

**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.

**Motion (Unopposed) to Reargue and Amend the Judgment and Order
(Dismissing Petitioner's Habeas Petition) Pursuant to Rule 59(e) or
alternately Rule 60 Based on New Superseding 11th Circuit Law**

Plaintiff Eduardo Diaz Garcia by undersigned counsel hereby respectfully moves this Court for reconsideration of its April 24th Order denying and dismissing his habeas petition. The motion is timely as within 28 days of said Order. The basis of this motion is a subsequent 11th Circuit precedent decision in *Hernandez Alvarez v. Warden*, Case No. 25-14065, May 6, 2026 (11th Cir. 2026) (Marcus, J.), holding that 8 U.S.C. § 1226(a) governs bond jurisdiction for aliens apprehended in the interior of the country, while 8 U.S.C. § 1225(b)2(A) — upon which this Court predicated its decision — applies, legal fictions notwithstanding, only at the border to aliens actually arriving at the border and seeking admission at the border.

Petitioner Diaz Garcia, as apprehended in the interior of the country approximately three years after his lawful inspection and entry into the country, even though his parole status terminated, is thus an alien not actually and physically at the border, regardless of the legal fiction that the government “deems” him to be an applicant for admission and/or seeking admission in a technical legal sense. Diaz Garcia is not “seeking admission”—rather he is seeking lawful adjustment of status—nor was he “seeking admission” at the time of his recent (and only) detention on December 7, 2025, three years after his arrival with inspection in the United States.

The unambiguous holding of *Hernandez Alvarez* applies to Petitioner Diaz Garcia, and may be summarized as follows: “As we see it, § 1225(b)(2)(A) does not apply to Petitioners or to other present aliens not seeking admission.” *Hernandez Alvarez*, at 35. The Court continues: “The INA’s text confirms that the two relevant sections on detention govern distinct classes of aliens: § 1225 applies to arriving aliens seeking entry *at the border*, whereas § 1226 applies to aliens unlawfully in the interior. By interpreting § 1225 to stretch far beyond the border and ports of entry, the government vitiates this longstanding distinction.” *Hernandez Alvarez*, at 36. (Emphasis added).

Because Petitioner Diaz Garcia was not as a matter of actual fact “seeking admission” at the time he was detained, and because, to the contrary, he was detained in the interior of the country, bond jurisdiction lies pursuant to *Hernandez Alvarez*, thus mandating the reversal of this Court’s Decision. This Court also misconstrued the facts regarding Diaz Garcia’s lawful entry into the U. S.

A. Facts

It should be noted that Petitioner Diaz Garcia entered the United States legally with inspection (if not a formal “admission” in the technical sense under the law), and was never detained during his lawful entry into the country, as misstated in the Order in several places. Order at 1, 4 *inter alia* (stating at 4, *e.g.*, “Garcia was apprehended at the border while seeking admission. That puts him squarely under § 1225.”). The Court respectfully erred when it found that Diaz Garcia was apprehended and detained at the border, and subsequently released on parole. Building on this mistake, the Court deemed him an applicant for admission, stating that Petitioner Diaz Garcia “shall be deemed . . . an applicant for admission’ [pursuant to] 8 U.S.C. § 1225(a)(1) [because Petitioner Diaz] Garcia concededly meets this definition. He was stopped at the border, had no legal status, and sought entry.” Ord. at 4.

This is not true, however, on the facts. Petitioner Diaz Garcia entered pursuant to a prior confirmed Cuban family reunification/humanitarian parole application and Notice of Action dated January 16, 2023, attached herewith at **Exh. A**; received travel authorization from USCIS thereafter; and then flew to Miami, went through Customs, and was paroled into the United States under section 212(d)(5)(A) of the INA on January 29, 2023. *Please see*, copy of his DHS Travel Authorization from January to April 2023, at Doc. 1-1, at 4, and I-94 record of lawful entry of Diaz Garcia on January 29, 2023, at Doc. 1-1, at 3.

Thus Mr. Diaz Garcia did not crash the border and then receive parole after being detained. He was never detained at the border, but arrived by Miami airport and was duly inspected and only then did he enter the country. Although his parole terminated with no chance of renewal by executive action, thus *arguendo* placing him in the legal construct of “back at the border,” this is a legal fiction that the *Hernandez Alvarez* court explicitly rejected as far as seeking admission is concerned.

