UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

OCTAVIO DE GABRIEL PEREZ,
Petitioner,

v.

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

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

PAMELA BONDI,
in her official capacity as Attorney General, U.S. Department of Justice;

KRISTI NOEM,
in her 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.:

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

MOTION FOR TEMPORARY RESTRAINING ORDER/INJUNCTIVE RELIEF

Petitioner, Octavio De Gabriel Perez ("Mr. Perez"), respectfully moves before this Honorable Court for a Temporary Restraining Order and Injunctive Relief, to enjoin the Respondents from continuing his unlawful detention during the pendency of his habeas corpus petition filed under 28 U.S.C. § 2241 and upon any grant in release, through the instant request for restraining order and/or habeas corpus petition, the issuance of an injunction to prevent further re-arrest.

On December 11, 2025, Mr. Perez was detained by U.S. Immigration and Customs

Enforcement ("ICE") and placed at the Delaney Hall Detention Facility in Newark, New Jersey. The corresponding habeas petition challenges his unlawful detention on the grounds that ICE is detaining Mr. Perez without providing necessary and prescribed medical care for serious chronic medical conditions, in violation of the Fifth Amendment Due Process Clause.

To obtain a temporary restraining order and 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. Perez is likely to succeed on the merits because he has raised substantial constitutional claims demonstrating that his continued detention without access to necessary medical care violates the Due Process Clause of the Fifth Amendment. Mr. Perez suffers from Type 2 diabetes mellitus, essential hypertension, and hyperlipidemia—serious chronic conditions that require continuous treatment and daily prescription medication. Despite ICE's knowledge of these conditions, Mr. Perez has not been provided with his prescribed medications while detained, rendering his continued confinement unlawful and unconstitutional.

Second, absent the preliminary relief requested, Mr. Perez will suffer irreparable harm. Such harm includes not only the profound deprivation of liberty inherent in unlawful detention, but also the imminent and severe risk to his health and life. The interruption of treatment for diabetes and hypertension places Mr. Perez at risk of stroke, cardiovascular events, organ damage, or death. Each day that Mr. Perez remains detained without medical treatment compounds this risk and constitutes irreparable injury that cannot be remedied after the fact.

Third, the balance of equities weighs decisively in Mr. Perez's favor. Mr. Perez poses no

danger to the community and is not a flight risk. Any purported burden on the government is minimal and speculative, particularly when compared to the grave and irreversible harm Mr. Perez faces. Continued detention under these circumstances serves no legitimate governmental interest and instead imposes unnecessary fiscal and administrative costs on the government.

Fourth, the public interest is served by ensuring compliance with the Constitution, safeguarding human life, preserving meaningful judicial review under 28 U.S.C. § 2241, and preventing unlawful detention under conditions that violate basic due process protections.

For the foregoing reasons, Petitioner respectfully requests that this Court: 1. Issue a Temporary Restraining Order enjoining Respondents from continuing Petitioner's detainment until resolution of the habeas petition; 2. Issue a preliminary and permanent injunction restraining Respondents from re-arresting or re-detaining Petitioner absent a lawful and constitutional basis; 3. In the alternative, enter a temporary restraining order prohibiting Respondents from transferring Mr. Perez, while in custody, outside this Honorable Court's jurisdiction while this action is pending; and 4. Grant any further relief the Court deems just and proper.

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

Petitioner, Octavio de Gabriel Perez ("Mr. Perez"), respectfully petitions this Honorable Court for a writ of habeas corpus to remedy his unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner Octavio De Gabriel Perez is a citizen of Mexico who first entered the United States in 1997 and has continuously resided in this country since 2007. He is the father of three United States citizen children, a long-term resident of this country, and an individual with no serious criminal history.

