

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

CARLOS ALBERTO PEREZ SILVA,

*Petitioner,*

v.

LUIS SOTO,

in his official capacity as Director/Warden of  
Delaney Hall Detention Facility;

KEITH DEVILLE,

in his official capacity as Director/Warden of Winn  
Correctional Center;

JOHN TSOUKARIS,

in her official capacity as Field Office Director,  
New Jersey Field Office, U.S. Immigration &  
Customs Enforcement;

PAMELA BONDI,

in his official capacity as Attorney General, U.S.  
Department of Justice;

KRISTI NOEM,

in his official capacity as Acting Secretary, U.S.  
Department of Homeland Security; and

TODD M. LYONS,

in his official capacity as Acting Director, U.S.  
Immigration & Customs Enforcement;

*Respondents.*

**Civil Action No.:**  
**2:25-cv-16577**

**MOTION FOR TEMPORARY  
RESTRAINING ORDER  
&  
AMENDED PETITION FOR WRIT OF  
HABEAS CORPUS PURSUANT  
TO 28 U.S.C. § 2241**

**MOTION FOR TEMPORARY RESTRAINING ORDER**

Petitioner, Carlos Alberto Perez Silva (“Mr. Silva”), respectfully moves before this Honorable Court for a Temporary Restraining Order and/or Preliminary Injunction, to enjoin the Respondents from continuing his unlawful detention during the pendency of his habeas corpus petition filed under 28 U.S.C. § 2241.

Since September 5, 2025, Mr. Silva has been detained by U.S. Immigration and Customs

Enforcement (“ICE”). The corresponding habeas petition challenges his unlawful detention with his approved I-130 family-based petition, filed by his U.S. Citizen wife, along with a lack in bond hearing, and the unconstitutional punitive conditions endured by Mr. Silva while in ICE custody.

To obtain a temporary restraining order and/or injunction, a movant must demonstrate that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 320 (3d Cir. 2020).

First, Mr. Silva is likely to succeed on the merits being that he has raised substantial constitutional and statutory claims in his habeas petition that demonstrate his continued detention violates the Fifth Amendment Due Process Clause.

Second, and absent the preliminary relief sought, Mr. Silva will suffer irreparable harm due to the continual deterioration of his mental health, potential transfer, *again*, to differing detention centers across the nation, *loss of his family owned business*, and being subjected to punitive conditions such as being served food ridden with mold, sleeping on dirty floors with garbage bags, and utilizing a blanket so poorly that it falls apart upon use and causes respiratory issues.

Third, the harm endured by Mr. Silva full-heartedly outweighs any minimal, or rather alleged burden on the government by continuing his unlawful detention - if anything, the government is burdening itself by fiscally detaining Mr. Silva and wasting judicial resources.

Fourth, the public interest is served by ensuring compliance with the Constitution and preserving judicial review under 28 U.S.C. § 2241.

For the foregoing reasons, Petitioner respectfully requests that this Court: 1. Issue a

Temporary Restraining Order enjoining Respondents from continuing to Petitioner's detainment until resolution of the habeas petition; 2. Set a hearing date for a preliminary injunction; and 3. Grant any further relief the Court deems just and proper.

**AMENDED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT  
TO 28 U.S.C. § 2241**

Petitioner, Carlos Alberto Perez Silva, respectfully petitions this Honorable Court for a writ of habeas corpus to remedy his unlawful detention by Respondents, as follows:

