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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 Daniel PEREZ GONZALEZ,

11 Petitioner,

12 v.

13 Jason KNIGHT, Field Office Director of  
Enforcement and Removal Operations, Salt  
Lake City Field Office, Immigration and  
14 Customs Enforcement; Michael  
BERNACKE, Acting Director of the Las  
15 Vegas U.S. Immigration and Customs  
Enforcement Field Sub-Office; Kristi NOEM,  
16 Secretary, U.S. Department of Homeland  
Security; Pamela BONDI, U.S. Attorney  
17 General; John MATTOS, Warden of the  
Nevada Southern Detention Center,

18 Respondents.  
19

Case No. 2:25-cv-02137-RFB-DJA

**Federal Respondents' Response to the  
Petition for Writ of Habeas Corpus  
(ECF No. 1)**

20 The Federal Respondents hereby submit this Response to Petitioner Daniel Perez  
21 Gonzalez ("Petitioner" or "Perez Gonzalez") Petition for Writ of Habeas Corpus (ECF No.  
22 1). For purposes of judicial efficiency, the Federal Respondents hereby incorporate by  
23 reference the arguments set forth in Exhibit A, the Federal Respondents' Response to the  
24 Petition for Writ of Habeas Corpus in *Rivera Lopez v. Noem*, Case No. 2:25-cv-01993-RFB-  
25 NJK (D. Nev.), which the Federal Respondents filed as ECF No. 9 in that case. *See* Exhibit  
26 A. Specifically, the Federal Respondents highlight for the Court's consideration the  
27 arguments set forth in Sections I.A., II, III.B. through III.E of their Response in *Rivera*. The  
28

1 Federal Respondents do not incorporate by reference the arguments set forth in Sections I.B.  
2 and III.A. as those arguments do not apply to Perez Gonzalez's Petition.

3 The Federal Respondents are amenable to receiving a ruling on the papers and are  
4 willing to waive a hearing.

5 In addition to the arguments presented in Exhibit A and incorporated herein, the  
6 Federal Respondents submit the following for the Court's consideration.

### 7 **I. Background**

8 The Federal Respondents hereby incorporate by reference the arguments set forth in  
9 Section I.A. of their Response to the Petition for Writ of Habeas Corpus in *Rivera Lopez v.*  
10 *Noem*, Case No. 2:25-cv-01993-RFB-NJK (D. Nev.). Exhibit A.

11 Regarding the factual background, Petitioner did not file any substantive evidence to  
12 corroborate the facts alleged in the Petition. Further, because the Federal Respondents' have  
13 not had sufficient time to procure the evidentiary record to provide a factual statement in  
14 this case, the Federal Respondents also incorporate by reference the facts alleged in the  
15 Petition. ECF No. 1, ¶¶ 22-26.

### 16 **II. Standard of Review**

17 In a petition for a writ of habeas corpus, the petitioner is challenging the legality of  
18 his restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show  
19 the confinement is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). Specifically,  
20 here, Petitioner challenges his temporary civil immigration detention pending his removal  
21 proceeding.

### 22 **III. Argument**

23 The Federal Respondents hereby incorporate by reference the arguments set forth in  
24 Section III.B through III.E. of their Response to the Petition for Writ of Habeas Corpus in  
25 *Rivera Lopez v. Noem*, Case No. 2:25-cv-01993-RFB-NJK (D. Nev.). Exhibit A. The Federal  
26 Respondents further present the following pertinent arguments that are relevant to Perez  
27 Gonzalez's Petition.

#### 28 **A. The Petition Should Be Denied for Failure to Carry the Burden of Proof**

1           **1. Petitioner Bears the Burden of Proof in Immigration Habeas Proceedings**

2           In immigration habeas corpus proceedings brought under 28 U.S.C. § 2241, the  
3 petitioner must present evidence establishing the factual predicates for his claims. Habeas  
4 corpus is an extraordinary remedy, and petitioners seeking such relief cannot proceed on  
5 unsupported allegations alone. A recent decision directly on point illustrates this principle.  
6 In *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), the  
7 court denied an immigration habeas petition where the petitioner argued he should be  
8 detained under § 1226 rather than § 1225 but failed to provide any documentary evidence  
9 supporting his claim. *Id.* at \*6. The court held this evidentiary failure was fatal to the  
10 petition, emphasizing that petitioners must come forward with proof to support their  
11 statutory arguments. *Id.* Further, at no point did the court place the burden of proof on the  
12 United States.

13           The *Vargas Lopez* court explained that even where the legal question is disputed and  
14 potentially meritorious, the petitioner must establish the factual predicates necessary to  
15 resolve that dispute. Without evidence, the petition must be denied regardless of the  
16 theoretical merits of the petitioner's legal theory. This principle recognizes that courts  
17 cannot grant extraordinary relief based on speculation or attorney argument divorced from  
18 factual support.

