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

DENNIS GUTIERREZ, Civil Action No. ___________
[redacted]

Petitioner,

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.

___________________________________/

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Petitioner, **DENNIS GUTIERREZ** ("Petitioner" or "Mr. Gutierrez"), by and through undersigned counsel, the Lemus Law Firm, respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 and for related declaratory and injunctive relief. Petitioner challenges the legality and constitutionality of his continued civil immigration detention by U.S. Immigration and Customs Enforcement ("ICE") and seeks an order directing his **immediate release** from custody, or at minimum release under reasonable conditions of supervision, because his detention has become unconstitutionally prolonged and unlawful as applied.

In support, Petitioner alleges as follows:

I. NATURE OF THE CASE

1. This is a petition for a writ of habeas corpus under 28 U.S.C. § 2241 brought by a long-time U.S. resident, former Lawful Permanent Resident, crime victim, and U visa applicant who has been detained by ICE since December 5, 2025, at the Everglades Detention Facility (commonly known as "Alligator Alcatraz") in Ochopee, Florida.
2. Petitioner entered the United States as a child, adjusted to Lawful Permanent Resident (LPR) status in 2002, and lived in the United States as an LPR for many years. After his criminal convictions, he was placed in removal proceedings and, on September 29, 2016, an Immigration Judge ordered him removed to Cuba. As a result, he lost his LPR status and is now a noncitizen subject to a final order of removal.
3. Petitioner has significant criminal history from 2013–2015, including:

    a. 2013 grand theft third degree conviction (Case No. F13-017826A);
    b. 2014 armed burglary of a dwelling and criminal mischief over $1,000 (Case No. F14-016273A), for which he received a jail term followed by community control and probation; and
    c. 2015 conviction for cocaine sell/manufacture/deliver/possess with intent (Case No. F14-016268).

    He has since served the imposed custodial sentences and supervision periods in those matters.

4. Petitioner has no recent criminal charges or convictions since completing his state sentences and supervision, and his current detention is purely civil immigration detention under color of the Immigration and Nationality Act ("INA").

5. While in custody in the Miami-Dade County Boot Camp Program, Petitioner was the victim of extortion and grand theft by a supervising officer. He fully cooperated with law enforcement, resulting in prosecution and conviction of the officer. The Miami-Dade State Attorney's Office later provided a U visa law-enforcement *certification*, and Petitioner's Form I-918 U visa petition has been accepted and remains pending with USCIS.
6. On December 5, 2025, ICE arrested and detained Petitioner. Since that date, he has been continuously held in immigration custody, with all requested forms of relief denied, and without any constitutionally adequate, individualized assessment of whether his continued detention is necessary to ensure his appearance or to protect the community.
7. On December 5, 2025, ICE arrested and detained Petitioner. Since that date, he has been held continuously in immigration custody, with all requested forms of relief denied, and without any constitutionally adequate, individualized assessment of whether his continued detention is necessary to ensure his appearance or to protect the community. This prolonged detention fails to consider Petitioner's current circumstances, including his lawabiding conduct, strong family ties, business ownership, and contributions as a taxpayer. By maintaining detention without evaluating these factors, the government has imposed an arbitrary and excessive restraint on Petitioner's liberty, in violation of his constitutional rights.
8. Petitioner's counsel subsequently sought relief in Immigration Court through a Motion for Custody Redetermination and an Alternative Motion to Reopen, along with a Request for Stay of Removal, based on his U visa certification and pending petition. On February 12, 2026, Immigration Judge Christina Martyak denied the motion as untimely and declined to

reopen the proceedings sua sponte, concluding that Petitioner is subject to mandatory detention under INA § 236(c) due to a 2015 cocaine conviction, and that his U visa eligibility did not warrant reopening. This ruling fails to account for the disproportionate and punitive nature of relying on a conviction that is *over a decade old*, particularly where Petitioner has since demonstrated exemplary conduct, maintaining a law-abiding life, owning and operating a business, paying taxes, and providing for his family. The decision thus imposes mandatory detention without consideration of Petitioner's current character, circumstances, or rehabilitative record, rendering the detention arbitrary, excessive, and constitutionally suspect.

9. The Immigration Judge's order did not provide any constitutionally adequate individualized custody hearing, instead treating detention as categorically mandatory and effectively foreclosing administrative relief from detention.

