

**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**

**REPLY TO RESPONDENTS ANSWER TO  
PETITIONER'S AMENDED WRIT OF  
HABEAS CORPUS UNDER 28 U.S.C. § 2241  
& MOTION FOR TEMPORARY  
RESTRAINING ORDER**

**INTRODUCTION**

On October 29, 2025, Respondents filed an answer to Petitioner's, Carlos Alberto Perez Silva ("Mr. Silva"), Amended Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, along with Opposition to the Motion for Temporary Restraining Order. Within the joint reply, Respondents contended: 1. Mr. Silva's detention is lawful, initially under 8 U.S.C. § 1231 (a), and later under 8 U.S.C. § 1225(b)(1), and comports with due process; 2. The Court lacks jurisdiction over conditions of confinement; and 3. Mr. Silva's motion for temporary restraining does not meet

the requisite elements for a meritorious claim. Mr. Silva respectfully resubmits that Respondents detention unlawfully violates his due process rights, that this Honorable Court does have jurisdiction to find the ramifications of the punitive confinement conditions at Delaney Hall Detention Facility (“Delaney”) and Winn Correctional Center (“Winn”) do not comport with Mr. Silva’s due process rights, and that Mr. Silva demonstrates, without a doubt, the requisite showings to warrant a temporary restraining order.

### **ARGUMENT**

#### **I. MR. SILVA’S DETENTION IS UNLAWFUL & VIOLATES THE DUE PROCESS CLAUSE.**

Within their Answer to the Amended Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, and specifically concerning the legality of Mr. Silva’s detention, Respondents allege Mr. Silva’s detention, initially under 8 U.S.C. § 1231 (a) and later under 8 U.S.C. § 1225(b) (1), is lawful and comports with due process. Respondents are far from correct.

To reiterate, the Due Process Clause of the Fifth Amendment is applicable to all individuals in the United States regardless of status or lack thereof; even further, civil detention is a severe deprivation of liberty, which requires due process protection. *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).

#### **A. Mr. Silva’s initial detention under 8 U.S.C. § 1231 (a) was unlawful as demonstrated by the Granted Motion to Reopen.**

Respondents initially detained and subjected Mr. Silva to mandatory detention under 8 U.S.C. § 1231 (a) on the basis of the improperly entered final removal order. As evidenced by the granted Motion to Reopen on September 18, 2025, by Immigration Judge Monica Neumann, Mr. Silva never received the Notice to Appear for removal proceedings and further,

said final order of removal was clearly entered in error. Therefore, Mr. Silva's detention, under 8 U.S.C. § 1231 (a), from the absolute beginning was unconstitutional due to lack in procedural due process.

**B. Mr. Silva's mandatory detention under INA § 235, 8 U.S.C. 1225, is improper and unconstitutional.**

Respondents contend Mr. Silva is, now, properly subject to mandatory detention pursuant to INA § 235, 8 U.S.C. 1225 (b) (1), because he satisfies both the applicant for admission and applicant seeking admission prongs, as well as grounds of inadmissibility based on the improper allegations within the Notice to Appear— such contentions are presumptuous and incorrect. Mr. Silva should not be subject to mandatory detention under to INA § 235, 8 U.S.C. 1225, for a myriad of reasons. First, Respondents contend the charges of removability, alleged in the improperly served Notice to Appear, make Mr. Silva subject to detention under INA § 235, 8 U.S.C. 1225 (b) (1) and ineligible to adjust his status through Form I-485 - said inaccurate charges noted by Respondents are fraud and willful misrepresentations for admission. However, and as indicated in the I-485 Notice of Decision, the sole basis of the I-485 denial was Mr. Silva's outstanding removal order.<sup>1</sup> Even further, Mr. Silva did file an I-601A, Application for Waiver in May 2025, however during the adjustment of status interview, USCIS informed Mr. Silva, along with counsel from Nova Law Group LLC, Mr. Silva did not commit any fraud or misrepresentations. **In short, Mr. Silva did not commit fraud or any misrepresentations.** Even further, and upon, arriving Mr. Silva immediately applied for asylum.