**INTRODUCTION**

1. Petitioner Carlos Alberto Perez Silva ("Mr. Silva") is a citizen of the Colombia who was paroled into the United States ("U.S.") in February 2001, at the age of twenty-five, and has lived here ever since. Mr. Silva is a dedicated father to his two U.S. Citizen sons, a loving husband of ten years to his U.S. Citizen wife, a grandfather to his U.S. Citizen grandson, and an important member in his community.
2. On September 5, 2025, upon completion of his USCIS interview, Mr. Silva was taken into U.S. Immigration and Customs Enforcement ("ICE") custody.
3. Presently, and pursuant to the recent BIA decision *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), Mr. Silva is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A) by ICE. In addition, he has an approved I-130 receipt, a pending I-485 appeal, and an Order granting his Motion to Reopen. Further, Mr. Silva has not been afforded a bond hearing. *See, Exhibit B: I-130 Approval Receipt ("Exhibit B"); Exhibit C: I-485 Decision & Appeal ("Exhibit C"); Exhibit D: 09/05/25 Order Granting Stay of Removal Pending Motion to Reopen ("Exhibit D"); Exhibit E: Order Granting Motion to Reopen ("Exhibit E").*
4. Mr. Silva's detention is unlawful and being held without the opportunity to be heard, lack of access to sanitary conditions, and punitive confinement conditions violates the Due Process

Clause of the Fifth Amendment.

5. Mr. Silva respectfully requests that this Court grant him immediate release from detention, or, in the alternative, the Court should order an immediate bond hearing to ensure Mr. Silva's detention bears a reasonable relation to the government's interests.

### **PARTIES**

6. Mr. Silva has been detained by Respondents since September 5, 2025. From September 5, 2025, to September 9, 2025, he was detained at Delaney Hall Detention Center ("Delaney"). On September 9, 2025, he was transferred to Winn Correctional Center ("Winn"). Then, on September 14, 2025, he was transferred back to Delaney.
7. Respondent Luis Soto is named in his official capacity as the Director/Warden of Delaney. Mr. Soto is responsible for the operation of Delaney, where Mr. Silva is currently detained.
8. Respondent Keith Deville is named in his official capacity as the Director/Warden of Winn. Mr. Deville is responsible for the operation of Winn, where Mr. Silva was previously detained.
9. Respondent John Tsoukaris is named in his official capacity as the Director of the New Jersey Field Office for ICE. Mr. Tsoukaris is responsible for arrests, processing, detention, production, transfer, and release of individuals in removal proceedings. He is a legal custodian of Mr. Silva.
10. Respondent Pamela Bondi is named in her official capacity as the U.S. Attorney General ("AG"). AG Bondi is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(g) and oversees the Executive Office for Immigration Review ("EOIR"). She is a legal custodian of Mr. Silva.
11. Respondent Kristi Noem is named in her official capacity as the Acting Secretary of the U.S. Department of Homeland Security ("DHS"). Ms. Noem is responsible for the administration

of immigration laws under 8 U.S.C. § 1103(a) and oversees ICE. She is a legal custodian of Mr. Silva.

12. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE. Mr. Lyons is responsible for the administration of federal immigration law and the execution of detention and removal determinations. He is a legal custodian of Mr. Silva.

### **JURISDICTION**

13. This Court has proper jurisdiction over Mr. Silva’s Petition for Writ of Habeas Corpus. As per 28 U.S.C. § 2241, this Court has the discretion to evaluate and grant the instant writ of habeas corpus. Under 28 U.S.C. § 1331, this Court has original jurisdiction over the federal issue arising in this matter. Article I, § 9, cl. 2 of the United States Constitution, the Suspension Clause, protects the privilege of habeas corpus. The All-Writs Act, 28 U.S.C. § 1651, grants this Court with remedial authority to issue this necessary writ. The Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, specifically allows this Court to grant injunctive and declaratory relief if it sees fit.
14. Federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by DHS; as well as claims by noncitizens seeking to protect their due process rights. *See, Jennings v. Rodriguez*, 138 S. Ct. 830, 840-41 (2018).
15. Mr. Silva’s current detention as enforced by Respondents constitutes a “severe restraint [on his] individual liberty,” such that he is “in custody in violation of the Constitution or laws ... of the United States.” *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3).

### **VENUE**

16. Venue is proper in the District of New Jersey. Pursuant to 28 U.S.C. § 2241(d), a writ of habeas corpus may be filed in the district where the Petitioner is held in custody. Under 28 U.S.C. § 1391 (b) (2), a proper venue is where a substantial part of the events and omissions gave rise to the claim.

17. Mr. Silva is currently in ICE custody at Delaney, where a substantial part of the events giving rise to his habeas claim occurred. Due to custody location and occurrence in events, it is proper to file in the District of New Jersey.