10. Petitioner's detention is now **prolonged and indefinite in practice**, with no mechanism within the immigration system to obtain a meaningful custody redetermination. Under the **Fifth Amendment Due Process Clause**, the detention statutes and regulations cannot be applied in this manner. As applied to Petitioner, continued detention under § 236(c) without a meaningful hearing is unconstitutional and unlawful.

11. Petitioner therefore seeks an order from this Court directing his **immediate release** from ICE custody, or at minimum release under conditions of supervision, and declaratory relief that his continued detention without a constitutionally adequate hearing violates due process.

II. JURISDICTION AND VENUE

11. This Court has jurisdiction under 28 U.S.C. § 2241, because Petitioner is in federal immigration custody within this District and challenges the fact and duration of that custody.

12. This Court also has jurisdiction under 28 U.S.C. § 1331, because this action arises under the U.S. Constitution and federal immigration statutes and regulations.

13. This Court may grant declaratory relief pursuant to 28 U.S.C. §§ 2201–2202 and equitable injunctive relief under its inherent powers.

14. Venue is proper in the Southern District of Florida, because Petitioner is detained at Everglades Detention Facility in Ochopee, Florida, which lies within this District's territorial jurisdiction, and his immediate custodian is located here.

III. PARTIES

15. Petitioner DENNIS GUTIERREZ is a native and citizen of Cuba, formerly a Lawful Permanent Resident of the United States, Florida, identified by alien number A 076-171-491, and currently detained by ICE at Everglades Detention Facility in Ochopee, Florida.

16. Respondent Warden, Everglades Detention Facility, is Petitioner's immediate custodian and has physical custody over him. The Warden is a proper respondent in this habeas action.

17. Respondent Secretary of the U.S. Department of Homeland Security is the official charged with the administration and enforcement of the immigration laws, including detention and removal.

18. Respondent Director of U.S. Immigration and Customs Enforcement oversees ICE operations, including detention decisions with respect to Petitioner.

IV. STATEMENT OF FACTS

A. Petitioner's Identity, Immigration Entry, and Former LPR Status

19. Petitioner Dennis Gutierrez was born in Cuba on or about November 22, 1993.

20. Petitioner was paroled into the United States at Miami, Florida, on or about May 22, 1999.

21. On or about February 5, 2002, Petitioner adjusted status to Lawful Permanent Resident (LPR), with residency backdated to May 22, 1999.

22. Petitioner lived in the United States for many years as an LPR and has resided continuously in this country since childhood, with substantial family and community ties in Florida.

23. Following his criminal convictions and subsequent immigration proceedings, Petitioner was ordered removed from the United States to Cuba by the Miami/Krome Immigration Court on September 29, 2016 (Case No. A076-171-491, Immigration Judge John Opaciuch). As a result of that final order, Petitioner lost his LPR status and is now a noncitizen with a final removal order.

B. Criminal History Underlying DHS's Detention Theory

24. Petitioner's criminal history, as reflected in Miami-Dade Circuit Court records and the Immigration Court's files, includes:

a. Grand theft third degree (Case No. F13-017826A), with judgment entered January 22, 2015;

b. Armed burglary of a dwelling and criminal mischief over $1,000 (Case No. F14-016273A), with adjudication of guilt and sentence of 364 days in the Dade County Jail, followed by community control and probation, imposed January 22, 2015; and

c. Cocaine sell/manufacture/deliver/possess with intent (Case No. F14-016268), with adjudication of guilt and 192 days in Dade County Jail (time served), also imposed January 22, 2015, concurrent with other cases.

25. These state judgments and sentences are reflected in the certified Miami-Dade County Circuit Court records (Exhibit B-series from the 2023-22880 file).

26. Petitioner completed his jail sentences and subsequent periods of community control and probation. Since completing those sentences, he has no further criminal charges or convictions.

27. The January 22, 2015 cocaine conviction in Case No. F14-016268 is the primary conviction relied upon by DHS and the Immigration Judge to conclude that Petitioner falls within the mandatory detention provisions of INA § 236(c) and 8 C.F.R. § 1226(c).

C. Petitioner's Status as a Crime Victim and U Visa Applicant

28. On August 11, 2015, while enrolled as a cadet in the Miami-Dade County Boot Camp Program, Petitioner was the victim of extortion and grand theft perpetrated by supervising officer Christy Laster, who exploited her position to demand money from Petitioner and other cadets under threats of terminating them from the program.