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<sup>1</sup> The I-485 Decision Notice is attached to the initial as well as amended habeas corpus petition as "Exhibit C: I-485 Decision & Appeal;" the I-485 Decision is attached again hereto for ease.

As evidenced by the I-485 Notice of Decision, the sole adverse premise of USCIS's I-485 denial, the final removal order, has been eliminated by Immigration Judge Monica Neumann's grant in the Motion to Reopen. Upon Mr. Silva's release, he may immediately proceed with his adjustment of status. Being that the Notice to Appear erroneously states Mr. Silva committed fraud and misrepresentations, he is currently being subjected to detention under to INA § 235, 8 U.S.C. 1225 (b) (2).

Second, Mr. Silva has lived in this nation since February 2001– **for over twenty-four years**. A noncitizen with long-term residence in the U.S., such as Mr. Silva, is not properly considered an “applicant for admission” and/or “applicant seeking admission” under INA § 235(b)(2)(A) because such individuals are not affirmatively seeking to enter the country, have significant longstanding physical and social ties within the states, applying such labels circumvents due process, and in and of itself, contradicts the statute's intent. Therefore, such long-term U.S. residents should not be subject to mandatory detention without bond, and instead should be eligible for a custody redetermination/bond hearing under INA § 236(a).

Third, *Matter of Yajure-Hurtado*, which is subjecting Mr. Silva to mandatory detention, 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). Additionally, Federal District Courts across the nation, including the New Jersey Federal District Court, have already disagreed with the *Matter of Yajure-Hurtado* ruling through the re-enforcement of INA § 236(a), not INA § 235(b), and further, many grants in habeas petition reliefs based on the resounding due process violations set forth by *Yajure-Hurtado*. *De Fatima Lomeu v. Soto, et al.*, No. 2:25-cv-16589 (D.N.J. Oct. 23,

2025); *Zumba v Bondi*, 2025 US Dist LEXIS 167666 [DNJ Aug. 28, 2025, No. 25-cv-14626 (KSH)]; *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]).

Fourth, subjecting Mr. Silva to mandatory detention with his approved I-130 petition, pending I-485 appeal, will inevitably result in unconstitutional prolonged detention pursuant to *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *German Santos v. Warden Pike Cty. Corr. Fac.*, 965 F.3d 203, 208 (3d Cir. 2020); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232-33 (3d Cir. 2011); *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d 469, 478 (3d Cir. 2015).

**C. Mr. Silva's unlawful detention, without a bond hearing and approved I-130 violates the Fifth Amendment.**

Repeatedly throughout their brief, Respondents reiterate Mr. Silva's detention, without an opportunity to be heard, and regardless of his pending petitions, as lawful and constitutional – such an allegation is wildly erroneous.

As illustrated in the amended habeas corpus petition, upon an individual evidencing a liberty or property interest, a Court must determine whether constitutionally sufficient procedures were provided by balancing the three factors set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Mr. Silva resubmits: First, Mr. Silva has a significant liberty interest in remaining in the United States – his loving wife, two sons, grandchild, family-owned business, and essentially all he has, is within 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 by prematurely attempting to deport and confining Mr. Silva before full adjudication of his I-485 petition; and Third, the interest of enforcing immigration policies would be valid if the government was even following said policies – Mr. Silva was improperly detained while following the procedural requirements to obtain lawful status.

Additionally, Mr. Silva is neither a flight risk nor a danger to the community. Mr. Silva has established a home in the United States for over twenty-four years and has no criminal record whatsoever.

Pursuant to a long-line of U.S. Supreme Court decisions and the Due Process Clause of the Fifth Amendment, Mr. Silva respectfully resubmits to this Honorable Court that he is improperly being subjected to mandatory detention under INA § 235(b), that his detention should be categorized as discretionary under INA § 236(a), and further, detention without the opportunity to be heard for bond, is unlawful and violates Fifth Amendment Due Process Clause.