### **EXHAUSTION**


18. No statutory exhaustion requirements exist as to Mr. Silva's unlawful detention claims. *Callwood v. Enos*, 230 F.3d 627, 634 (3d Cir. 2000).

19. Although exhaustion is not statutorily required when challenging detention under 28 U.S.C. §2241, many courts still require proof of exhaustion largely to the appropriate agency's benefit. *Id.*

20. There are several exceptions that courts consider when evaluating exhaustion requirements. An immigrant detainee advancing a due process claim is likely to be exempt because "the Board of Immigration Appeals ("BIA") does not have jurisdiction to adjudicate constitutional issues." *Khan v. United States AG*, 448 F.3d 226, 228 (3d Cir. 2006).

21. Mr. Silva is not required to prove exhaustion because he is advancing due process claims in the instant habeas petition.

### **STATEMENT OF FACTS**

22. Mr. Silva was born on  in Pereira, Colombia. He immigrated to the U.S. in February 2001. *See, Exhibit A: Declaration of Carlos Alberto Perez Silva in Support of his Habeas Petition*, ¶ 1 ("Exhibit A").

23

[REDACTED]

[REDACTED] Mr. Silva made the challenging decision to travel to the U.S.; upon his arrival, and based on said fear, Mr. Silva applied for asylum.

24. Shortly after his arrival, Mr. Silva was detained by ICE, for approximately two weeks, and personally served with a defective Notice to Appear resulting in a missed hearing and a removal order. *See, Exhibit D.*

25. In 2002, Mr. Silva met his U.S. Citizen wife, Maria Victoria Urena. After many years of dating, the two were married on August 20, 2015, and have been together ever since.

26. The parties have loved and cared for two children, one son, Kevin Castillo, being from his wife's prior marriage, and the other biological son, B [REDACTED] Kevin recently welcomed his own son, [REDACTED] making Mr. Silva a grandfather.

27. For almost twenty-five years, Mr. Silva has lived in United States without any criminal record; while in the U.S., he became a father, a husband, a grandfather, a business owner, and a pillar of his community.

**Mr. Silva's Proceedings**

28. On February 24, 2023, Mr. Silva's wife filed an I-130, Petition for Alien Relative; the I-130 application was approved on September 8, 2025. *See, Exhibit B.*

29. On May 8, 2025, Mr. Silva filed an I-485, Application to Register Permanent Residence or Adjust Status; the I-485 application was denied on September 5, 2025. *See Exhibit C.* Due to the denial, Mr. Silva filed an I-290B, Notice of Appeal, on September 24, 2025. *Id.*

30. On September 2, 2025, Mr. Silva filed a Motion to Reopen, along with a stay of removal due to the defective notice of appearance. On September 5, 2025, an Immigration Judge ("IJ")

granted the stay of removal pending the motion. Thereafter, the Motion to Reopen was granted on September 19, 2025. *See Exhibit E.*

**Mr. Silva's ICE Detention**

31. On September 5, 2025, Mr. Silva was taken into ICE custody and detained at Delaney - Mr. Silva has endured an array of punitive conditions.

32. The first night at Delaney, Mr. Silva was transferred to an overcrowded room with approximately thirty other detainees. Upon entering, and without any blanket or pillow, he was directed to find a place to sleep on the floor. As told, Mr. Silva found an area on the dirty floor between other detainees and attempted to obtain some rest – the room was so cold that at Mr. Silva was “grateful it was overcrowded” for purposes of additional warmth. *Exhibit A*, ¶ 11.

33. The following day, Mr. Silva was placed in one of the several sleeping rooms at Delaney. The windowless twenty by fifteen-foot room was shared with approximately ten to twenty other detainees dependent on the overflow of detainees each day. *Id.* at ¶ 12-14.

34. Albeit, Mr. Silva was no longer sleeping on the floor, but the sleeping conditions in the shared room were not significantly better than his first night's experience. Mr. Silva was given a bed that was as “hard as a rock,” a pillow, and a blanket, that falls apart upon use resulting in significant dust fibers. Due to unavoidably inhaling the dust fibers, Mr. Silva suffers with throat pain, which has required visits to the Delaney medical unit. *Id.*

35. Mr. Silva is permitted one hour of outdoor activities and access to a separate lounge area that has one singular television for the entire prison. *Id.* at ¶ 16.