29. Petitioner promptly reported the conduct, cooperated with law enforcement, and provided detailed information that was instrumental in the investigation and prosecution of Officer Laster.

30. The case was prosecuted in the Miami-Dade Circuit Court, Case No. F16-4530, and Officer Laster ultimately entered a plea and was sentenced.

31. On February 10, 2025, recognizing Petitioner's cooperation and victim status, the Miami-Dade State Attorney's Office executed a U Nonimmigrant Status Law Enforcement Certification (Form I-918 Supplement B) on Petitioner's behalf, attesting that:

    a. Petitioner was a victim of extortion/blackmail;
    b. The criminal case was successfully prosecuted; and

c. Petitioner was helpful and cooperative throughout the investigation and prosecution.

32. On April 28, 2025, USCIS received Petitioner's Form I-918 Petition for U Nonimmigrant Status, Receipt Number IOE8071710945.

33. On December 29, 2025, USCIS issued a Form I-797C Receipt Notice, confirming acceptance of the U visa petition and the waiver of filing fees.

34. Petitioner has thus made a strong showing of prima facie eligibility for U nonimmigrant status under 8 U.S.C. § 1101(a)(15)(U) and 8 C.F.R. § 214.14, consistent with Congress's intent to protect and encourage the cooperation of crime victims.

D. Removal Proceedings and Final Removal Order

35. DHS commenced removal proceedings against Petitioner by issuing a Notice to Appear (NTA) on or about September 8, 2016, charging him as removable under the INA. The NTA was filed with the Miami/Krome Immigration Court on September 14, 2016, under A076-171-491.

36. On or about September 20, 2016, Petitioner appeared in Immigration Court. The Court issued an oral decision on September 29, 2016, and entered a written Order of the Immigration Judge ordering Petitioner removed from the United States to Cuba. The IJ's summary order is reflected in the 2023-22880 file.

37. Petitioner did not ultimately secure relief from removal, and his removal order became final. His LPR status was therefore terminated in connection with that order.

38. In the years following his removal order, Petitioner remained in the United States, complied with various supervision requirements, and maintained family and community ties in Florida.

E. ICE Arrest and Current Detention

39. On December 5, 2025, ICE arrested Petitioner and took him into immigration custody. The arrest occurred during a non-custodial context rather than a new criminal arrest.

40. Petitioner has been continuously detained in ICE custody since December 5, 2025, with no release on bond or supervision.

41. As of at least January 12, 2026, Petitioner has been detained at Everglades Detention Facility ("Alligator Alcatraz") in Ochopee, Florida, within this Court's jurisdiction.

42. On January 12, 2026, Petitioner's significant other, Keyshla Gonzalez, submitted a sworn, notarized declaration confirming daily communication with Petitioner and his detention at Everglades Detention Facility.

43. Prior to his detention, Petitioner complied with his obligations, maintained residence in Florida, and did not attempt to abscond despite living under a final order of removal. This history illustrates that less restrictive alternatives to detention are sufficient to ensure his appearance.

F. Immigration Court Filings Challenging Detention

44. On January 9, 2026, through counsel, Petitioner served DHS with a Motion for Custody Redetermination and Alternative Motion to Reopen and Request for Stay of Removal.

45. On January 12, 2026, counsel filed the motion with the Miami Immigration Court, requesting:

    a. Custody redetermination and bond under INA § 236(a) and 8 C.F.R. § 1003.19; and

    b. In the alternative, reopening of the 2016 removal proceedings based on new, material evidence unavailable at the time, specifically:

i. The February 10, 2025, U visa certification; and ii. USCIS's receipt and acceptance of the pending Form I-918.

46. The motion invoked Matter of Sanchez Sosa, Matter of Avetisyan, and Matter of Cruz Valdez, and requested that the Immigration Court exercise case-management authority (including administrative closure or continuance) to allow USCIS to adjudicate the U visa petition without removal or prolonged detention.

G. Denial of Motion to Reopen and Refusal to Provide Custody Relief

47. On February 12, 2026, Immigration Judge Christina Martyak issued an Order Denying the

Motion to Reopen.

