

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

EDUARDO DIAZ GARCIA,

Petitioner,

Case No. 2:26-cv-771-KCD-NPM

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 ENFORCEMENT,
MIAMI FIELD OFFICE; DAVID HARDIN,
SHERIFF, GLADES COUNTY; STUART SIEGEL,
IMMIGRATION JUDGE, EOIR MIAMI KROME,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Eduardo Diaz Garcia seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by U.S. Immigration and Customs Enforcement and seeking his release from custody.¹ His petition should be denied. This case is distinct from recent immigration habeas cases filed in

¹ Pursuant to its Inter-Governmental Services Agreement for Glades County Detention Center, U.S. Immigration and Customs Enforcement requests Warden of Glades County Detention Center be terminated from this case. *See* Inter-Governmental Services Agreement for Glades County Detention Center, Ex. 2 at 12; *Mota-Constanzo v. Noem*, 2:26-cv-00369-KCD-DNF, 2026 WL 681819, at *2 & n.2 (M.D. Fla. Mar. 11, 2026).

this District, which have primarily dealt with petitioners who—critically—had not been paroled into the United States as an arriving alien. Petitioner, however, received such a temporary parole. Because his parole has now ended, Petitioner is restored to the status he had prior to parole, as an applicant for admission; he is therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

FACTS

Petitioner is a national and citizen of Cuba who was paroled into the United States on or about January 29, 2023. *See* Exs. A, B. ICE advises that Petitioner was admitted under the Cuban Humanitarian Parolee (“CHP”), and that he filed an adjustment of status application on March 5, 2024, which remains pending with USCIS. By its terms, Petitioner’s parole expired on January 26, 2025, *see* Ex. A, and it has not been renewed. *See* Dkt. 1 at ECF pg. 3 (alleging in January 2025 his “parole status was effectively terminated” because the “administration . . . refus[ed] to renew any expiring paroles under the Cuban humanitarian parole program”).

ICE detained Petitioner on December 7, 2025. *See* Ex. C. On January 6, 2026, ICE served Petitioner with a Notice to Appear, identifying him as “an arriving alien,” and placed him in removal proceedings. *See* Ex. D at 1. Petitioner has twice sought bond; he has denied such both times, based on his status as “an arriving alien.” *See* Exs. E, F (Dec. 22, 2025, and January 16, 2026, Orders, respectively).

On March 12, 2026, the Immigration Court entered an Order of removal, *see* Ex. G, as to which Petitioner filed an appeal. *See* Ex. H. Accordingly, his order of removal is not final. Petitioner is presently detained at the Glades County Detention Center. *See* Ex. I. As of the date of this Response (April 9, 2026), Petitioner has been detained for 123 days.

On March 20, 2026, Petitioner filed a petition for writ of habeas corpus alleging among other things, that his custody violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. *See* generally Dkt. 1. He seeks release from detention or, alternatively, release upon reasonable condition. *See id.*

CERTIFIED HABEAS RETURN

ICE is detaining Petitioner under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A). *See* 28 U.S.C. § 2243 (“The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Petitioner bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021).

ARGUMENT

I. Petitioner’s detention comports with the INA and the Due Process Clause of the Fifth Amendment.

Title 8 U.S.C. § 1225—applicable to “applicants for admission,” that is, aliens present in the United States who have not been admitted—is the specific detention authority applicable to Petitioner. Under § 1225(a), an “applicant for admission” is

defined as an “alien present in the United States who has not been admitted *or who arrives in the United States*.” (Emphasis added). Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(2)—the provision relevant here—is the “broader” of the two. *Id.* It “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2); *Matter of Q. Li*, 29 I & N. Dec. at 69 (“[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”); *see also Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025).

The present case is factually and legally distinct from recent Orders of this Court finding § 1225(b)(2) an inapplicable basis for detention. Here, the record establishes that Petitioner was paroled into the United States in 2023 as an arriving alien. *See* Ex. A. Petitioner’s parole at a port of entry allowed his otherwise mandatory § 1225(b)(2)(A) detention to be suspended, subject to, however, the government’s right to treat him “as if stopped at the border.” *See Dep’t of Homeland*

Sec. v. Thuraissigiam, 591 U.S. 103, 139 (2020).

Petitioner's parole terminated in January 2025, *see* Ex. A, and has not been renewed. *See* Dkt. 1 at ECF pg. 3. ICE detained Petitioner based on the expiration of his parole. *See* Ex. C at 3 (noting detention based on expiration of parole in January 2025). This is provided by 8 CFR § 212.5(e)(1)(ii) ("Parole shall be automatically terminated without written notice . . . (ii) if [the alien has] not departed, at the expiration of the time for which parole was authorized . . .").