36. On multiple occasions, Mr. Silva was served meals ridden with mold, which now requires him to inspect every meal prior to eating. *Id.* at ¶ 18.

37. On or about September 9, 2025, Mr. Silva was unexpectedly transferred to Winn. *Id.* at ¶ 19.

38. Upon being processed, Mr. Silva was directed to a small room with approximately forty other detainees. Similar to Delaney, at Winn, Mr. Silva was directed to find a place to sleep on the floor. Unlike Delaney, Mr. Silva was handed two garbage bags to sleep on. As directed, Mr. Silva found a place to sleep between all the other detainees, and laid one garbage bag down on the floor and used the other as a blanket. These inhumane sleeping conditions lasted the initial two days of detainment at Winn. Further, Mr. Silva was never given any bed, pillow, real blanket, or even place to shower, the first two nights at Winn— he wrapped himself in garbage bags and slept crammed up against other detainees on the dirty floor. *Id.* at ¶ 21.

39. After the initial two days Mr. Silva was directed to a sleeping room with approximately ninety other individuals. Along with the other ninety individuals, Mr. Silva received a small bed and only had access to a single toilet and shower. At Winn, Mr. Silva was required to utilize a toilet that was out in the open. Because approximately ninety other individuals were able to see Mr. Silva utilize the bathroom, he and other detainees hung garbage bags for purposes of privacy. *Id.* at ¶ 23.

40. After four days at Winn, on or about September 14, 2025, Mr. Silva was transferred back to Delaney. To this day, Mr. Silva remains in ICE custody at Delaney.

### **LEGAL FRAMEWORK**

#### **I. MR. SILVA IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIMS THAT HIS DETENTION IS UNLAWFUL & VIOLATES HIS DUE PROCESS RIGHTS.**

41. The Due Process Clause of the Fifth Amendment is applicable to all individuals in the United States; moreover, every immigrant, regardless of status or lack thereof, is entitled to due process protections. *Zadvydas v Davis*, 533 US 678, 682 (2001); *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Reno v. Flores*, 507 U.S. 292, 3061 (1993); *Mathews v. Eldridge*, 424 U.S.

319, 333 (1976). Even further, individuals navigating our immigration system in pursuit of lawful status have a right to be noticed, meaningfully heard and protected from governmental constraints, which deprive them of any liberty or property interests. *Landon v. Plasencia*, 459 US 21, 34 (1982). Specifically concerning detainment, the Supreme Court has held that civil detention “for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

**A. The BIA’s Interpretation of INA 235(b) (2)(A), in the *Matter of Yajure-Hurtado*, Violates Mr. Silva’s 5<sup>th</sup> Amendment Due Process Rights.**

42. On September 5, 2025, the BIA made the disturbingly, unconstitutional decision in the *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which ignored decades of legal precedent, the Constitution, and stripped away the well-established due process rights for a plethora of non-citizens. Moreover, *Yajure-Hurtado* established the dangerous sweeping rule that any non-citizen present in the United States without having been inspected and admitted who is arrested with or without a warrant is subject to mandatory detention under INA § 235(b)(2), rather than the typical discretionary detention under INA § 236 (a), this is without regard of where the non-citizen was apprehended or how long the non-citizen has resided in the United States. *Id.*

43. Again, the BIA’s decision directly conflicts with significant U.S. Supreme Court decisions including but not limited to *Zadvydas v. Davis*, 533 U.S. 678 (2001), *Demore v. Kim*, 538 U.S. 510 (2003), *Boumediene v. Bush*, 553 U.S. 723 (2008), *Mathews v. Eldridge*, 424 U.S. 319 (1976), and *United States v. Salerno*, 481 U.S. 739 (1987).