19           **2. The Court's Order Improperly Requires the Federal Respondents to Build**  
20 **Petitioner's Case**

21           The Court's Order (ECF No. 6) directs the Federal Respondents to file with their  
22 return “any arrest warrant, Notice to Appear, Form-286, and/or Form I-213 relevant to  
23 Petitioner's detention.” This directive effectively requires the United States to produce the  
24 very documents that form the evidentiary foundation of Petitioner's case. By ordering the  
25 Federal Respondents to produce these materials in the first instance, the Court's order  
26 inverts the proper allocation of burdens in habeas proceedings.

27           The show cause language in 28 U.S.C. § 2243 establishes a procedural framework for  
28 expedited responses to habeas petitions, but it does not alter the fundamental principle that

1 petitioners must support their factual allegations with evidence. The statute requires  
2 respondents to certify the true cause of detention and make a return, but this procedural  
3 obligation to respond does not eliminate the petitioner's burden of establishing unlawful  
4 detention with evidence.

5 **3. The Documents at Issue Are Essential to Petitioner's Claims and**  
6 **Petitioner Should Have Obtained Them Before Filing**

7 Each of the documents specified in the Court's Order are required for Petitioner to  
8 support his Petition. The Notice to Appear is the charging document in removal  
9 proceedings. It includes information regarding charges of inadmissibility or deportability,  
10 when removal proceedings commenced, what court has jurisdiction, and when Petitioner's  
11 initial hearing was scheduled. *See Pereira v. Sessions*, 585 U.S. 198, 204 (2018) (describing  
12 Notice to Appear as document that initiates removal proceedings).

13 The Form I-286 (Notice of Custody Determination) notifies an alien of the statutory  
14 authority under which he is being detained. It informs the alien whether he is eligible for a  
15 bond hearing and whether he can request one. Petitioner's entire legal theory rests on the  
16 claim that he is being improperly detained under § 1225(b)(2) when he should be detained  
17 under § 1226(a) with eligibility for bond. The Form I-286 would be evidence regarding what  
18 authority DHS claims to be detaining Petitioner. Yet Petitioner has not produced this  
19 document or explained its absence.

20 The Form I-213 (Record of Deportable/Inadmissible Alien) documents Petitioner's  
21 complete immigration history as known to DHS. It includes information about entries into  
22 the United States, any prior grants of immigration status, any revocations of status, criminal  
23 history, prior removal proceedings, prior removals, and the factual basis for current removal  
24 charges. This document is essential to evaluating whether Petitioner's characterization of his  
25 immigration history is accurate and complete. Petitioner alleges he entered without  
26 inspection in 2004 and has resided in the United States continuously since then. But the  
27 Form I-213 would reveal whether Petitioner ever sought or obtained any immigration status  
28 during those years, whether he departed and reentered the United States, whether he was

1 previously in removal proceedings, and whether there are other aspects of his immigration  
2 history relevant to determining which detention statute applies.

3 The requested documents are precisely the documents Petitioner needs to establish  
4 the factual predicates for his legal claims. Petitioner argues that he is improperly detained  
5 under § 1225(b)(2) because that provision applies only to arriving aliens and recent entrants,  
6 not to individuals who entered years ago and have been residing in the United States. To  
7 establish this claim, Petitioner must prove his case, and each of the alleged factual elements  
8 in his case requires documentary support, yet Petitioner has provided none.

9 **4. Petitioner Has Access to These Documents Through Established**  
10 **Administrative Channels**

11 Petitioner has made no effort to obtain these documents before filing his Petition and  
12 has offered no explanation for why he cannot obtain them through established  
13 administrative channels. Immigration attorneys routinely obtain their clients' immigration  
14 files through Freedom of Information Act requests submitted to ICE and USCIS.  
15 Immigration attorneys also obtain documents through Privacy Act requests, which provide  
16 access to agency records about specific individuals. There are established procedures and  
17 regulations to access the relevant agency records, including A-files. *See e.g.* 8 C.F.R. § 103.42  
18 (rules relating to FOIA and the Privacy Act).