Additionally, ICE has served a Notice to Appear on Petitioner. *See* Ex. D. Title 8 CFR § 212.5(e)(2)(i) provides, "When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified." After service of the NTA, Petitioner was therefore restored to the status of an arriving alien subject to mandatory detention. *Cf.* *Chanaguano Caiza v. Scott*, No. 1:25-CV-00500-JAW, 2025 WL 3013081, at *6 (D. Me. Oct. 28, 2025) (holding the petitioner's parole automatically terminated upon expiration subjecting him to mandatory detention).² For noncitizens who have

² Respondents recognize the Court previously ruled against the government in a similar case, *Velasquez Mendez v. Warden, Glades Cnty. Detention Cntr.*, 2:25-cv-01211-KCD-DNF, Doc. 11 (M.D. Fla. Jan. 14, 2026). Respondents nevertheless respectfully that a previously paroled arriving alien is subject to mandatory detention. As the Code of Federal Regulations recognize, Immigration Judges generally lack jurisdiction to redetermine conditions of custody for "[a]rriving aliens" in removal proceedings, including previously paroled aliens. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B); *see also* *Mina v. Trump*, No. 8:25CV583, 2025 WL 3141178, at *4 n.4 (D. Neb. Nov. 10, 2025) (recognizing that an alien paroled into the country may be an "arriving alien"). *Cf.* *Cooper-Pedro v. Warden*, Case No. 2:25-cv-524-KCD-DNF, at *9 (M.D. Fla. April 2, 2026) (holding alien whose parole was terminated –

never been “been admitted into the country pursuant to law . . . the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.” *Thuraissigiam*, 591 U.S. at 139. Petitioner is therefore lawfully detained under 8 U.S.C. § 1225(b)(2).

II. No District Court Jurisdiction to Review Immigration Court Rulings

Petitioner contends that, during Immigration Court proceedings, he filed a motion for “continuance” to permit “processing of his AOS [Adjustment of Status] application,” which continuance the IJ denied. *See* Dkt. 1 at ECF pg. 7. Petitioner asserts the IJ’s denial was error under Bull v. I.N.S., 790 F.2d 869 (11th Cir. 1986), which he asserts found such a denial of a continuance to be an abuse of discretion. *See* Dkt. 1 at ECF pg. 2. Thus, among other things, his Petition seeks to “vacate the order of the March 12, 2026, denying Petitioner’s request for a continuance and ordering his removal and remand for further proceedings.” *Id.* at ECF pg. 10 (Prayer for Relief item (3)). As set forth above, the IJ’s March 12, 2026, Order is the operative order of removal, *see* Ex. G, which is presently on appeal to the Board of Immigration Appeals. *See* Ex. H.

The only avenue for judicial review of a removal order is a petition filed in the appropriate court of appeals. *See* 8 U.S.C. § 1252(a)(5); *see also Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (“[F]inal orders of removal may not be reviewed in district

by virtue of arrest on criminal charges – was subject to detention under § 1225(b)(2)) (copy of *Cooper-Pedro* order attached as Ex. J).

courts, even via habeas corpus, and may be reviewed only in the courts of appeals.”); *Delgado Rodriguez v. U.S. District Court*, Case No. 2:26-cv-692-KCD-DNF, at *1 (M.D. Fla. April 2, 2026) (copy attached as Ex. K). The exclusivity of that path is indirectly confirmed by the *Bull* case cited by Petitioner, which was a Court of Appeals’ review of a final order of the BIA affirming the underlying IJ Order. *See* 790 F.2d at 869.

Petitioner asserts any prudential exhaustion requirement should be waived here because exhaustion is futile due to what he asserts is the “current climate of DHS enforcement and hostility.” *See* Dkt. 1 at ECF pg. 5. Petitioner’s broad-brush assertion of futility is insufficient. *See, e.g., McGee v. Warden*, 487 F. App’x 516, 518 (11th Cir. 2012) (finding no jurisdiction on habeas petition where petitioner failed to exhaust remedies despite argument doing so would be futile). Futility is not a blank check that relieves petitioner’s duty to exhaust his remedies.

Under exceptional circumstances, courts may excuse an exhaustion requirement. *See, e.g., Sanchez v. Warden*, No. 5:23-CV-79-WFJ-PRL, 2023 WL 4489472, at *2 (M.D. Fla. July 12, 2023); *Faison v. Warden*, FCC Coleman, No. 5:23-CV-67-WFJ-PRL, 2023 WL 4489471 (M.D. Fla. July 12, 2023); *Vasquez v. Warden*, FCC Coleman Low, No. 5:22-CV-517-WFJ-PRL, 2023 WL 4157364, at *2 (M.D. Fla. June 23, 2023). But Petitioner has not set forth any evidence to support such relief in this case, only a general assertion of “hostility.”

Conclusion

WHEREFORE, the Federal Respondents assert the Court should deny the Petition.

Respectfully submitted,

April 9, 2026

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CERTIFICATE OF FILING

I hereby certify that, on the date set forth above, I filed the foregoing documents and any exhibits referenced therein using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

s/ Charles T. Harden III
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