48. The IJ concluded that the motion was untimely and did not meet any exception under 8 C.F.R. § 1003.23(b)(1), (4).

49. The IJ also found that Petitioner had not shown payment of the filing fee or submitted a fee-waiver request.

50. The IJ characterized Petitioner's request as a motion for sua sponte reopening and held:

   a. Sua sponte reopening is reserved for "exceptional circumstances" and is not intended to cure filing defects or circumvent regulatory limits;

   b. Possible eligibility for a U visa does not constitute an exceptional circumstance;

   c. The underlying U visa crime occurred in 2015, nearly ten years before the certification request; and

   d. Even if the case were reopened, Petitioner would remain subject to mandatory detention under INA § 236(c) due to his 2015 cocaine conviction.

51. The IJ further noted that the Immigration Court lacks jurisdiction over U visa-based adjustment of status under 8 C.F.R. § 245.24(f), which vests U visa adjudications and U-based adjustment authority in USCIS.

52. The IJ's decision did not provide any individualized custody redetermination, did not weigh Petitioner's rehabilitation, compliance, victim status, or community ties, and did not analyze whether continued detention remains reasonably related to any legitimate governmental purpose.

53. As a result, Petitioner remains detained based on a categorical interpretation of INA § 236(c), with the Immigration Court explicitly disclaiming authority to revisit custody or case posture.

54. The Immigration Judge's February 12, 2026 order is not merely unfavorable; it is factually erroneous and procedurally deficient in ways that deprive Petitioner of due process and confirm that further resort to the immigration courts would be futile.

55. First, the IJ based her denial in part on the assertion that Petitioner had not paid the filing fee and had not requested a fee waiver. That assertion is demonstrably false. The

Executive Office for Immigration Review's own records show that on December 18, 2025, *Petitioner's family paid $1,045.00* for a "Court – Motion to Reopen/Reconsider Before the IJ" by ACH (Payment Tracking ID 27U0KL39). EOIR issued an official Payment Receipt for A076-171-491 on that date, which instructed that the receipt must be included with the motion and that failure to do so would result in rejection of the filing. Petitioner's family complied and paid in full. The IJ's contrary statement that there was no fee payment reflects a clear failure to review the record and supporting documentation.

56. Second, *even if no fee had been paid, the IJ failed* to acknowledge or apply the governing fee waiver regulations for detained, indigent noncitizens. Under 8 C.F.R. § 1103.7(c) and related EOIR authority, an Immigration Judge may waive a filing fee upon a sufficient showing of inability to pay. Petitioner is a detained, incarcerated individual with no current

income, a factor that EOIR recognizes as highly relevant to indigency. The IJ, fully aware that Petitioner was in ICE custody, did not analyze his ability to pay, did not address her authority to waive the fee, and did not even mention the applicable regulatory framework. This omission underscores the arbitrary and mechanical nature of the decision.

57. Third, the IJ framed Petitioner's motion solely as a request for sua sponte reopening and then used that framing to avoid engaging with the merits of his U visa victim status, rehabilitation, and equities. Rather than reading the motion and its evidence in a fair and flexible manner, especially in light of the documented fee payment and Petitioner's incarceration the IJ dismissed the motion by reciting generic standards about "exceptional circumstances" and declaring that possible U visa eligibility is not exceptional.

58. **These errors, taken together,** *show that the immigration court process failed in its basic obligation to consider the evidence actually submitted and to apply the correct legal standards*, particularly as they relate to detained, indigent individuals and fee requirements. The IJ's failure to recognize the paid fee, to consider fee waiver authority, and to undertake any meaningful custody analysis confirms that Petitioner's case has been *overlooked and mishandled*, and that this Court's intervention is necessary to prevent further unlawful detention.

H. Current Posture and Absence of Administrative Remedies

59. Petitioner's Form I-918 U visa petition remains pending with USCIS and has not been adjudicated. USCIS has acknowledged receipt and fee waiver.

60. Petitioner has now been detained since December 5, 2025, approaching or exceeding three months and counting, at the time of this filing, with no bond hearing, no custody redetermination, and no meaningful administrative review of his continued detention.

