

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Eduardo Diaz Garcia,

Plaintiff,

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

Defendants.

PETITIONER'S REPLY

As this Court held in *Velasquez v. Warden*, 2:25-cv-1211-KCD-DNF, Doc. 11 (M.D. Fla. Jan. 14, 2026), Petitioner was entitled to a bond hearing despite the denial of his requests for same. Under *Jennings* and *Zadvydas* he has a liberty interest in virtue of residing here three years prior to his detention and having come with lawful inspection and upon invitation of the U.S. government. By the time the government terminated his parole, he had valid work authorization on other grounds, *viz.*, a duly filed and still pending adjustment of status to permanent resident petition under the Cuban Adjustment Act—under which it is undisputed by the Respondents that he is qualified to adjust; a home; an LPR fiancée expecting his child here; as well as lawful employment and dutifully abiding by the law — not only no criminal record whatsoever as conceded by the government — but also paying taxes for two years.

His health has greatly suffered in detention. His medical condition was confirmed by doctors in detention. *Please see*, Exh. 1 herewith. Furthermore, his fiancée is more than six months pregnant with child. *Please see*, Exh. 2 herewith.

Jurisdiction lies with the Court to assess the propriety of the entry of the removal order, which was and is manifestly unjust. It was a master calendar hearing, and the pleadings were not taken “previously” but on that very day. The immigration court and OPLA were well aware of the relief that Petitioner sought and was entitled to, namely a continuance pursuant to the famous *Bull v. INS* (11th Cir. 1986). If this Court declines to consider the impropriety of the circumstances of the removal order, which is not yet a final order of removal, then Petitioner requests consideration under 8 USC 1226(a) and not 1225(b) and an order to DHS or the court to set conditions of release. Petitioner is not otherwise ineligible for release, as he has no criminal record, as OPLA conceded in open court.

Petitioner can establish that he will suffer irreparable injury from further detention. He has severe health problems and is wasting away in prison—having lost 30 pounds in a matter of days and nearly another 20 pounds after that. The attached medical records from the jail establish that Petitioner, who is 5’11” tall, went from 190 pounds on January 1, 2026, to 160 pounds on January 12, 2026, as indicated at pages 4 & 18 of the medical records herewith, at Exh. 1, thus losing 30 pounds over eleven days in January. His weight hovered between 160 and 167 pounds in recent months. Yet, while on February 6, 2026 he weighed 165 pounds, *ibid*, page 24, he lost

18 pounds more by February 27, when Petitioner weighed an alarming 142 pounds.

Ibid. at page 29.

Records are missing for or were not taken during the first three weeks of March, and by March 21, 2026, petitioner was back up to 170 pounds, still 20 pounds below his normal weight. *Ibid.*, at 31.

This is due to a condition Petitioner has suffered since shortly after birth the removal of most of his lower intestine in infancy, which was confirmed in the jail medical records, recently received, as “abdominal surgery — bowel resection s/p bowel obstruction,” *ibid.* at 6, 14, rendering Petitioner unable to eat and retain the jail food without extreme stomach upset and either constipation or diarrhea, and cramps, pain in abdomen (ranging from 3/10 to 7/10), vomiting and nausea, *ibid.*, at 14, 18, 23, 27, 29, 31, 33, due to intestinal bowel syndrome (IBS) flareups as noted at his last visit to the infirmary for which there is a record in counsel’s possession, on April 2. *Ibid.*, at 37.

Exhaustion Not Required Where Futile Or Irreparable Harm May Result

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.” *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). See also, *McCarthy v.*

Madigan, 503 U.S. 140, 146-49 (1992), superseded by statute on other grounds as stated in *Booth v. Churner*, 532 U.S. 731 (2001) (noting that traditional exceptions include where exhaustion would cause “undue prejudice to subsequent assertion of a court action” or “irreparable harm” to the petitioner, where there is “some doubt as to whether the agency was empowered to grant effective relief,” or where it would be futile because “the administrative body is shown to be biased or has otherwise predetermined the issue before it”) (internal quotation marks omitted).