2. On December 11, 2025, Mr. Perez was taken into custody by U.S. Immigration and Customs Enforcement ("ICE") and detained at the Delaney Hall Detention Facility in Newark, New Jersey.
3. Mr. Perez suffers from serious chronic medical conditions, including Type 2 diabetes mellitus, essential hypertension, and hyperlipidemia, all of which require continuous medical monitoring and daily prescription medication. Despite ICE's knowledge of these conditions, Mr. Perez has not been provided with his prescribed medications while in custody.
4. Mr. Perez's detention under these circumstances is unlawful and unconstitutional. Immigration detention is civil in nature and may not be punitive in purpose or effect. Detaining Mr. Perez without providing necessary medical care violates the Due Process Clause of the Fifth Amendment and renders his continued confinement unlawful.
5. Mr. Perez respectfully requests that this Court grant his immediate release from ICE custody.

PARTIES

6. Mr. Perez has been detained by Respondents since December 11, 2025, at Delaney Hall Detention Facility ("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. Perez is currently detained.
8. 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. Perez.
9. 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. Perez.

10. 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. Perez.

11. 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. Perez.

JURISDICTION

12. This Court has proper jurisdiction over this 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.

13. 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).

14. Mr. Perez'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

15. 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.

16. Mr. Perez 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

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

18. 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.*

19. 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).

20. Mr. Perez is not required to prove exhaustion because he is advancing due process claims in

the instant habeas petition.

STATEMENT OF FACTS

21. Petitioner Octavio De Gabriel Perez was born on [redacted] in Mexico. He first entered the United States in 1997 and, except for a brief voluntary departure in 2006 to visit family, has continuously resided in the United States since 2007. The United States has been Mr. Perez's home for nearly two decades. *See Exhibit A: Declaration of Octavio De Gabriel Perez in Support of his Habeas Petition* ¶¶ 1-2. ("*Exhibit A*").

22. Mr. Perez is the father of three United States citizen children, all of whom reside in the United States and depend on him for emotional, physical, and financial support. *See Exhibit A* ¶ 3.; *see also Exhibits B: Birth Certificates ("Exhibit B")*. He has no serious criminal history. The only legal matter in his past involved a minor transit-related offense that was resolved through payment of a fee and completion of community service and was thereafter dismissed. *See Exhibit A* ¶ 4.

23. Prior to his detention, Mr. Perez was under ongoing medical care for Type 2 diabetes mellitus, essential hypertension, and hyperlipidemia, all of which require continuous monitoring and daily prescription medication. His treating providers prescribed metformin, lisinopril, and atorvastatin, and emphasized the importance of strict medication compliance to prevent serious medical complications. *See Exhibit C: Medical Records of Octavio De Gabriel Perez* ("*Medical Records*") *("Exhibit C").*

24. On December 11, 2025, Mr. Perez was taken into custody by U.S. Immigration and Customs Enforcement ("ICE") and detained at the Delaney Hall Detention Facility in Newark, New Jersey, where he remains confined. *See Exhibit A,* ¶ 7.

25. At intake and repeatedly thereafter, Mr. Perez informed ICE and detention staff of his diagnosed medical conditions and prescribed medications. Despite ICE's knowledge of his medical needs, Mr. Perez has not been provided with his prescribed medications since his detention. *See Exhibit A,* ¶¶ 8-10.

26. As a result, Mr. Perez's chronic medical conditions are uncontrolled. His medical records document elevated blood glucose levels and uncontrolled blood pressure, placing him at serious risk of stroke, cardiovascular events, kidney damage, and other life-threatening complications if treatment is not resumed. *See Exhibit C.*

27. Continued detention without access to necessary medical care places Mr. Perez at imminent risk of serious and irreversible harm and renders his detention unsafe and punitive in effect.

28. If released, Mr. Perez has immediate access to medical care and family support and will be able to resume prescribed treatment without delay. *See Exhibit A* ¶ 12. He is also eligible to apply for cancellation of removal for non-permanent residents under INA § 240A(b), which his counsel intends to pursue following his release.

