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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Eduardo Diaz Garcia,

Plaintiff,

v. PAM BONDI, ATTORNEY GENERAL;
KRISTI NOEM, OR SUCCESSOR, DHS SECRETARY;
TODD LYONS, ACTING DIRECTOR, IMMIGRATION
AND CUSTOMS ENFORCEMENT; GARRETT RIPO,
DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCE-
MENT, MIAMI FIELD OFFICE; DAVID HARDIN,
SHERIFF, GLADES COUNTY; STUART SIEGEL,
IMMIGRATION JUDGE, EOIR MIAMI KROME,

Defendants.

2:26-cv-771-KCD-NPM

Case No:
[NEW CASE]

PETITION FOR A WRIT OF HABEAS CORPUS
AND FOR INJUNCTIVE
AND DECLARATORY RELIEF

Civil Case Number:

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Attorney for Petitioner-Plaintiff

*pro hac vice application forthcoming

Dated: March 19, 2026
New York, N. Y.

Christopher P. Benischek, Esquire, undersigned counsel and attorney for Petitioner moves this honorable Court for a Writ of Habeas Corpus pursuant to 28 U.S.C § 2241 and since the role of equity is “to do justice and not by halves,” for declaratory relief aimed at the DOJ Defendants to vacate the Removal Order and on remand order the Immigration Judge (IJ) to grant a continuance pursuant to *Bull v. I.N.S.*, 790 F.2d 869 (11th Cir. 1986) (finding the refusal to grant a continuance to file an adjustment of status application pursuant to a filed and pending immediate relative family petition an abuse of discretion) to permit a duly filed, facially approvable, and pending adjustment of status application under the Cuban Adjustment Act of Petitioner to be adjudicated. In addition, the Petitioner requests injunctive relief, to wit, a temporary restraining order (TRO) of 14 days duration that Defendants are restrained from moving Petitioner out of State. Petitioner can establish that he will suffer irreparable injury to himself and his family if he is removed to a distant locale such as Texas or Otero Detention Center, New Mexico as is common ICE practice at present. He has severe health problems and is wasting away in prison because he cannot eat the food without extreme stomach upset due to the removal of most of his lower intestine in infancy. Petitioner respectfully notes his intention to file a more detailed memorandum of points and authorities with supplementary evidence as soon as possible due to the exigent nature of this Petition.

INTRODUCTION

Petitioner is a 40 year old Cuban man who came to this country upon invitation of the U. S. government on or around January 28, 2023 by lawful inspection and parole

into the U.S. A true and correct copy of his I-94 record is submitted herewith as Exh. A. He thereafter filed in the ordinary course an application for adjustment of status to lawful permanent resident under the Cuban Adjustment Act on or around March 2024, pursuant to which he received work authorization. A true and correct copy of his I-485 receipt notice dated March 8, 2024, and email correspondence dated January 27, 2026 from USCIS confirming the application is still pending within the ordinary time frame is submitted herewith as Exh. B. He has absolutely no criminal record,¹ as well as gainful employment and strong family ties to South Florida.

Yet Petitioner has been in jail first at Alligator Alcatraz and thereafter at Glades County Detention Center for a total of 3 months and 12 days as of today.

In January 2025 his parole status was effectively terminated by the Trump administration by refusing to renew any expiring paroles under the Cuban humanitarian parole program. Thus despite filing his adjustment application in 2024 he was in legal limbo as its pendency continued to the present day. This legal limbo was unfairly taken advantage of by ICE and the immigration court in his arrest and its abusive decision and order of removal of March 12, 2026, at a designated master calendar hearing, and not noticed as an individual hearing.

On or around December 7, 2025, a day of infamy once again, Petitioner was stopped and arrested without a warrant, probable cause, or reasonable suspicion, and

¹ This was admitted by the ACC for DHS at the petitioner's bond hearing on January 16, 2026.

placed in detention by Custom and Border Patrol officers for no other reason than his immigrant status, where he remains to this day.

Currently Petitioner is in Glades County Detention Center, Moore Haven, Florida.

