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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

ASAEL PEREIRA

Petitioner,

v.

MITCHELL DIAZ Assistant Field Office Director for Detention at Broward Transitional Center; **GARRETT RIPA,** Director of Miami Field Office, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; **TODD LYONS**, Acting Director, U.S. Immigration and Customs Enforcement **KRISTI NOEM** Secretary of the U.S. Department of Homeland Security; and **PAMELA BONDI,** Attorney General of the United States, in their official capacities,

Respondents.

Case No. ________________

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Asael Pereira (Mr. Pereira) is a citizen of Brazil who most recently arrived in the United States on or about May 29, 2017 after being inspected and admitted as a B-2 visitor.

2. He is currently a civil immigration detainee held at the Broward Transitional Center ("BTC") under the authority of U.S. Immigration and Customs Enforcement ("ICE") since May 17, 2025.

3. On June 3, 2025, Petitioner's immigration counsel requested that he be released on bond through a custody redetermination under 8 C.F.R §1236. At the bond hearing the Immigration Judge ("IJ") denied bond exclusively on the grounds of alleged flight risk.

4. U.S. Immigration and Customs Enforcement (ICE) presented as evidence a 2015 blog published in Brazil. The blog contains unverified, uncorroborated, and demonstrably speculative claims about Mr. Pereira.

5. ICE's continued detention of Petitioner violates the Due Process Clause of the Fifth Amendment because it is based on materially unreliable evidence and ignores substantial evidence demonstrating that Petitioner is neither a danger to the community nor a flight risk.

6. The IJ's determination relied heavily and improperly on information contained in an unreliable foreign blog from Petitioner's home country. Therefore, the IJ erred in making a determination that Mr. Pereira is a flight risk.[1]

7. Furthermore, the IJ disregarded substantial, credible, and unrebutted evidence of Petitioner's deep ties to Florida, including: long-term residence, immediate family members who are U.S. citizens or lawful residents, active participation in his church community, and a stable residence where he would live if released.

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[1] See for similar argument on dangerousness determination, e.g., Martinez v. Clark, 144 S. Ct. 1339 (2024) (vacating and remanding Ninth Circuit decision finding no jurisdiction to review dangerousness determination in denying bond), and Martinez v. Clark, No. 21-35023, __ F.4th__, 2024 WL 5231197, *7 (9th Cir. Dec. 27, 2024) (following remand, holding that court has jurisdiction to review danger determination under abuse of discretion standard).

8. Mr. Pereira is not subject to mandatory detention, his removal proceedings are ongoing and he is eligible for adjustment of status. Mr. Pereira was unlawfully denied bond due to respondent's failure to consider alternatives to detention in custody determinations, failure to consider the evidence presented and due its reliance on erroneous and unreliable information found on the internet.

9. Since Mr. Pereira is likely to face many additional months in detention, he seeks relief from this Court that would allow him to challenge the continuing, lengthy and unlawful detention. Accordingly, to vindicate Petitioner's statutory and constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

10. Petitioner further asks this Court to find that Respondent's denial of a bond as well the failure to consider alternatives to detention in custody determinations are arbitrary and capricious in violation of the law, and to immediately issue an order preventing Petition's transfer out of this district.

JURISDICTION

11. Petitioner is in the physical custody of Respondents. He is detained at BTC and under the direct control of Respondents and their agents "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2241(c)(3).

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. §1101 *et. seq.*

13. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651 and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

14. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis,* 533 U.S. 678, 687 (2001).

VENUE

15. Venue is proper because Petitioner is detained at BTC in Pompano Beach, FL which is within the jurisdiction of this District.

16. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to his claims occurred in this District. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2241, 2243

17. The Court must grant the petition for writ of habeas corpus and issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

18. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and

imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

19. Petitioner is "in custody" for the purpose of §2241 because Petitioner was arrested and detained by Respondents.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

20. The agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v. Amer-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claim).

PARTIES

21. Petitioner is a citizen of Brazil who most recently arrived in the United States on or about May 29, 2017 after being inspected and admitted as a B-2 visitor. Petitioner is currently detained at BTC. He is in the custody, and under the direct control, of Respondents and their agents since May 17, 2025.

22. Respondent MITCHELL DIAZ Assistant Field Office Director for Detention at Broward Transitional Center and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent DIAZ is a legal custodian of Petitioner.

23. Respondent GARRETT RIPA is the Director of Miami Field Office, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations. Respondent RIPA is a legal custodian of Petitioner and has authority to release him.