61. Because the Immigration Judge denied reopening and declared Petitioner subject to mandatory detention under § 236(c), and because EOIR has no jurisdiction over U visas or their associated benefits, *there is no administrative process available to provide a constitutionally adequate custody hearing.*

62. Any additional motion to reopen would be barred by the time and number limits and would be futile given the IJ's stated reasons for denying the prior motion and her view of U visa eligibility.

63. Petitioner has thus exhausted any available administrative remedies or, in the alternative, exhaustion is excused because no effective remedy exists to redress the unlawful detention he now challenges.

V. GOVERNING LAW

A. Habeas Jurisdiction Over Immigration Detention

64. Federal courts retain habeas corpus jurisdiction under 28 U.S.C. § 2241 to review the legality of immigration detention. *See* Zadvydas v. Davis, 533 U.S. 678 (2001) (post-order detention); Demore v. Kim, 538 U.S. 510 (2003) (§ 236(c) pre-final-order detention).

65. Habeas relief is appropriate when, as here, a noncitizen challenges the length and constitutionality of civil detention and the absence of a meaningful process to justify continued confinement.

B. Due Process Limits Civil Immigration Detention

66. Immigration detention is civil in nature, not punitive. *See* Zadvydas, 533 U.S. at 690. Due process requires that civil detention be reasonably related to its purpose, ensuring appearance and protecting the public, and not excessive in relation to those goals.

67. The Fifth Amendment Due Process Clause applies to all "persons" in the United States, including noncitizens, and prohibits arbitrary or indefinite detention without adequate procedural safeguards.

68. In Demore v. Kim, the Supreme Court upheld the mandatory detention statute, INA § 236(c), only on the understanding that detention is of limited duration and typically brief. 538 U.S. at 529–31. The Court did not sanction prolonged or open-ended detention without individualized review.

69. In Zadvydas, interpreting the post-order detention statute, 8 U.S.C. § 1231(a)(6), the Court read a reasonableness limitation into the statute to avoid serious constitutional questions arising from indefinite detention. 533 U.S. at 701. The Court emphasized that due process demands some end point and adequate procedural protections.

70. The Eleventh Circuit has recognized that immigration detention statutes must be applied in a manner consistent with due process, and that prolonged civil detention raises serious constitutional concerns.

71. Other federal circuits have held that when detention under § 236(c) becomes prolonged, due process requires an individualized custody hearing at which the Government bears the burden of justifying continued detention by clear and convincing evidence, and the adjudicator must consider less restrictive alternatives. *See*, e.g., Guerrero-Sanchez v. Warden, 905 F.3d 208 (3d Cir. 2018); Reid v. Donelan, 819 F.3d 486 (1st Cir. 2016); Rodriguez v. Robbins, 715 F.3d 1127 (9th Cir. 2013).

72. *While not binding in this Circuit, these persuasive authorities underscore the constitutional principle that prolonged civil detention must be justified through robust*

procedures, including a meaningful individualized hearing and a heightened burden of proof on the Government.

C. Statutory and Regulatory Framework

73. INA § 236(a), 8 U.S.C. § 1226(a), generally authorizes arrest and detention of noncitizens pending decision on removal and allows for release on bond or conditional parole.

74. INA § 236(c), 8 U.S.C. § 1226(c), requires the Attorney General to take into custody certain criminal noncitizens "when the alien is released" from criminal custody and to hold them pending removal proceedings. The statute is silent on prolonged, post-final-order detention in the context of a pending collateral relief application.

75. 8 C.F.R. § 1226(c) implements mandatory detention, but does not override constitutional requirements of reasonableness and due process.

76. 8 C.F.R. § 1003.23(b)(1), (4) govern motions to reopen removal proceedings, including time and numerical limitations and exceptions for changed country conditions or certain in absentia situations.

77. 8 C.F.R. § 245.24 vests primary jurisdiction over U visas and U-based adjustment of status in USCIS, expressly limiting Immigration Judges' authority to adjudicate such applications.

78. 8 C.F.R. § 214.14 governs U nonimmigrant status, including the definition of qualifying crimes, cooperation requirements, and bona fide determinations. This regulatory framework reflects Congress's intent to protect victims and encourage cooperation with law enforcement, including by affording immigration stability to victims during the pendency of U visas.

79. DHS has issued enforcement-priority guidance (2021–2024) emphasizing that removal and detention resources should focus on threats to national security, public safety, and border security, and that humanitarian considerations and victim status are relevant to enforcement discretion. Petitioner, as a crime victim and cooperating witness with a pending U visa petition and no recent criminal history, fits squarely outside the highest-priority categories.