JURISDICTION AND VENUE

This Court has subject matter jurisdiction under 28 U.S.C. § 2241. The court also has jurisdiction under 28 U.S.C. § 1331 (federal question) and, where applicable, Article I § 9, cl. 2 of the U.S. Constitution (Suspension Clause). The Court may grant relief pursuant to the habeas statute, 28 U.S.C. § 2241; the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.; and the All Writs Act, 28 U.S.C. § 1651. This action arises under the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

Venue is proper pursuant Petitioner's detention at this time at Glades County Detention Center, which is within this District and specifically its Ft. Myers Division.

If Petitioner is moved by ICE to another place of confinement, as is frequently the practice at present, venue is proper under 28 U.S.C. § 1391(e), where a substantial part of the relevant events/omissions occurred.

PARTIES

Petitioner is detained as noted at Glades County Detention Center. With respect to petitioners challenging detention, include the length and place of detention and an

allegation that they are under the direct control of the respondent(s). The individual Defendants—Kristi Noem, or her successor, DHS Secretary; Todd Lyons, Acting Director, Immigration and Customs Enforcement; Garrett Ripo, Director, Immigration and Customs Enforcement, Miami Field Office; David Hardin, Sheriff, Glades County—are the legal custodian of the Petitioner and/or proximate cause of his detention. Defendants Bondi and Siegel are responsible for the abuse of discretion in Petitioner’s denial of bond, categorization as an arriving alien, and due to their abuse of process and discretion by their precipitous entry of a removal order contrary to the longstanding binding precedential law of the State of Florida and the 11th Circuit represented by *Bull v. INS*, *ibid.* at 869 (holding denial of a continuance to permit respondent to file an adjustment of status application to be an abuse of discretion). Defendants are all sued in their official capacity.

EXHAUSTION IS FUTILE

There is no statutory exhaustion requirement in 28 U.S.C § 2241, and in this current climate of DHS enforcement and hostility, exhaustion is futile. Therefore, this Petition properly lies despite a notice of appeal to the BIA having been filed. This Court may waive the prudential exhaustion requirement if “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” *Abreau Medina v. Bondi, et al.*, Case No.: 2:26-cv-00266-SPC-DNF (M. D. of Fla., Feb. 26, 2026) (Polster Chappell, D.C.J.) (unpublished opinion); *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (*quoting S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981)).

Irreparable harm would result to Petitioner in that his family is here in South Florida, and he and his fiancée are expecting a baby in a matter of two or three months. Additionally he has severe health issues.

FACTS AND PROCEDURAL HISTORY

Petitioner Diaz has no criminal record, he has work authorization and stable employment, and he has strong ties to the United States including a U.S. citizen mother, Zulema Garcia, and a lawful permanent resident fiancée, Arisnay Viltres Viltres, who is pregnant with their child and now in her six month, as she recently learned in late January. A true and correct copy of Petitioner's EAD card, job award from July 2025, tax returns, letters of support from mother and fiancée, and medical record proof of pregnancy, are submitted herewith at Exh. C.

On December 7, 2025, CBP officers arrested Petitioner Diaz on his way to work—for no apparent reason other than his immigration status—and handed him over to Immigration and Customs Enforcement ("ICE"). ICE initially detained Petitioner at Alligator Alcatraz, but he is currently detained at Broward Transitional/Glades County Detention Center without an opportunity to seek release on bond. His bond applications were denied on the mistaken grounds that he was an arriving alien.

A notice to appear was not served on Petitioner until on or around January 6, 2026. A true and correct copy of the NTA is annexed hereto as Exh. D. After two

bond hearings, and two motions to terminate both denied, but both directly raised the issue of a facially approvable, duly filed, and currently pending AOS application, the immigration court mandated a 24-hour in advance deadline for filing all applications for relief. A true and correct copy of this order dated Feb. 27, 2026 is annexed hereto as Exh. E. The only application for viable relief that Petitioner requested was a continuance for the processing of his AOS application, of which the court was aware due to the two prior motions to terminate before the same court, as was the assistant chief counsel of OPLA to DHS who had filed opposition based solely on the fact that such relief could be pursued during the pendency of immigration proceedings. Nonetheless, the immigration court denied any request for a continuance and entered an order of removal dated March 12, 2026. A true and correct copy of this order dated Mar. 12, 2026 is annexed hereto as Exh. F.