It is respectfully submitted that Diaz Garcia has a greater right, liberty interest and claim to be free of detention than petitioners in *Hernandez Alvarez*, because he was not an EWI but to the contrary actually followed the law to enter; was vetted in advance by DHS; availed himself of the law again in his adjustment application; and in all other respects, as *e.g.*, including obtaining work authorization which he held at the time of his detention, and still holds, as well as in paying taxes for his entire three years here in the States during which he was lawfully employed the entire time (despite the lapse of his parole due to no fault of his own—his EAD was supplied by his duly filed I-485 AOS application which followed after his entry on parole.

Petitioner Diaz Garcia thus acceded to one of the several “grey areas” of lawful status, or approaching same to the extent of lawful presence here, as discussed in *Hernandez Alvarez* at 18 et seq., particularly in his pending CAA-based I-485—which in this Circuit provides him with legal protection from being deported pursuant to the law of this Circuit. *Please see, Bull v. I. N. S.*, 790 F.2d 869 (11th Cir. 1986).

Even if the immigration court did not agree, that is the subject of his pending duly filed appeal with the BIA. There is no reason he should litigate his case from inside a jail cell.

The question quite boils down to why he should be compelled by the Court to contest his legal fight from inside a jail cell, when he followed the law and has relief and protections from removal available to him. Not to mention he is facing severe health problems facing him in the jail, where he cannot get access to the special diet he requires and is suffering manifest health deterioration as discussed in Pet.'s Reply, Doc. 13-1, but concerning which this Court has been silent.

Due to his lawful manner of entry and as he entered with inspection, Mr. Diaz Garcia qualifies to adjust status under the CAA. Consequently, Mr. Diaz Garcia's duly filed I-485 application for adjustment to permanent residence in January 2024 is *prima facie* approvable. A visa number is immediately available but this application has been pending for two years and four months as of this date. USCIS assures it is still within "normal processing times," per undersigned counsel's last enquiry last week. USCIS responded by email dated May 14, 2026 (as it did on January 27, 2026, Doc. 1-1, at 7), that the application is still "within normal processing times." *Please see*, correspondence from USCIS herewith at **Exh. B**. To undersigned counsel, it seems as if there is a work stoppage on the processing of such cases.

Similarly, there is another humanitarian consideration of his pregnant girlfriend. Doc. 13-2. It has been since confirmed that their baby is due later this month, with a scheduled date of C-section of May 31, 2026. *Please see*, Nurse Progress Note, dated May 13, 2026, herewith at **Exh. C**.

Petitioner Is Not a Danger Nor a Flight Risk

Pursuant to his AOS application he has valid work authorization. Diaz Garcia has no criminal record, as OPLA confirmed in open court in January, and as proven by the belated I-213.¹ Doc 9-3, at 3. Mr. Diaz Garcia also has an established residence and sponsor (per statement of LPR fiancée Miss Viltres, Doc. 1-1, at 44-45, and copy of current 12-month reservation/lease dated December 5, 2025, in trailer-home park herewith in his name at **Exh. D**), a U. S. citizen mother who sponsored him for the Cuban parole (Doc. 1-1, at 43); and a very pregnant LPR fiancée Arisnay Viltres. The due date of his and Miss Viltres's baby is this very month,  *Ibid.*, Nurse Progress Note, at **Exh. C**. Mr. Diaz Garcia holds a job, which he had before detention and which is still open to him upon his release. He is demonstrably not a danger to the community and clearly not a flight risk.

B. Law: Legal Application of *Hernandez Alvarez* to Petitioner

As already noted, Mr. Diaz Garcia was not seeking admission or arriving anywhere at the time of his detention, just as in the case of petitioners in *Hernandez Alvarez*. He was driving to work (with valid EAD card and work authorization) at 7:00 am early on a Sunday morning.²

¹ Belated in that ICE turned over the I-213 record of arrest and background check to opposing counsel in this matter, but not to undersigned counsel when requested in immigration court in January 2026.

² OPLA withheld evidence of the nature of the stop even though counsel requested same at the first bond application in January.