44. The BIA’s ruling of restrictions on the Due Process Clause and mandated, unchecked detentions under INA § 235(b)(2), instead of INA § 236(a), has already been refuted by a myriad of Federal District Courts across the nation through the re-enforcement of INA §

236(a), not INA § 235(b)(2), and further, many grants in habeas petition reliefs based on the resounding due process violations set forth by *Yajure-Hurtado. Benitez v. Francis*, 2025 US Dist LEXIS 153952 [SDNY Aug. 8, 2025]]; *Samb v. Joyce*, 2025 US Dist LEXIS 161109 [SDNY Aug. 19, 2025]]; *Sampiao v. Hyde*, 2025 US Dist LEXIS 175513 [D Mass Sep. 9, 2025, No. 1:25-cv-11981-JEK]]; *Leal-Hernandez v. Noem*, 2025 US Dist LEXIS 165015 [D Md Aug. 24, 2025, No. 1:25-cv-02428]]; *Kostak v. Trump*, 2025 US Dist LEXIS 167280 [WD La Aug. 27, 2025, No. 3:25-1093]]; *Zaragoza Mosqueda v. Noem*, 2025 US Dist LEXIS 174828 [CD Cal Sep. 8, 2025, No. 5:25-cv-02304]).

45. Due to the BIA's decision in *Yajure-Hurtado*, Mr. Silva is currently being detained INA § 235(b)(2) without any opportunity to be heard, which is a blatant infringement on his due process rights as established by a long-line of U.S. Supreme Court decisions and the U.S. Constitution itself. For over twenty-five years, Mr. Silva has resided in this nation as a law-abiding individual, who contributes to his community. Pursuant to this nation's Supreme Court precedent and Due Process Rights of the Fifth Amendment, Mr. Silva respectfully requests this Court find his detention as discretionary under INA § 236(a) and provide Mr. Silva with the opportunity to be heard, as many Federal Districts have already done across the country for individuals similarly situated to Mr. Silva.

**B. Mr. Silva's unlawful detention, without a bond hearing and pending an I-485 Appeal, violates the Fifth Amendment.**

46. Upon an individual evidencing a liberty or property interest, a Court must determine whether constitutionally sufficient procedures were provided by balancing: First, the private interest that will be affected by the official action; Second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural requirement would entail; and Finally, the government's interest,

including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews*, 424 U.S. at 335.

47. Immigrants facing deportation and removal proceedings have a deep-rooted liberty interest – **“the right to stay and live and work in this land of freedom.”** *Bridges v. Wixon*, 326 U.S. 135, 154 (1945).
48. Mr. Silva is entitled to the protections of the 5<sup>th</sup> Amendment Due Process Clause. First, Mr. Silva has a significant liberty interest in remaining the United States – his loving wife, two sons, grandchild, family-owned business, and essentially all he has, is within the United States. The government has failed to evidence any reason to continue confinement: Mr. Silva is not a flight, Mr. Silva has no criminal record, and Mr. Silva is not a danger to the community.
49. Second, in light of the Constitution, the INA and its applicable regulations, Respondents have procedurally deprived and continue to risk deprivation of Mr. Silva’s due process rights. When evaluating the second *Mathews* prong “the only interest to be considered . . . is that of the detained individuals—not the government.” *Black v Director Thomas Decker*, 103 F.4th 133, 152 (2d Cir 2024). Without any regards, Respondents have violated Mr. Silva’s due process rights tenfold: As evidenced by the granted Motion to Reopen, Mr. Silva was never properly placed on notice of his removal proceedings; Mr. Silva was wrongfully detained by ICE agents on the basis of the improper notice and entry of removal order; ICE’s efforts to prematurely deport and confine Mr. Silva before USCIS may adjudicate the I-485 appeal constitutes a deprivation in his liberty interest to stay in the United States with his loved ones; and Mr. Silva was discretionarily thrown in a detention center without the opportunity to be heard for bond – upon a bond hearing, Mr. Silva would demonstrate he is neither a flight risk

nor a danger to community. Due to Respondent's unjustified arrest of Mr. Silva, an astonishing snowball effect of due process violations have occurred and will continue to occur so long as Mr. Silva is detained.