Petitioner submitted a letter the same time as or shortly after the hearing informing the IJ explicitly that *Bull v. INS* mandated a continuance in this matter, but upon information and belief the immigration court mandated that such letter be stricken from the record, but not the accompanying exhibit to that letter. A true and correct copy of this correspondence with exhibit consisting of a duly filed and approved I-130 petition filed by Petitioner's mother is annexed hereto as Exh. G.

Petitioner filed an appeal on March 13, 2026 with the BIA, an agency of the attorney general and the DOJ of course, mainly to obtain an automatic stay of deportation, without much expectation of substantive relief in the current immigrant-

hostile climate in the executive branch. A true and correct copy of the notice of appeal dated Mar. 13, 2026 is annexed hereto as Ex. H.

POINTS OF LAW

Petitioner avers that it is an abuse of discretion to deny a continuance to have enabled him to await processing of duly filed Form I-485 for his adjustment of status, and abuse of discretion to enter an order of removal under these circumstances and at a hearing the immigration court noticed as a “master calendar” hearing. The immigration court seems to be practicing advocacy on behalf of DHS and ICE, and utilizing completely improper ambush tactics to do so.

Petitioner also avers it to be an abuse of discretion to treat him as an arriving alien and deny bond in the first instance. He had a liberty interest of work authorization and having been here for almost three years in lawful employment and residence, establishing a family and home on these shore at the invitation of our government. Having subjected Petitioner Diaz to mandatory detention under § 1225(b)(2) was and is unlawful.

As this Court recently held, “applying § 1225(b)(2) to noncitizens years after they were apprehended at the border and released into the country does not comport with the policy justification for treating noncitizens in the country differently than those seeking entry.” *Abreau Medina v. Bondi, et al.*, *supra*, at 3. *See also, Hinojosa Garcia v. Noem*, No. 2:25-cv-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025) and *Vasquez Carcamo v. Noem*, 2:25-cv922-SPC-NPM, 2025 WL 3119263 (M.D.

Fla. Nov. 7, 2025). *See also, Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”).

The liberty interests of Petitioner are all the more compelling as he entered lawfully with inspection, and was working pursuant to governmental authorization as well at the time of his apprehension and detention. Counsel will not even get into the savage and inhumane conditions under which he was held at Alligator Alcatraz.

CLAIMS FOR RELIEF

Even if the Defendants rightly characterized Petitioner as an arriving alien, the IJ should nonetheless have followed *Bull v. INS*, supra, and simply continued the case as requested for Petitioner’s prima-facie approvable and already filed and pending adjustment of status to proceed to conclusion. There would have been no prejudice to Defendants in this course of action, mandated by governing law.

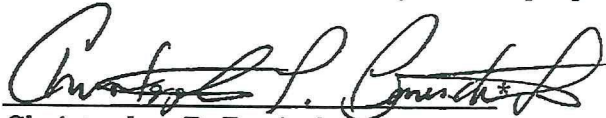
Therefore the order of removal constitutes a grave abuse of discretion, which should be outright vacated and declared null and void by this court, or in the alternative remanded to the IJ with an order to do same.

Petitioner is also entitled to relief of release from detention immediately without conditions in light of his clean non-criminal record and family and community ties, or alternately upon reasonable conditions. Finally he is entitled to

a temporary restraining order that Defendants not move him away from family halfway across the country.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court: (1) assume jurisdiction over the matter; (2) declare that the actions of Respondents violate the statutory, constitutional, and regulatory provisions that govern Petitioner's relief; (3) vacate the order of the March 12, 2026 denying Petitioner's request for a continuance and ordering his removal and remand for further proceedings; (4) issue a writ of *habeas corpus* that (a) orders that the Respondents shall release Petitioner within five days of this Opinion and Order, either without conditions or alternately under reasonable conditions, or alternatively, (b) declare Petitioner is not an arriving alien and order a bond hearing; (5) grant a temporary restraining order of 14 days duration that Defendants are restrained from moving Petitioner out of State; (6) award attorneys' fees and costs under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified by law; and (7) grant any other relief that the Court deems just and proper.



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Dated: March 19, 2026
New York, N. Y.

* special admission/pro hac vice application pending

Local Rule 3.01(g) Certification

I have attempted to confer with the opposing party and represent the opposing party is opposed to my petition.