LEGAL FRAMEWORK

29. Immigration detention is civil in nature and must "bear a reasonable relation to the purpose for which the individual is detained" so that it remains "nonpunitive in purpose and effect." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). To comport with due process, civil detention must be limited to legitimate regulatory purposes and may not impose conditions that transform detention into punishment. *Id.*; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

30. The Due Process Clause of the Fifth Amendment applies to all persons within the United States, including noncitizens in immigration detention. *Zadvydas*, 533 U.S. at 693; *Demore v.*

Kim, 538 U.S. 510, 523 (2003). Where detention is carried out under conditions that place a detainee's health or life at serious risk, detention exceeds its civil purpose and violates substantive due process.

31. Federal courts have long recognized that detention without constitutionally adequate medical care renders custody unlawful. When the government detains an individual, it assumes an affirmative obligation to provide for basic medical needs. Continued detention without access to necessary and prescribed medical treatment is incompatible with due process and cannot be justified as a legitimate regulatory measure.

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

32. Mr. Perez suffers from serious, chronic medical conditions—Type 2 diabetes mellitus, essential hypertension, and hyperlipidemia—that require continuous medical monitoring and daily prescription medication. Despite Respondents' knowledge of these conditions, Mr. Perez has not been provided with his prescribed medications while in ICE custody.

33. Detaining Mr. Perez without providing necessary medical care is not reasonably related to any legitimate governmental purpose. Instead, it places him at substantial risk of stroke, cardiovascular events, organ damage, and other life-threatening complications. Under these circumstances, Mr. Perez's detention is punitive in effect and violates substantive due process.

34. Because Respondents are unable or unwilling to provide constitutionally adequate medical care, Mr. Perez's continued detention is unlawful. He has therefore demonstrated a strong likelihood of success on the merits of his habeas claims.

II. MR. PEREZ'S DETENTION LACKS A LEGITIMATE GOVERNMENT PURPOSE.

35. The Supreme Court has recognized only two legitimate purposes for civil immigration detention: ensuring appearance at future proceedings and protecting the community. *Zadvydas*, 533 U.S. at 690–91; *Diop v. ICE*, 656 F.3d 221, 233–34 (3d Cir. 2011).

36. Mr. Perez poses no danger to the community and is not a flight risk. He is a long-term resident of the United States, the father of three U.S. citizen children, and has no serious criminal history. Continued detention under conditions that place his health at serious risk serves no regulatory purpose and instead functions as punishment.

37. Because Mr. Perez's detention does not reasonably further any legitimate governmental interest, it violates the Due Process Clause.

III. RELEASE IS THE APPROPRIATE REMEDY.

38. Where detention violates the Constitution, release is the proper remedy under 28 U.S.C. § 2241. *Zadvydas*, 533 U.S. at 699–700. Courts need not order alternative relief where continued detention itself is unlawful.

39. Because Mr. Perez's detention without access to necessary medical care violates substantive due process, this Court should grant the writ of habeas corpus and order his immediate release from ICE custody.

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. Respondents' continued detention of Mr. Perez without providing necessary and prescribed medical care is not reasonably related to a legitimate regulatory purpose and violates substantive due process.

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. Perez is entitled to the protections of the 5th Amendment Due Process Clause. First, Mr. Perez 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. Perez'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. Perez and wasting judicial resources.
7. Accordingly, Mr. Perez is being detained without sufficient process in violation of his Constitutional right to Due Process under the Fifth Amendment.
8. Additionally, Respondents have deprived Mr. Perez of his liberty without constitutionally adequate safeguards by continuing his detention despite knowledge that detention conditions place his health and life at serious risk.

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 in the first instance to ensure Petitioner's detention bears a reasonable relation to the government's interests; and
4. Enjoin Respondents from re-detaining or re-arresting Petitioner absent a lawful and constitutional basis;
5. Grant such other and further relief as this Court deems just and proper.

Dated: 12/17/25

Respectfully Submitted,

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Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Motion for Temporary Restraining Order and Injunctive Relief and Petition for Writ of Habeas Corpus with all attachments using the PACER system.