24. Respondent TODD LYONS the Acting Director U.S. Immigration and Customs Enforcement. Respondent LYONS has authority over the actions of respondents DIAZ and RIPA and ICE in general. Respondent LYONS is a legal custodian of Petitioner.
25. Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement the component agency responsible for Petitioner's detention and custody. Respondent NOEM is a legal custodian of Petitioner.
26. Respondent PAMELA BONDI is the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent BONDI is a legal custodian of Petitioner.
27. This action is commenced against all Respondents in their official capacities.

STATEMENT OF FACTS

28. The Petitioner is a citizen of Brazil who lawfully entered the United States on or about March 29, 2017, after being inspected and admitted as a B-2 visitor. He subsequently filed Form I-129 and was granted valid nonimmigrant status through July 1, 2021. Prior to the expiration of that status, on June 17, 2020, Mr. Pereira timely filed Form I-485 as the beneficiary of his spouse's Form I-140, which was later approved. Thereby maintaining lawful presence in the United States.
29. Mr. Pereira is in a long-term relationship to the mother of his children, Tayana Dacorregio. They have been together for 12 years and have a legal common law marriage recognized

as legal marriage in Brazil. She is a lawful permanent resident. They are parents of N.D.P. who is 9 years old and Nh.D.P. who is 6 years old. N.D.P is a lawful permanent resident and Nh.D.P is a U.S. citizen born in Orlando, FL.

30. Mrs. Dacorregio battled breast cancer that was diagnosed on or about 2021. She is now in remission but still suffering the consequences of the cancer treatment and undergoing reconstruction surgery.

31. Mr. Pereira's younger son Nh.D.P, has been diagnosed with language disorder, ADHD and learning disability.

32. The Form I-485 was later denied due to a USCIS error which alleged that Mr. Pereira failed to maintain continuously lawful status from March 29, 2017 to June 17, 2020. However, such a statement is incorrect as he has maintained lawful status until July 1, 2021, and the denial of his case relies solely on an inaction of USCIS and error pursuant to 8 C.F.R. § 245.1(d)(2)(iii). Accordingly, in light of the Service's prejudicial inaction and the technical violation arising through no fault of the applicant, he remains eligible for adjustment of status under 8 C.F.R. § 245.1(d)(2)(ii).

33. On May 17, 2025, Mr. Pereira was arrested and detained by ICE and charged under INA 237(a)(1)(B). He appeared for a bond hearing on June 3, 2025, which was denied based on the Respondents' finding that he posed a flight risk. A motion to reconsider was filed and subsequently dismissed on July 1, 2025. An appeal was filed with the BIA and is currently pending.[2]

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[2] In detention cases, appeals to the Board of Immigration Appeals (BIA) can take months or years. Thus, requiring habeas petitioners to appeal to the BIA to prudentially exhaust is not efficient, would cause irreparable harm by continuing to deprive a person of their liberty.

34. Respondents' determination that Mr. Pereira presents a flight risk was based primarily on his departure from Brazil during the pendency of judicial proceedings. However, this finding is not supported by the record and constitutes both legal and factual error.

35. Mr. Pereira lawfully entered the United States on March 29, 2017, after inspection and admission as a B-2 visitor. At the time of his departure, no final adjudication had been issued in the Brazilian matter. In fact, the case did not reach a final decision until May 29, 2024, more than seven years after his entry into the United States. There is no indication in the record that Mr. Pereira left Brazil to avoid judicial process or failed to comply with any legal obligations.

36. Throughout the proceedings in Brazil, Mr. Pereira was represented by licensed legal counsel who ensured that his procedural rights and responsibilities were fully observed. At no time did Mr. Pereira fail to appear for any hearings, whether in-person or remote, in either the United States or Brazil. This evidence was presented to Respondents during the bond proceedings.

37. The corruption crime Mr. Pereira was charged in Brazil resulted in a conviction in 2024. He was charged while holding a political position as city councilman. He was sentenced for 2 years and 8 months in a semi-open regime. The conviction is now under Appeal as Mr. Pereira has a criminal law attorney representing him in Brazil.

38. Petitioner has no criminal convictions in the Unites States. He had two criminal charges in Florida. One in 2018 for Grad Theft that resulted in Nolle Prosequi and a traffic violation which was dismissed. Mr. Pereira provided the court records during the bond proceedings.

39. The blog relied upon by ICE is not a reputable news source. It was published in 2015 and lacks editorial standards, provides no credible citations, and contains unverifiable

allegations. The statements in the blog are contradicted by official records, witness statements, and all evidence submitted by Petitioner. The IJ improperly credited the blog while dismissing Petitioner's favorable family and community ties evidence as insufficient, without providing a reasoned explanation.

40. Petitioner resides at a stable address, is deeply involved in his church community, and has a United States citizen sponsor. The IJ's determination of flight risk, based solely on international travel during the pendency of proceedings in Brazil, is speculative and unsupported by the record.

