful custody assessment, demonstrate a violation of due process. Extended detention under these circumstances is arbitrary, inconsistent with statutory priorities and constitutional protections, and warrants immediate release or, alternatively, prompt individualized custody review.

PETITIONER'S PRELIMINARY TRAVERSE

Petitioner, by undersigned counsel, submits this preliminary traverse in response to Respondents' filing and respectfully states:

I. INTRODUCTION AND REQUESTED RELIEF

Respondents have not demonstrated that Petitioner's continued detention is authorized by statute or consistent with due process. The statutory framework, factual record, and constitutional principles compel judicial intervention.

Petitioner respectfully requests that the Court:

1. Grant the writ of habeas corpus and order immediate release; or
2. In the alternative, order prompt, individualized custody relief consistent with due process, including proper allocation of the burden of proof and consideration of less restrictive alternatives.

II. HABEAS JURISDICTION AND SCOPE

1. **Jurisdiction** – This Court has jurisdiction under 28 U.S.C. § 2241 to review the legality of Petitioner's detention, including both statutory and constitutional claims. Challenges to detention are fully cognizable irrespective of the final removal order. See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).
2. **Limits on Reply** – Petitioner raises no new claims, responding solely to arguments presented by Respondents, consistent with *United States v. Evans*, 473 F.3d 1115, 1120 (11th Cir. 2006).

III. RESPONDENTS' THRESHOLD ARGUMENTS

A. Exhaustion

Exhaustion is not jurisdictional in § 2241 detention cases and may be excused where administrative remedies are inadequate, unavailable, or futile. See *Santiago-Lugo v. Warden*, 785 F.3d 467, 475 (11th Cir. 2015). Here, ICE and EOIR have foreclosed meaningful administrative review.

B. REAL ID Act / 8 U.S.C. § 1252

The REAL ID Act does not strip courts of habeas jurisdiction over detention challenges. See *Zadvydas*, 533 U.S. at 687; *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). Petitioner

challenges the legality of detention, not the validity of a removal order; any attempt to recast this petition as a disguised petition for review is without merit.

C. Authority to Grant Relief

Habeas courts may grant release or other relief necessary to remedy unlawful detention. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

IV. RESPONDENTS HAVE NOT ESTABLISHED LAWFUL DETENTION

Petitioner incorporates all factual allegations from the Petition. Respondents bear the burden of justifying detention, and generalized assertions are insufficient.

A. Mandatory Detention Under INA § 236(c)

- Respondents must establish statutory predicates with competent evidence.
- Prolonged detention raises serious constitutional concerns. *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring); *Jennings*, 583 U.S. at 302.
- Internal file reviews or discretionary procedures cannot substitute for a constitutionally adequate individualized hearing.

B. Discretionary Detention Under INA § 236(a)

- Due process requires a meaningful hearing before a neutral decisionmaker, proper allocation of burden, and consideration of relevant evidence.
- Reliance on prior bond determinations or cursory custody assessments is insufficient.

C. Post-Removal-Order Detention Under INA § 1231(a)

- Detention must be reasonably related to removal. *Zadvydas*, 533 U.S. at 701.
- Respondents must show a realistic and imminent likelihood of removal; conclusory statements do not justify continued detention.

V. FACTUAL DEFICIENCIES AND PROCEDURAL ERRORS

- The February 12, 2026 IJ order misstates that Petitioner did not pay filing fees; EOIR records show full compliance.
- IJ failed to consider fee waiver authority for a detained, indigent individual, contrary to 8 C.F.R. § 1103.7(c).
- IJ refused to provide an individualized custody assessment, relying instead on a categorical reading of § 236(c).

These errors demonstrate a denial of procedural due process and confirm the futility of administrative remedies.

VI. AS-APPLIED DUE PROCESS

- Petitioner is a long-term U.S. resident, former LPR, certified crime victim, pending U visa applicant, and has no recent criminal history.
- He presents minimal flight risk, no public danger, and strong community ties.
- Less restrictive alternatives (supervised release, reporting requirements) are fully adequate.
- Extended detention without a meaningful hearing violates substantive and procedural due process, requiring the government to justify confinement by clear and convincing evidence. *Guerrero-Sanchez v. Warden*, 905 F.3d 208 (3d Cir. 2018); *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013).

VII. U VISA STATUS AND HUMANITARIAN CONSIDERATIONS

- The U visa protects crime victims who have suffered harm and cooperated with law enforcement. 8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. § 214.14.
- DHS enforcement priorities (2021–2024) indicate Petitioner is not a high priority for detention or removal.
- Detaining a certified U visa applicant with no recent offenses undermines statutory purpose, regulations, and policy guidance, rendering detention arbitrary and unlawful.

VIII. REQUESTED RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

1. Assume jurisdiction under 28 U.S.C. §§ 2241 and 1331;
2. Declare that continued detention violates the Fifth Amendment;
3. Order immediate release from ICE custody, or, alternatively, prompt individualized custody review consistent with due process;
4. Enjoin Respondents from transferring Petitioner outside this Court's jurisdiction without notice;
5. Grant all other relief deemed just and proper.

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Complaint was served upon Respondents electronically.

March 18, 2026

Respectfully submitted,


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