Dated: 12/17/25

Respectfully Submitted,

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Counsel for Petitioner

EXHIBIT A

DECLARATION OF OCTAVIO DE GABRIEL PEREZ

In Support Of His Habeas Corpus Petition

I, Octavio De Gabriel Perez, being duly sworn, hereby declare under penalty of perjury that the following is true and correct to the best of my personal knowledge:

1. My name is Octavio De Gabriel Perez. I was born on [redacted] in Mexico. I am currently detained by ICE in immigration custody.

Background

2. I first came to the United States in 1997. In 2006, I voluntarily left the United States to visit my family in Mexico and returned the following year. I have continuously resided in the United States since 2007.
3. I have lived in the United States for many years. I am the father of three United States citizen children. I have always worked to support my family, complied with the law, and contributed to my household and community.
4. I do not have any serious criminal history. The only legal matter I have ever had was a minor incident from 1998, in which I did not pay a train fare. I paid a fee, completed community service, and the case was dismissed.

Medical Conditions and Denial of Care in Detention

5. I suffer from Type 2 diabetes mellitus, essential hypertension, and hyperlipidemia, all of which are chronic medical conditions that require continuous medical monitoring and daily prescription medication. These conditions have been diagnosed and treated by medical

providers prior to my detention, and my treatment has included prescribed medications to control my blood sugar, blood pressure, and cholesterol levels.

6. Prior to my detention, I was prescribed metformin for diabetes, lisinopril for hypertension, and atorvastatin for cholesterol management. My medical providers emphasized that consistent use of these medications is necessary to prevent serious complications, including cardiovascular events, kidney damage, stroke, and worsening diabetic disease.
7. On December 11, 2025, I was taken into ICE custody and placed at the Delaney Hall Detention Facility in Newark, New Jersey. During my intake and thereafter, I disclosed my medical conditions and my prescribed medications.
8. Despite this, since entering ICE custody, I have not been provided with my prescribed medications for diabetes, hypertension, or cholesterol management. As of the date of this declaration, I am not receiving these medications at all. Without access to my prescribed medications, my chronic conditions are uncontrolled.
9. I have experienced physical symptoms including weakness, dizziness, headaches, fatigue, and anxiety related to my health. Based on my medical history and prior treatment, I understand that interruption of my medications places me at serious risk of complications such as dangerously elevated blood pressure, uncontrolled blood sugar, cardiovascular events, and permanent organ damage.
10. I have informed detention staff of my medical needs and the risks associated with lack of treatment. Nevertheless, my medical conditions have not been adequately addressed.
11. Continued detention without access to necessary and prescribed medical care is unsafe for me and places my health and life at serious risk.

12. If released from detention, I would be able to immediately resume proper medical treatment, take my prescribed medications consistently, and attend regular medical appointments. My family in the United States is able and willing to assist me in obtaining and maintaining appropriate medical care.

13. I have been advised by my attorneys that I am eligible to apply for cancellation of removal for non-permanent residents based on my long residence in the United States and the hardship my removal would cause my United States citizen children. My attorneys have advised me that this application will be filed after my release. Remaining detained without access to necessary medical care makes it difficult for me to communicate effectively with counsel and to assist in the preparation of my case.

Plea for Relief

14. I respectfully request that this Honorable Court order my release, as I cannot safely remain in detention without access to necessary medical care. I have three children and a wife who rely on my physical well-being and support.

15. Upon my release, I will fully comply with all conditions imposed by the Court and will continue to support my family while receiving the medical care required to manage my health conditions.

I hereby certify under penalty of law that the foregoing statements are true and correct to the best of my knowledge and belief. I understand that any willfully false statement made herein may subject me to punishment under applicable law. Due to my current detention and the exigent circumstances requiring prompt action to prevent the Respondents from relocating me, I am unable to execute this declaration in person. I have reviewed this declaration by telephone with my attorney and with the assistance of a translator, who read the declaration to me in Spanish. I hereby authorize my attorney to affix my electronic signature on my behalf.

s/Octavio De Gabriel Perez

DATE: 12/17/25 **OCTAVIO DE GABRIEL PEREZ**