50. Third, the interest of enforcing immigration policies would be valid if the government was even following said policies – Mr. Silva was improperly detained. Regardless, any additional or substitute procedural requirement would not burden the government whatsoever - if anything, the government is burdening itself by fiscally detaining Mr. Silva and wasting judicial resources.

51. All three Mathews factors, weigh heavily in Mr. Silva's favor. Moreover, Mr. Silva has established that Respondents violated his due process rights, which warrants his immediate release from ICE custody or in the alternative, an immediate bond hearing.

**C. Mr. Silva's detention violates his right to substantive due process because he is neither a flight risk.**

52. Immigration detention is civil and must “bear a reasonable relation to the purpose for which the individual [is] [detained]” so that it remains “nonpunitive in purpose and effect.” *Id.* at 690. Further, and to comport with due process, there are only two legitimate regulatory purposes for immigration detention to ensure the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690-691; *Diop v. ICE*, 656 F.3d 221, 233–234 (3d Cir. 2011).

53. Mr. Silva is not a flight risk and will appear at all future immigration proceedings. For almost twenty-five years, Mr. Silva has lived in the United States – this is his home. Moreover, his loving wife, two sons, grandchild, family-owned business, and essentially all he has, is within the United States. Everything he loves, owns, and works for is right here in New Jersey.

54. Mr. Silva is not a danger to the community – he has no criminal record, whatsoever. In fact, Mr. Silva is a significant member of the community and contributes thereof through his family business.

55. No legitimate interests exist as to Mr. Silva’s detention, rather the government is detaining Mr. Silva along with countless others swept up in its courthouse arrests, for the understandable but illegitimate reason that he was easy to locate. At the time of his arrest, Mr. Silva was attempting to lawfully navigate our immigration system by completing his USCIS Interview. Due to pure accessibility, Mr. Silva was detained without any opportunity to heard.

56. Because Mr. Silva’s detention has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires under the Due Process Clause of the Fifth Amendment to the U.S. Constitution, his continued detention without a bond hearing is unlawful and therefore, he should be released.

57. In the alternative, the Court should order an immediate bond hearing to ensure Mr. Silva’s detention bears a reasonable relation to the government’s interests.

**D. The conditions of Mr. Silva’s confinement are punitive in violation of the Fifth Amendment.**

58. The Fifth Amendment protects immigrant detainees from punitive confinement conditions. Since immigrant detainees are civilly detained, the Eighth Amendment’s cruel and unusual standard is inapplicable; the idea is that immigrant detainees must not be subject to punishment at all, let alone cruel and unusual punishment. *E. D. v. Sharkey*, 928 F.3d 299, 307 (3d Cir. 2019). Conditions that violate the Eighth Amendment necessarily violate the Fifth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). A plethora of cases, whether applying the Eighth Amendment to criminal detainees or Fifth Amendment to immigrant

detainees, evidence that Mr. Silva's confinement is highly punitive and violates the Due Process Clauses in multiple regards.

59. The totality of the circumstances test is applied to determine whether the conditions of confinement constitute cruel and unusual punishment. Relevant considerations in the immigration detention context include assessing maintenance of sanitary conditions and maintaining detention conditions that are distinct from criminal detention. *Tillery v. Owens*, 907 F.2d 418, 420 (3d Cir. 1990); *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d at 478 (3d Cir. 2015).

**a. Unsanitary Conditions**

60. Detention facility conditions violate the Eighth Amendment when detainees are “deprived of the minimal civilized measure of life's necessities” and the facility and/or prison officials act with deliberate indifference. *Tillery*, 907 F.2d at 426. Deliberate indifference of a detainee's health or safety means the “official knows of and disregards an excessive risk to inmate health or safety.” *Farmer v Brennan*, 511 US 825, 828 (1994).