For the foregoing reasons, Mr. Silva respectfully resubmits his requests for immediate release from custody or an immediate bond hearing to ensure his detention bears a reasonable relation to the government's interests.

**II. THIS COURT DOES NOT LACK JURISDICTION TO EVALUATE THE EGREGIOUS CONFINEMENT CONDITIONS ENDURED BY MR. SILVA, WHICH VIOLATE THE FIFTH AMENDMENT DUE PROCESS CLAUSE**

Within their Answer to the Amended Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, and specifically concerning confinement conditions, Respondents allege this Court lacks jurisdiction over confinement condition claims, that Mr. Silva failed to claim the confinement conditions correlate to the fact/legality of detention, and that Ms. Silva's punitive conditions are not "exceptional."

First, the U.S. Supreme Court, and further, the Third Circuit, has and continually does evaluate punitive confinement conditions, including but limited to unsanitary conditions and inadequate medical conditions, within habeas corpus petitions; to allege otherwise is clearly mistaken. *Farmer v Brennan*, 511 US 825, 828 (1994); *Helling v. McKinney*, 509 U.S. 25, 33 (1993); *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *E. D. v. Sharkey*, 928 F.3d 299, 307 (3d Cir. 2019); *Tillery v. Owens*, 907 F.2d 418, 420 (3d Cir. 1990); *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d 478 (3d Cir. 2015); *Monmouth Cnty. Corr. Inst. Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987); *Rouse v. Plantier*, 182 F.3d 192, 198 (3d Cir. 1999); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011); *Guerrero Sanchez v. Warden York County Prison*, 905 F.3d 208 (3d Cir. 2018); *Pearson v. Prison Health Serv.*, 850 F.3d 526, 538 (3d Cir. 2017); *Natale v. Camden County Correctional Facility*, 318 F.3d 575, 582 (3d Cir. 2003).

Second, Mr. Silva certainly demonstrated the punitive confinement conditions endured at both Delaney and Winn are in violation of the Fifth Amendment and are directly caused by the fact of his detention. Moreover, Mr. Silva illustrated the unsanitary conditions and the nature of his detention being akin to criminal detention violates his due process rights. *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); *Helling v. McKinney*, 509 U.S. 25, 33 (1993); *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). The punitive conditions endured by Mr. Silva include, but are not limited to, being directed to sleep on dirty floors with plastic garbage bags as blankets, crammed in rooms overflowing with other detainees, repeatedly given meals ridden with black mold for consumption, restriction from shower access, given a “blanket” that is so poorly made it falls apart and causes a sore throat/breathing problems, and so on.

Third, and similar to the extraordinary circumstances in *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 320 (3d Cir. 2020), the punitive conditions endured by Mr. Silva have been exceptional. Being provided with inedible moldy food, being subjected to sleep on dirty floors in overcrowded rooms with nothing but plastic garbage bags for protection, being restricted from shower access, given a “blanket” that is so poorly made it falls apart and causes a sore throat/breathing problems, are just few of the exceptional punitive conditions endured by Mr. Silva.

**III. MR. SILVA CLEARLY SATISFIES THE FACTORS TO OBTAIN TRO RELIEF.**

Mr. Silva resubmits: First, he 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.

**CONCLUSION**

For the foregoing reasons, the undersigned respectfully resubmits the following requests:

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 the immediate transfer back the State of New Jersey; and
4. Order any such other relief as this Court deems just and proper.

Dated: 11/1/25

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I, undersigned counsel, hereby certify that on this date, I filed this Reply to Respondents Answer to the Amended Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order and all attachments using the PACER system.