19 Petitioner's counsel is experienced in immigration law. It is inconceivable that  
20 counsel does not know that the documents specified in the Court's order are standard  
21 materials that must be obtained to properly evaluate and litigate habeas claims. Yet the  
22 Petition contains no representation that counsel attempted to obtain any of these materials  
23 before filing. The Petition does not state that counsel submitted a FOIA request and is  
24 awaiting a response. It does not state that counsel requested documents from ICE counsel  
25 and was refused. It does not state that counsel requested the A-file under applicable  
26 regulations and encountered obstacles. The Petition is entirely silent regarding any efforts to  
27 secure documentary support for Petitioner's allegations.  
28

1 This silence suggests that Petitioner filed this habeas petition without undertaking  
2 even basic efforts to obtain the documentary evidence necessary to support his claims.  
3 Petitioner appears to have assumed that the burden would shift to the Federal Respondents  
4 to produce all relevant materials once a petition was filed, regardless of whether Petitioner  
5 made any threshold evidentiary showing. This assumption is fundamentally at odds with  
6 habeas corpus principles and the allocation of burdens. The party seeking relief bears the  
7 burden of establishing entitlement to that relief, which necessarily includes the burden of  
8 producing evidence supporting factual allegations.

9 **5. The Court's Order Creates an Improper Presumption of Unlawful**  
10 **Detention**

11 The allocation of documentary production responsibilities ordered by the Court is  
12 problematic because it creates a presumption that detention is unlawful unless the United  
13 States affirmatively disproves all possible grounds for relief. Under the proper framework,  
14 Petitioner must first establish a threshold showing of unlawful detention supported by  
15 evidence. This means Petitioner must produce documents and testimony demonstrating that  
16 he is detained under circumstances not authorized by statute or in violation of constitutional  
17 protections. Only after Petitioner makes this threshold showing might the government need  
18 to produce contrary evidence or justify continued detention with additional materials.

19 Here, Petitioner has not made even a threshold evidentiary showing. He has filed  
20 legal arguments and conclusory allegations without any supporting documentation. Yet the  
21 Court's order requires the Federal Respondents to produce documentation as if Petitioner  
22 had already sustained his initial burden. This approach allows petitioners to file bare-bones  
23 petitions consisting of legal theories and unsupported allegations, then require the United  
24 States to produce all potentially relevant materials that might support or refute those  
25 theories. Such an approach would fundamentally alter habeas practice and create perverse  
26 incentives for petitioners to file first and gather evidence later, knowing that the United  
27 States will be required to produce materials that petitioner should have obtained before  
28 filing.

1 The proper approach requires Petitioner to produce the documents identified in the  
2 Court's order as part of his initial evidentiary showing. If Petitioner cannot obtain these  
3 documents through established administrative channels despite reasonable efforts, Petitioner  
4 should explain those efforts and the obstacles encountered. The Court could then determine  
5 whether to order production by the Federal Respondents based on a showing that the  
6 documents are genuinely unavailable to Petitioner despite diligent efforts. But requiring the  
7 Federal Respondents to produce these documents in the first instance, without any showing  
8 that Petitioner attempted to obtain them or cannot obtain them, improperly shifts the  
9 burden of proof and creates the framework for habeas litigation by ambush rather than by  
10 proper evidentiary development.

11 **6. Petitioner Has Provided No Evidence Supporting His Factual Allegations**

12 Petitioner's Petition (ECF No. 1) consists entirely of legal argument and conclusory  
13 factual allegations unsupported by any documentary evidence. Despite having the burden of  
14 proof in this immigration habeas proceeding, Petitioner has attached no exhibits, affidavits,  
15 declarations, or administrative records to support his claims.

16 Petitioner makes numerous specific factual allegations throughout the Petition. He  
17 argues he has statutory rights under Section 1226(a) but has provided no evidence of a  
18 warrant for his arrest. He alleges that he entered the United States in 2004 without  
19 inspection. ECF No. 1, ¶ 22. He alleges that he was apprehended on October 19, 2025, by  
20 police and ICE officials while attending a horse race in Wilder, Idaho. *Id.* ¶ 24. He provides  
21 detailed allegations about the circumstances of his apprehension, including that he was in  
22 his vehicle with his family when officials broke the vehicle's glass which struck his eight-  
23 year-old child. *Id.* He alleges that he has not been scheduled for a hearing on his  
24 removability. *Id.* ¶ 23.

25 Despite these detailed factual assertions, Petitioner has provided no evidence  
26 whatsoever to support any of these claims. This failure to provide evidentiary support is not  
27 merely a technical deficiency. The documents Petitioner has failed to produce are essential  
28 to resolving the central legal question in this case, namely whether Petitioner is properly

1 detained under 8 U.S.C. § 1225(b)(2) or § 1226(a). Without evidence of Petitioner's  
2 immigration history, the circumstances of his entry, any prior immigration proceedings or  
3 grants of status, and the specific charges filed against him, the Court cannot evaluate  
4 whether the statutory framework Petitioner challenges actually applies to him.