VI. CUSTODY AND EXHAUSTION

80. Petitioner is in federal custody at Everglades Detention Facility under color of immigration law and is therefore "in custody" for purposes of 28 U.S.C. § 2241.

81. Petitioner has no adequate administrative remedy to challenge the legality or length of his current detention:

    a. The Immigration Judge has denied reopening, expressly declined to exercise sua sponte authority, and asserted that Petitioner remains subject to mandatory detention under § 236(c);
    b. EOIR lacks jurisdiction to adjudicate U visa petitions or to grant U-based adjustment of status; and
    c. No regulatory mechanism provides for a bond hearing in his posture as interpreted by the Government.

82. Any further motion to reopen would be untimely and numerically barred and, given the IJ's explicit reasoning, would be futile.

83. Under these circumstances, Petitioner has exhausted any available administrative avenues, or in the alternative, exhaustion is not required because no effective administrative remedy exists to address his constitutional claims regarding prolonged detention.

VII. CLAIMS FOR RELIEF

COUNT I

FIFTH AMENDMENT DUE PROCESS VIOLATION PROLONGED CIVIL IMMIGRATION DETENTION WITHOUT A CONSTITUTIONALLY ADEQUATE CUSTODY HEARING (AS-APPLIED CHALLENGE TO DETENTION UNDER INA § 236(c))

84. Petitioner incorporates paragraphs 1 through 78 as if fully set forth herein.

85. Petitioner has been detained by ICE since December 5, 2025, with no bond hearing or individualized custody redetermination at which the Government must justify continued detention.

86. The Immigration Judge's February 12, 2026 order is not a constitutionally adequate custody hearing, because it:

    a. Treated detention as categorically mandatory based solely on the existence of specified convictions;
    b. Declined to exercise any discretion or case-management powers; and
    c. Failed to assess Petitioner's current risk of flight or danger, or to consider alternatives to detention.

87. Petitioner's detention has now become prolonged relative to the "brief" detentions contemplated in Demore, and there is no defined end point given his pending U visa petition and the absence of any travel document to effect removal.

88. Under the Due Process Clause, prolonged civil detention requires robust procedural protections, including:

    a. A meaningful, individualized hearing before a neutral decisionmaker;
    b. Placement of the burden of proof on the Government; and
    c. A heightened standard of proof, such as clear and convincing evidence of current dangerousness or significant flight risk.

89. Petitioner's long residence in the United States, former LPR status, completion of his criminal sentences, lack of recent criminal activity, strong family and community ties, certified victim status, and pending U visa all weigh heavily against any conclusion that he is a danger or serious flight risk.

90. Less restrictive alternatives, including supervised release, reporting requirements, or other non-custodial conditions, are readily available and capable of addressing any legitimate governmental concerns.

91. The IJ's factual misstatement that no filing fee was paid, when EOIR's own receipt shows that the fee was fully paid, demonstrates a denial of basic procedural due process: the decisionmaker did not consider or accurately review the evidence before her.

92. The IJ's failure even to consider fee-waiver authority for a detained, indigent individual, combined with the refusal to provide any individualized custody assessment, further demonstrates that the administrative process did not provide Petitioner with a meaningful opportunity to be heard regarding his liberty interest.

93. As applied to Petitioner, continued detention under INA § 236(c) without a constitutionally adequate individualized hearing violates substantive and procedural due process under the Fifth Amendment.

94. Petitioner is therefore entitled to habeas relief and immediate release or, at minimum, release unless and until the Government provides a constitutionally compliant custody hearing.

COUNT II

UNLAWFUL DETENTION AS APPLIED IN LIGHT OF U VISA STATUS, HUMANITARIAN EQUITIES, AND ENFORCEMENT PRIORITIES

95. Petitioner incorporates paragraphs 1 through 87 as if fully set forth herein.

96. Congress created the U nonimmigrant classification in 8 U.S.C. § 1101(a)(15)(U) to protect noncitizen victims of certain crimes who have suffered substantial harm and have been, are being, or are likely to be helpful to law enforcement.

97. The implementing regulations at 8 C.F.R. § 214.14 emphasize the humanitarian and law-enforcement goals of the U visa program, including promoting cooperation with law enforcement by alleviating fear of removal and providing a measure of immigration stability for victims.