41. Mr. Pereira deserves the right to wait for proceedings in non-custody, and his presence is critical to the emotional and financial stability of the household, particularly as his wife continues to recover from breast cancer and his son Nh.D.P who has special needs.

42. Petitioner's continued detention has caused severe hardship to his family in Florida, including emotional distress and financial instability.

43. Mr. Pereira prolonged detention is unconstitutional because it is based on procedurally defective factfinding and unreliable evidence.

LEGAL FRAMEWORK

44. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

45. The Immigration and Nationality Act (INA) establishes various procedures through which individuals may be detained pending a decision on whether the noncitizen is to be removed. 8 U.S.C. § 1226(a).

46. Removal proceedings described in section 240 of the INA are used to determine whether individuals, such as Petitioner, should be removed from the United States. See 8 U.S.C. § 1229a.

47. Immigration detention is a form of civil confinement that "constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 4253 (1979).

48. Custody determinations for individuals in 1229a removal proceedings are governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); Matter of Guerra, 24 I&N Dec. 37 (BIA 2006).

49. Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a case-by-case review of the facts and circumstances.

50. Courts that apply a reasonableness test have considered three main factors in determining whether prolonged detention is reasonable. First, courts have evaluated whether the noncitizen has raised a "good faith" challenge to removal—that is, the challenge is "legitimately raised" and presents "real issues." *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a "function of the length of the detention," with detention presumptively unreasonable if it lasts six months to a year. Id. at 477-78; accord *Sopo v. United States*, 825 F.3d 1199 (11th Cir. 2016) at 1217-18. Third, courts consider the likelihood that detention will continue pending future proceedings. Chavez-Alvarez, 783 F.3d at 478 (finding detention unreasonable after

ninth months of detention, when the parties could "have reasonably predicted that Chavez-Alvarez's appeal would take a substantial amount of time, making his already lengthy detention considerably longer"); Sopo, 825 F.3d at 128; Reid, 819 F.3d at 500.

51. To justify immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. See *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). The same is true for other contexts in which the Supreme Court has permitted civil detention; in those cases, the Court has relied on the fact that the government bore the burden of proof at least by clear and convincing evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention where the detainee was afforded a "full-blown adversary hearing," requiring "clear and convincing evidence" before a "neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, inter alia, they placed burden on detainee); see also *Padilla v. Immigration & Customs Enf't*, 379 F. Supp. 3d 1170 (W.D. Wash. 2019) (requiring the government to bear the burden of proof for class members who receive bond hearings after being found to have a credible fear of persecution or torture); *Banda v. McAleenan*, 385 F. Supp. 3d 1120-21 (in case of arriving asylum seeker, government must bear burden of proof to justify continued detention after noncitizen had been detained for more than 18 months).

52. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v.*

Wolfish, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program, the Intensive Supervision Appearance Program (ISAP), has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). It follows that alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process

53. The allegations in the above paragraphs are realleged and incorporated herein.
54. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.
55. Petitioner's private interests in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004); *see also Zadvydas v Davis*, 533 U.S. 678. 690 (2001) ("Freedom from imprisonment-form government custody, detention, or other forms of physical restraint- lies at the heart of the liberty that [the Due process] Clause protects.")
56. The IJ's reliance on unverified and unreliable evidence, and the Respondents' disregard of substantial contrary evidence, violated Petitioner's right to a fair bond hearing.
57. Detention based on materially false or unreliable evidence is arbitrary and unconstitutional.
58. The risk of erroneous deprivation is exceptionally high. Petitioner has strong ties to the community.

59. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO
Violation of 8 U.S.C. § 1226(a) and Implementing Regulations
Unlawful Denial of release on Bond

60. The allegations in the above paragraphs are realleged and incorporated herein.

61. Under § 1226(a), civil immigration detention is permitted only where the government can show that the individual is a danger to the community or a flight risk.

62. The evidence presented by ICE lacked reliability, and the IJ failed to give proper weight to Petitioner's evidence of extensive family and community ties. As such, Petitioner's continued detention is unlawful.

63. For these reasons, Petitioner's detention violates 8 U.S.C. § 1226(a). *See* 8 C.F.R. § 236 and §1003.19.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this writ should not be granted within three days;

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

(4) Declare that Petitioner's continuing detention under 8 U.S.C. § 1226(a), and 8 C.F.R. § 236 is unlawful;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Mr. Pereira on his own recognizance or under parole, a low bond or reasonable conditions of supervision under alternative to detention programs;

(6) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;

(7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(8) Grant any further relief this Court deems just and proper.

Respectfully submitted,

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Pro Bono Counsel for Petitioner

Dated: November 23, 2025

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Asael Pereira, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 23 day of November, 2025.

Vanessa McCarthy
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Florida Bar 109072