5 **7. The Petition Should Be Dismissed or Denied**

6 For the foregoing reasons, the Petition should be dismissed or denied for failure to  
7 carry the burden of proof. Petitioner has provided no evidence supporting his factual  
8 allegations despite having access to administrative mechanisms for obtaining relevant  
9 documentation. The Petition consists entirely of legal argument and conclusory assertions  
10 insufficient to sustain extraordinary habeas relief. *See Vargas Lopez*, 2025 WL 2780351, at \*6.

11 The Court's order requiring the Federal Respondents to produce the foundational  
12 documents for Petitioner's case improperly shifts the burden of proof from Petitioner to the  
13 Federal Respondents. Petitioner should not be permitted to use the immigration habeas  
14 process to force the United States to construct his case for him when he has not even  
15 attempted to obtain the readily available documentation necessary to support his claims.  
16 The proper approach requires Petitioner to produce these documents as part of his initial  
17 evidentiary showing, or at minimum to explain what efforts he made to obtain them and  
18 why those efforts were unsuccessful.

19 Only if Petitioner provides the requisite supporting documentation can the Court  
20 properly evaluate whether Petitioner's detention is authorized by statute and whether his  
21 legal arguments have any application to his circumstances.

22 For the foregoing reasons, the Petition should be denied.

23 **B. To the Extent the Court Determines Section 1226(a) Governs, Petitioner May  
24 Challenge His Detention Via a Bond Hearing**

25 Section 1226 “generally governs the process of arresting and detaining [aliens who  
26 have already entered the United States] pending their removal.” *Jennings*, 583 U.S. at 288.  
27 Section 1226(a) provides that “an alien *may* be arrested and detained pending a decision on  
28 whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a) (emphasis

1 added). The Attorney General and DHS thus have broad discretionary authority to detain  
2 an alien during removal proceedings. *See* 8 U.S.C. § 1226(a)(1) (DHS “may continue to  
3 detain the arrested alien” during the pendency of removal proceedings); *Nielsen v. Preap*, 586  
4 U.S. 392, 409 (2019) (highlighting that “subsection (a) creates authority for *anyone’s* arrest or  
5 release under § 1226—and it gives the Secretary broad discretion as to both actions”). When  
6 an alien is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R.  
7 § 236.1(c)(8). DHS “may continue to detain the arrested alien.” 8 U.S.C. § 1226(a)(1). “To  
8 secure release, the alien must show that he does not pose a danger to the community and  
9 that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 594 U.S. 523,  
10 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). If DHS decides to release the alien,  
11 it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. §  
12 236.1(c)(8). Even after DHS decides to release an alien, it may “at any time revoke such  
13 release, “rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C. §  
14 1226(b).

15 If DHS determines that an alien should remain detained during the pendency of his  
16 removal proceedings, the alien may request a custody redetermination hearing (*i.e.*, a “bond  
17 hearing”) before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The  
18 immigration judge then conducts a bond hearing and decides whether to release the alien,  
19 based on a variety of factors that account for the alien’s ties to the United States and  
20 evaluate whether the alien poses a flight risk or danger to the community. *See Matter of*  
21 *Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *see also* 8 C.F.R. § 1003.19(d) (“The  
22 determination of the Immigration Judge as to custody status or bond may be based upon  
23 any information that is available to the Immigration Judge or that is presented to him or her  
24 by the alien or [DHS].”).

25 Section 1226(a) does not provide an alien with an absolute right to release on bond.  
26 *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)).  
27 Nor does the Constitution. *Velasco Lopez*, 978 F.3d at 848. Furthermore, Section 1226(a)  
28 grants DHS and the Attorney General broad discretionary authority to determine whether

1 to detain or release an alien during his removal proceedings. *See id.* In the exercise of this  
2 broad discretion, and consistent with DHS regulations, the BIA—whose decisions are  
3 binding on immigration judges—has placed the burden of proof on the alien, who “must  
4 establish to the satisfaction of the Immigration Judge . . . that he or she does not present a  
5 danger to persons or property, is not a threat to the national security, and does not pose a  
6 risk of flight.” *Matter of Guerra*, 24 I. & N. Dec. at 38. The BIA’s “to the satisfaction”  
7 standard is equivalent to a preponderance of the evidence standard. *See Matter of Barreiros*, 10  
8 I. & N. Dec. 536, 537 (BIA 1964). If, after the bond hearing, the immigration judge  
9 concludes that the alien should not be released, or the immigration judge has set a bond  
10 amount that the alien believes is too high, the alien may appeal that decision to the BIA. *See*  
11 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

12 **III. Conclusion**

13 For these reasons as well as those presented in the incorporated portions of Exhibit  
14 A, Federal Respondents request that the Petition be denied.

15 Respectfully submitted this 12th day of November 2025.

16  
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