Dated: 11/1/25

Respectfully Submitted,



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*Counsel for Petitioner*

**I-485 NOTICE OF DECISION**

*(WITHIN EXHIBIT C TO ORIGINAL PETITION & AMENDED PETITION)*

September 10, 2025

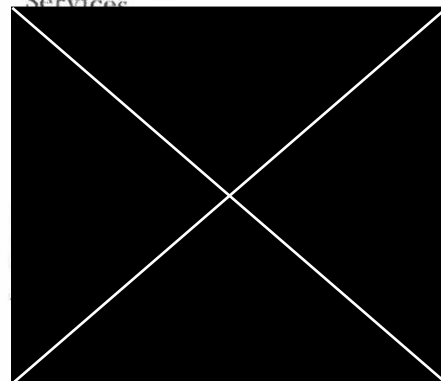
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
8 Cedar Brook Drive  
Cranbury, NJ 08512



U.S. Citizenship  
and Immigration  
Services

CARLOS ALBERTO PEREZ SILVA

RE: CARLOS ALBERTO PEREZ SILVA  
I-485, Application to Register Permanent Residence or  
Adjust Status



**NOTICE OF DECISION**

Dear CARLOS PEREZ SILVA:

On May 8, 2025, you filed a Form I-485, Application to Register Permanent Residence or Adjust Status, with U.S. Citizenship and Immigration Services (USCIS) under section 245 of the Immigration and Nationality Act (hereinafter referred to as INA or "the Act"), based on being the principal beneficiary of a family-based immigrant petition.

After a thorough review of your application, your testimony during your interview, and the record of evidence, we must inform you that we are denying your application.

To qualify for adjustment under INA 245, an applicant must:

- Be inspected and admitted or inspected and paroled into the United States;
- Be eligible to receive an immigrant visa;
- Be admissible to the United States for permanent residence; and
- Have an immigrant visa immediately available at the time the application is filed.

You must demonstrate that you are eligible to adjust status to a lawful permanent resident (LPR). See Title 8 Code of Federal Regulations (hereinafter referred to as 8 CFR), §245.1.

**Statement of Facts and Analysis, Including Reason(s) for Denial**

On September 05, 2025, you appeared for an interview to determine your eligibility for adjustment of status. During the interview and review of your application with an Immigration Services Officer, you testified that the information on your Form I-485, along with any amendments made during the adjustment interview, and supporting evidence were true and correct.

You initially submitted the following evidence in support of your application:

- Birth Certificate for Carlos Alberto Perez Silva;
- I-94 for Carlos Alberto Perez;
- Passport biographic page for Carlos Alberto Perez Silva;



- Form I-864 Affidavit of Support Under Section 213A of the INA and supporting documents;
- Birth certificate for Maria Victoria Urrea'
- Marriage Certificate for Carlos Alberto Perez and Maria Victoria Urrea;
- Notice to Appear for Carlos Alberto Perez

After reviewing the evidence and the testimony provided at the interview, USCIS records indicate that you are ineligible for the following reason(s):

USCIS reviewed your case file and determined that an Immigration Judge ordered that you be removed from the United States on August 03, 2001, but you have not yet departed under that order. It does not appear that the removal proceedings against you have been terminated. See Title 8 Code of Federal Regulations (8 CFR), sections 245.1(c)(8)(ii) and 1245.2(a)(1).

The granting of adjustment of status to that of a lawful permanent resident is a discretionary benefit. See section 245(a) of the INA. Mere eligibility is not the only factor considered in adjustment of status. Adverse factors may preclude a favorable exercise of discretion by USCIS. An applicant must demonstrate eligibility for adjustment of status as a matter of law and in the exercise of discretion. Generally, favorable factors such as family ties, hardship, and length of residence in the United States can be considered in the favorable exercise of administrative discretion.