61. Severe overcrowding and unsanitary conditions constitutes such a deprivation that amounts to cruel and unusual punishment. *Id.*

62. The egregious confinement conditions at Delaney are not only well-known to the detainees trapped behind its walls, but to the public at large including the Department of Homeland Security. As per a prior inspection report, DHS found a host of food safety and living conditions violations endured by detainees. Concerning the food served to inmates, DHS found: widespread mishandling of food ranging from service of moldy bread, “slimy, foul-smelling lunch meat,” “raw chicken leaking blood all over refrigeration units,” and service of meat “that smelt like fecal matter.” *Exhibit G: DHS 2019 Office of Inspector General Report*

(“*Exhibit G*”). Concerning environmental conditions, DHS found: leaking ceilings dripping directly onto detainee beds, showers laced with mold and peeling paint, dilapidated beds requiring detainees to utilize bedsheets to tie the seams of the mattress together, and lack in access to recreation space outside of their living area. *Id.*

63. As of June 2025, seemingly the disastrous infrastructure of Delaney has not improved, which is evidenced by the “escape” of four immigrant detainees. As a result of the conditions they endured, ranging from sleeping on the floor, limited to drinking foul-tasting water for hydration, and going hours on end without food just to be served slices of bread as a meal, four detainees were able to “escape” the facility by punching through the exterior wall of the jail. *Exhibit H: Inside the Tumult That Led 4 Men to Escape From a Migrant Facility, NYTimes Article (June 2025) (“Exhibit H”)*.

64. Inhumanely, and against DHS protocols, several of these conditions still exist to this day and are endured by Mr. Silva.

65. The first night at Delaney, Mr. Silva was required to sleep on the dirty floor, along with thirty other detainees - he was not provided any blanket or pillow. The room was so cold that Mr. Silva was “grateful it was overcrowded” for purposes of additional warmth. *Exhibit A*, ¶ 11. The following day, Mr. Silva was placed in one of the several sleeping rooms at Delaney. The windowless twenty by fifteen-foot room was shared with approximately ten to twenty other detainees dependent on the overflow detainees each day. *Id.* at ¶ 12-14. In this room, Mr. Silva was given a bed that was as “hard as a rock,” a pillow, and a blanket, that falls apart upon use resulting in significant dust fibers. Due to unavoidably inhaling the dust fibers, Mr. Silva suffers with throat pain, which has required visits to the Delaney medical unit. *Id.* On

multiple occasions, Mr. Silva was served meals ridden with mold, which requires him to inspect every meal prior to eating. *Id. at* ¶ 18.

66. Wildly unsanitary conditions and overcrowding continued during Mr. Silva’s detention at Winn. During the first two days at Winn, Mr. Silva was required to stay in a small room with approximately forty other detainees. Like Delaney, Mr. Silva was directed to find a place to sleep on the floor. Unlike Delaney, Mr. Silva was handed garbage bags to sleep on. Further, and for the first two nights at Winn, Mr. Silva was never given any bed, pillow, real blanket, or a place to shower – he wrapped himself in garbage bags and slept crammed up against other detainees on the dirty floor. *Id. at* ¶ 21. After the initial two days at Winn, Mr. Silva was directed to a sleeping room with approximately ninety other individuals. Mr. Silva was required to utilize a toilet that was out in the open. Because approximately ninety other individuals were able to see Mr. Silva utilize the bathroom, he and other detainees hung garbage bags for purposes of privacy. *Id. at* ¶ 23.

67. While in Respondents’ custody, the range of egregious and unsanitary conditions endured by Mr. Silva include, but are not limited to, being directed to sleep on dirty floors with plastic garbage bags, crammed in rooms overflowing with other detainees, given moldy meals to consume, restricted from shower access, given a “blanket” that is so poorly made it falls apart and causes a sore throat/breathing problems, and so on. Respondents have deprived Mr. Silva of “minimal civilized measure of life’s necessities” and both facilities have acted with deliberate indifference. *Tillery*, 907 F2d at 426.

68. This treatment breaches detainees’ rights to sanitary conditions and exposes them to health hazards, violating Mr. Silva’s Fifth Amendment rights.