This Circuit has similarly recognized, in its discussion of exhaustion in the military context in *Winck v. England*, 327 F.3d 1296, (11th Cir. 2003), that “[g]enerally, ‘exhaustion is not required where no genuine opportunity for adequate relief exists, irreparable injury will result if the complaining party is compelled to pursue administrative remedies, or an administrative appeal would be futile,’ quoting *Linfors*, 673 F.2d at 334 (citations omitted).” And while *Winck* dealt with the exhaustion doctrine as pertaining to military habeas petitions under 28 USC Sec 2254, and contrasted Section 2241 petitions *in the criminal context* for release from a federal prison as in *Gonzalez v. United States*, 959 F.2d 211, 212 (11th Cir. 1992) (*per curiam*), *ibid.*, n. 1, *Winck* does not hold that the equitable principles it and the *Laing* court enumerated are barred in the immigration context.

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 as documented at Exh. 1 herewith.

Futility due to potential length of BIA appeal process, at or around six months from briefing schedule which has not yet issued, with no reason for Petitioner to languish in jail for that time, among other things applies here, as well as irreparable harm to Petitioner both on account of his health and of being unable to care for his fiancé and child due to his incarceration, both of which are placing an immense strain on his family and his and their mental and physical well-being.

Petitioner Is Properly Subject to 8 USC 1226(a) and Not Section 1225(b)

Petitioner also avers it to be an abuse of discretion to treat him as an arriving alien and deny bond in the first instance. While § 1225(b)(2) mandates detention, aliens detained under § 1226(a) have the right to a bond hearing before an immigration judge. 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 shores at the invitation of our government. Having subjected Petitioner Diaz to mandatory detention under § 1225(b)(2) was unlawful, as this Court itself previously ruled against the government in a similar case, *Velasquez Mendez v. Warden, Glades Cty. Detention Cntr.*, 2:25-cv-1211-KCD-DNF, Doc. 11 (M.D. Fla. Jan. 14, 2026). *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.”).

Petitioner has absolutely no criminal record,¹ as well as gainful employment and strong family ties to South Florida. Petitioner has been in detention for a total of 4 months and 15 days (135 days total) as of today. In January 2025 his parole status ended and renewal was effectively terminated by the Trump administration by termination of the Cuban humanitarian parole program in April 2025.

As noted, Petitioner Diaz 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. *Please see* Exh. 2, Summary of Prenatal visit dated March 4, 2026 reflecting her 26th week of pregnancy.

Petitioner twice requested bond hearings, improperly denied on alleged arriving alien grounds, and also made two motions to terminate as a matter of discretion, both denied. These latter motions directly raised the issue of a facially approvable, duly filed, and currently pending AOS application, and klad outthe evidence for same. Counsel for ICE/OPLA opposed on the grounds that the requested relief of time to permit the AOS to mature could be had in the ordinary course of the removal proceedings.

Thus the immigration court was fully aware of the requested relief yet nonetheless mandated a 24-hour in advance deadline for filing all applications for

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

relief. 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 well as verbal and written notice on the same day as its removal order issued, March 12, 2026.

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. The arriving-alien mandatory detention cases cited by Respondents are distinguishable. In both *DHS v. Thuraissigiam*, 591 U.S. 103 (2020) and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the respondents entered without inspection and were apprehended and detained mere yards from the border, none of which is the case with Petitioner here. And in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025), respondent entered without inspection, again not at all the case with Petitioner who followed the law and was inspected. Most of Respondents' other cases were criminal cases, e.g. *McGee v. Warden*.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court 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; and for such other relief that the Court deems just and proper.

/s/ Christopher P. Benischek

Christopher P. Benischek

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April 22, 2026

CERTIFICATE OF FILING

I, Christopher P. Benischek, certify that a true and correct copy of the foregoing Reply and any exhibits thereto was filed on the date set forth above using the Pacer CM/ECF system, which sends notice of filing to all counsel of record.

/s/ Christopher P. Benischek

Christopher P. Benischek

Lead Counsel for Petitioner