98. Petitioner squarely fits this framework: he is a certified U victim, cooperated with the Miami-Dade State Attorney's Office in prosecuting a corrupt corrections officer, and has a pending Form I-918 accepted by USCIS.

99. DHS and USCIS, consistent with the U visa statute and regulations and with recent enforcement-priority memoranda, have recognized that individuals with bona fide U visa applications and victim status are appropriate candidates for favorable prosecutorial discretion, including release from detention.

Petitioner does not fit within DHS's highest enforcement priorities (national security threats, recent dangerous crimes, or border security). His underlying offenses are from 2013–2015; he has completed his sentences and supervision; and he has not reoffended since.

Continuing to detain a cooperating victim with a pending U visa petition, where less restrictive alternatives are available, is inconsistent with:

a. The statutory purpose of the U visa program;
b. The regulatory framework of 8 C.F.R. § 214.14; and
c. DHS's own enforcement-priority and victim-protection policies.

As applied to Petitioner, DHS's reliance on a rigid view of INA § 236(c) to maintain detention, without regard to his U visa status, humanitarian equities, and non-priority profile, renders his confinement arbitrary, unreasonable, and contrary to law.

100. Petitioner's ongoing detention is therefore unlawful under the INA and its implementing regulations, and inconsistent with the Due Process Clause. Petitioner is entitled to habeas relief and *immediate release*, or at minimum conditional release under reasonable supervision.

VIII. REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A. Assume jurisdiction over this petition pursuant to 28 U.S.C. § 2241 and 28 U.S.C. § 1331;

B. Declare that Petitioner's continued civil immigration detention without a constitutionally adequate individualized custody hearing violates the Fifth Amendment and is unlawful as applied to him;

C. Order Petitioner's immediate release from ICE custody at Everglades Detention Facility, subject to any reasonable conditions of supervision that the Court deems appropriate, such as periodic ICE reporting, residence verification, or other non-custodial measures;

D. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court during the pendency of this action absent prior notice to the Court and counsel and an opportunity to be heard;

F. Award Petitioner costs and any other relief the Court deems just and proper.

IX. EXHIBITS

Petitioner anticipates submitting the following exhibits, which are incorporated by reference:

- **Exhibit A** – Immigration Judge Order dated September 29, 2016, ordering removal to Cuba (A076-171-491).
- **Exhibit B** – Certified Miami-Dade Circuit Court judgments and sentences in Case Nos. F13-017826A, F14-016273A, and F14-016268.
- **Exhibit C** – Immigration Judge Order dated February 12, 2026, denying Motion to Reopen (Martyak, IJ).
- **Exhibit D** – U Nonimmigrant Status Certification (Form I-918 Supplement B) dated February 10, 2025.
- **Exhibit E** – USCIS Form I-797C Receipt Notice for Form I-918, Receipt No. [redacted] (received April 28, 2025; notice date December 29, 2025).
- **Exhibit F** – Declarations of Dennis Gutierrez and Keyshla Gonzalez.
- **Exhibit G** – ICE arrest/detention documentation reflecting custody since December 5, 2025.
- **Exhibit H** – Evidence of family and community ties, employment, and other humanitarian equities.

You may adjust this list to match your actual filing set.

Dated: March 4, 2026

Respectfully submitted,

THE LEMUS LAW FIR

By: //s/ Yoel Lemus. Esq.
YOEL LEMUS, ESQ.
Fl. Bar No.: 1027720
Counsel for Petitioner Dennis Gutierrez
P.O. Box 970628
Coconut Creek, FL 33097
954-800-0393
Yoel@thelemuslawfirm.com

Certificate of Service

I hereby certify that the Defendants in the above-captioned matter were served electronically on March 4, 2026, via CM/ECF electronic filing system. The electronic service was completed in accordance with the applicable rules governing electronic filing and service.

Dated: March 4, 2026

Respectfully submitted,

By: //s/ Yoel Lemus. Esq.
YOEL LEMUS, ESQ.
Fl. Bar No.: 1027720
Counsel for Petitioner Dennis Gutierrez
P.O. Box 970628
Coconut Creek, FL 33097
954-800-0393
Yoel@thelemuslawfirm.com