"[T]he extraordinary discretionary relief [of adjustment] can only be granted in meritorious cases...." Matter of Blas, 15 I&N Dec. 626, 630 (BIA 1974; A.G. 1976). "Factors relevant to determining whether a favorable exercise of discretion is warranted include, but are not limited to, the existence of family ties in the United States; the length of the respondent's residence in the United States; the hardship of traveling abroad; and the respondent's immigration history, including any preconceived intent to immigrate at the time of entering as a nonimmigrant." Matter of Hashmi, 24 I&N Dec. 785, 793 (BIA 2009). Along these lines, a "preconceived intention to remain" in the United States upon entry "a serious adverse factor." Matter of Ibrahim, 18 I&N Dec. 55, 57 (BIA 1981).

Considering the totality of the circumstances, your outstanding removal order outweighs any positive factors you may have. Thus, you have not met the burden of demonstrating to USCIS that you warrant a favorable exercise of discretion. Therefore, USCIS denies your application after consideration of all the available evidence.

You may not appeal this decision. However, if you believe that the denial of your Form I-485 is in error, you may file a motion to reopen or a motion to reconsider using Form I-290B, Notice of Appeal or Motion. The grounds for a Motion to Reopen and Motion to Reconsider are explained in 8 CFR §103.5(a). You must file Form I-290B within 30 days of the date of this decision if the decision was served in person, or within 33 days if the decision was served by mailed. See Title 8 Code of Federal Regulations 8 CFR §103.5(a) and §103.8(b). Note: You must follow the most current filing instructions for Form I-290B, which can be found at [www.uscis.gov](http://www.uscis.gov).

To access Form I-290B or if you need additional information, please visit the USCIS Web site at [www.uscis.gov](http://www.uscis.gov) or call the USCIS Contact Center toll free at 1-800-375-5283.

**NOTE on Employment Authorization Document:** Any employment authorization based upon this Form I-485 is automatically terminated if the expiration date on the employment authorization document has been reached. See Title 8 Code of Federal Regulations (8 CFR), section 274a.14(a)(1)(i). Since this Form I-485 is denied, the condition upon which your employment authorization was based no longer exists. Any unexpired employment authorization based upon this Form I-485 is revoked as of 18 days from the date of this notice, unless you submit, within 18 days,



proof that your Form I-485 remains pending. See Title 8 Code of Federal Regulations (8 CFR), section 274a.14(b)(2). The decision by the district director shall be final and no appeal shall lie from the decision to revoke the authorization. Your employment authorization document should be returned to the local USCIS office.

Any unexpired Employment Authorization Document (Form I-766) issued based on your pending Form I-485 (EAD with C09 or C09P as the eligibility category) is no longer valid and has been officially invalidated in our systems. You are required to return the invalidated EAD immediately by mail using the U.S. Postal Service (USPS) to:

USCIS  
ATTN: Revocation Cards  
7 Product Way  
Lee's Summit, MO 64002

Failure to return the invalidated EAD according to the instructions above can lead to further adverse action.

**NOTE on Advance Parole Document:** Any advance parole document based upon this Form I-485 is automatically terminated if the expiration date of the time for which parole was authorized has been reached. See 8 CFR §212.5(e)(1)(ii). Since this Form I-485 is denied, the purpose for which your advance parole document was issued has been accomplished. Any unexpired advance parole document issued to you based upon this Form I-485 is terminated as of the date of this notice. See 8 CFR §212.5(e)(2)(i). Your advance parole document should be returned to the local USCIS office.

For questions about your applications or petitions filed with USCIS or if you need additional assistance, forms or filing instructions, visit our web site at [www.uscis.gov](http://www.uscis.gov). You can use our online tools at [www.uscis.gov/tools](http://www.uscis.gov/tools), including our virtual assistant Emma for information and guidance.

Please use our Case Status Online Tool at <https://egov.uscis.gov> for status updates. You can also reach out to the USCIS Contact Center online by visiting [www.uscis.gov/contactcenter](http://www.uscis.gov/contactcenter). If you are not able to find the information you need online, call the USCIS Contact Center at 1-800-375-5283. If you are hearing impaired, call the USCIS Contact Center TTY at 1-800-767-1833.

Sincerely,



Ya-Mei Chen  
Field Office Director