As an applicant for AOS under the Cuban Adjustment Act, with a live pending adjustment application before USCIS, pursuant to this Circuit's precedent *Bull v. INS*, *supra*, Mr. Diaz Garcia has one of those other lawful bases to remain in the United States other than applying and gaining "admission." As discussed in *Hernandez Alvarez*, "This tees up a legal fiction of considerable importance in the INA – an alien may be lawfully present in the United States, but nevertheless not "admitted." *Supra*, at 19 *et seq.*

Such lawful status also would appear to bestow upon him certain constitutional rights, rights which do render his detention punitive, for the first civil right is the right to be free from arbitrary detention. *See, e.g. Campbell v. Almadovar*, 1:25-cv-09509, at 22 (S. D. N. Y. 2025) (noting that "[t]he Due Process clause applies to all 'persons' within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent," *Zadvydas*, 533 U.S. at 693 (citation omitted) and that 'the most significant liberty interest there is — [is] the interest in being free from imprisonment.' *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004))").

Mandatory detention under § 1225 is premised on an immigration officer's determination that a noncitizen is: (1) an "applicant for admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). At the time of his December 2025 arrest, Diaz Garcia did not meet each of the first two of these three criteria, so he could not have been detained under § 1225. In reaching this conclusion, the Court need only address, and distinguish between, the first two criteria under *Hernandez Alvarez*.

Here, we acknowledge that Diaz Garcia remained an “applicant for admission” despite having been paroled, in that Sec. 1182(d)(5)(A) specifically provides that “parole . . . shall not be regarded as an admission of the [noncitizen].” 8 U.S.C. § 1182(d)(5)(A). DHS regulations provide that once a noncitizen’s parole terminates, he is “restored to the status that he . . . had at the time of parole,” 8 C.F.R. 212.5(e)(2)(i) — that of an applicant for admission. *See, e.g., United States v. Balde*, 943 F.3d 73, 84 (2d Cir. 2019) (“Parole does not change parolees’ immigration status: they . . . are treated as applicants for admission into the country.”). Thus, at the time of his 2025 arrest, Diaz Garcia was “present in the United States” and “ha[d] not been admitted,” making him technically an applicant for admission. 8 U.S.C. § 1225(a)(1).

Despite this, that he remained an applicant for admission, Diaz Garcia was not “seeking admission” at the time of his 2025 arrest and detention under the framework announced in *Hernandez Alvarez*. Therefore this Court should respectfully issue an order granting Petitioner’s habeas petition.

Relief Sought

Petitioner seeks relief from this Court of release from detention immediately because he is unlawfully detained. This request is supported by the equities and circumstances of this case. There is ample evidence in the record that he is neither a flight risk nor a danger to the community. Mr. Diaz Garcia has absolutely no criminal record, as confirmed by DHS in the I-213 filing in this case. Doc. 9-3, at 3. Mr. Diaz Garcia has demonstrated deep family ties which were the basis of his original CHNV application, herewith at **Exh. A**, and its grant, including his U.S. citizen mother, Zulema Garcia’s affidavit in support and her letter in support. In addition his U.S.

LPR fiancée also offers her continuing support; their child is about to be born.. He still has the opportunity of gainful employment, with valid EAD and continuing offer of employment from his former employer. Community ties are strong; and the unlawfulness of his detention mitigates toward his release.

Alternately, Petitioner requests a bond hearing within three days and release pending any such Court-ordered bond hearing.

Finally, and again in the alternative, should the Court be dis- inclined to grant immediate release, Petitioner requests a bond hearing within three days of the date of any Court Order granting a bond hearing.

/s/ Christopher P. Benischek

Christopher P. Benischek
Lead Counsel for Petitioner-Plaintiff

Dated: May 18, 2026
New York, N. Y.

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Dated: May 18, 2026
New York, N. Y.

Local Rule 3.01(g) Certification

I have conferred with counsel for the opposing party and represent the opposing party is not opposed to my motion.

CERTIFICATE OF SERVICE BY FILING

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

/s/ Christopher P. Benischek

Christopher P. Benischek
Lead Counsel for Petitioner-Plaintiff

Date: May 18, 2026
New York, New York