**b. Punitive Conditions**

69. Again, immigrant detainees must not be subject to punishment at all, let alone cruel and unusual punishment and if a detained immigrant’s civil detention looks penal, the scales tilt toward finding the detention unreasonable. *E. D.*, 928 F.3d at 307; *Chavez-Alvarez v Warden York County Prison*, 783 F3d 469, 478 (3d Cir 2015).
70. At Delaney, Mr. Silva was subjected to sleeping on dirty floors, given a “blanket” that is so poorly made it falls apart and causes a sore throat/breathing problems, given only one hour of outdoor activities daily with the remainder of the day being trapped in the facility, and served moldy food to consume. *Exhibit A*, ¶ 11-19.
71. At Win, Mr. Silva spent four days trapped in a tiny room with over forty other detainees, subjected to sleeping on dirty floors with garbage bags, had no access to a shower at any point, and was not provided an actual bathroom for use. *Id.* at ¶ 20 -24. Mr. Silva “didn’t even feel like a prisoner, [he] felt like an animal” and reasoned “[a]t least prisoner’s get a place to rest their heads and livable conditions.” *Id.*
72. Mr. Silva's immigration detention bears an uncanny resemblance to criminal confinement, in violation of his Due Process Rights.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION (SUBSTANTIVE DUE PROCESS)**

1. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

2. Mr. Silva is not a flight risk nor is he a danger to the community. Respondents' detention of Mr. Silva is therefore unjustified and unlawful. Accordingly, Mr. Silva is being detained in violation of his Constitutional right to Due Process under the Fifth Amendment.

### **COUNT TWO**

#### **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION (PROCEDURAL DUE PROCESS)**

3. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
4. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law."
5. Mr. Silva is entitled to the protections of the 5<sup>th</sup> Amendment Due Process Clause. First, Mr. Silva has a significant liberty interest in remaining the United States. Second, in light of the Constitution, the INA and its applicable regulations, Respondents have procedurally deprived and continue to risk deprivation of Mr. Silva's due process rights.
6. Third, any additional or substitute procedural requirement would not burden the government whatsoever - if anything, the government is burdening itself by fiscally detaining Mr. Silva and wasting judicial resources.
7. Accordingly, Mr. Silva is being detained without sufficient process in violation of his Constitutional right to Due Process under the Fifth Amendment.

### **COUNT THREE**

#### **THE EGREGIOUS CONFINEMENT CONDITIONS ENDURED BY MR. SILVA VIOLATES THE FIFTH AMENDMENT RIGHT TO SUBSTANTIVE DUE PROCESS**

8. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
9. The Fifth Amendment protects immigrant detainees from punitive confinement conditions. Courts find the existence of punishment when confinement conditions lack a reasonable relationship to a legitimate governmental purpose.
10. The government also violates the Fifth Amendment by acting with deliberate indifference to an immigrant detainee's health and safety.
11. Respondents have knowingly exposed Mr. Silva to a substantial risk of serious harm including, but not limited to, being directed to sleep on dirty floors with plastic garbage bags, crammed in rooms overflowing with other detainees, given moldy meals to consume, restricted from shower access, given a "blanket" that is so poorly made it falls apart and causes a sore throat/breathing problems, and so on.
12. Accordingly, being confined with such horrendous conditions violates the Mr. Silva's Fifth Amendment Due Process Rights.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over the instant matter;
2. Issue a Writ of Habeas Corpus ordering the immediate release of Petitioner from Respondents custody;
3. In the alternative, grant a Writ of Habeas Corpus ordering an immediate bond hearing to ensure Petitioner's detention bears a reasonable relation to the government's interests; and
4. Order any such other relief as this Court deems just and proper.

**Dated: 10/15/25**

Respectfully Submitted,



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Alexandra Minogue, Esq.  
NJ Bar ID: 479582024  
Nova Law Group  
21 Fulton Street  
Newark, NJ 07102  
E: [aminogue@nova.law](mailto:aminogue@nova.law)  
P: 844-844-6682  
*Counsel for Petitioner*

**CERTIFICATE OF SERVICE**

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the PACER system.

**Dated: 10/15/25**

Respectfully Submitted,



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Alexandra Minogue, Esq.  
NJ Bar ID: 479582024  
Nova Law Group  
21 Fulton Street  
Newark, NJ 07102  
E: [aminogue@nova.law](mailto:aminogue@nova.law)  
P: 844-844-6682  
*Counsel for Petitioner*