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BY ECF
Honorable Susan D. Wigenton, U.S.D.J.
U.S. District Court for the District of New Jersey
50 Walnut Street
Newark, NJ 07102

Re: *Gabriel Perez v. Bondi*, No. 25-18711
Expedited Answer & Response to TRO

Dear Judge Wigenton:

This Office represents Respondents in this habeas matter. We respectfully submit this Answer and response to Petitioner's Motion for a TRO, pursuant to the Court's Text Order of today's date, ECF No. 3.

I. Expedited Answer

Petitioner is in ICE detention without bond pursuant to DHS's interpretation of "applicants for admission" under § 1225(b)(2) and the Board of Immigration Appeals' ("BIA") recent decision *Matter of Yajure Hurtado*, 29 I&N Dec. 215 (BIA 2025). Respondents contend, as they have in all other § 1225(b)(2) matters, that the Petitioner's detention is governed by § 1225(b)(2) because he is an alien who entered without inspection or parole several years ago and was initially detained by immigration authorities in the interior of the country without having been lawfully admitted. As such, he is an "applicant for admission" who is not entitled to a bond hearing. *But see Rivera Zumba v. Bondi*, No. 25-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025).[1] Respondents also contend that the only remedy, if the Court finds § 1225 does not apply, is a bond hearing under § 1226(a) not immediate release.

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[1] *See also, e.g.*, *Ayala Amaya v. Bondi*, No. 25-16427 (ESK), 2025 WL 3033880 (D.N.J. Oct. 30, 2025); *Smit Patel v. Almodovar*, No. 25-15345 (SDW), 2025 WL 3012323 (D.N.J. Oct. 28, 2025); *Lomeu v. Lyons*, No. 25-16589 (EP), 2025 WL 2981296 (D.N.J. Oct. 23, 2025); *Contreras Maldonado v. Cabezas*, No. 25-13004 (JKS), 2025 WL 2985256, at *2 (D.N.J. Oct. 23, 2025); *Soto v. Soto*, No. 25-16200 (CPO), 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Castillo v. Lyons*, No. 25-16219 (MEF), 2025 WL

Respondents acknowledge that their answer to this Petition relies on the same statutory arguments and salient facts as in *Rivera Zumba* and all other § 1225(b)(2) matters. Accordingly, Respondents submit this expedited response given the similar issues, the importance of efficient resolution of this habeas petition, and the preservation of the Court's and the parties' resources.

II. Response to TRO

To obtain this extraordinary remedy, Petitioner must demonstrate: (1) a likelihood of success on the merits; (2) that he will suffer irreparable harm by denial of the relief; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief. *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004).

Petitioner cannot show that he is reasonably likely to succeed on the merits of his petition for the reasons set forth above. Petitioner therefore cannot show an "indisputably clear" right to release or a bond hearing. *Kim v. Hanlon*, 99 F.4th 140, 155 (3d Cir. 2024). *But see* footnote 1, above, collecting a sample of § 1225(b)(2) decisions in this district.

Petitioner also cannot establish that "irreparable injury is likely in the absence of" an order enjoining his transfer from Delaney Hall. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Petitioner's TRO raises concerns about his medical treatment at the detention center. To the extent Petitioner raises his treatment at the detention center to make a conditions-of-confinement claim, that claim is outside the scope of 28 U.S.C. § 2241 habeas jurisdiction, because the claim neither attacks the duration nor the fact of the detention itself (*i.e.*, whether the terms of detention conflict with the statute or judgment). *See Nelson v. Campbell*, 541 U.S. 637, 643 (2004) (claim for injunctive relief challenging fact of conviction or duration of sentence "fall[s] within the core of federal habeas corpus," whereas "constitutional claims that merely challenge the conditions of a [detainee]'s confinement . . . fall outside of that core" habeas jurisdiction). *But see Orozco Alfonso v. Bondi*, No. 25-17371 (EP), ECF No. 5 (D.N.J.) (granting immediate release due to urgent medical condition).

Where, as here, the Government is the responding party, the final two factors—balance of the equities and public interest—merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). These factors weigh against a TRO. There is a significant public

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2940990 (D.N.J. Oct. 10, 2025); *Rivera Zumba v. Bondi*, No. 25-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025).

Respondents have filed a notice of appeal in *Rivera Zumba*, which would create binding precedent concerning the § 1225(b)(2) issue in this Circuit.

interest in lawful enforcement of immigration laws and a substantial interest in keeping communities safe.

For these reasons, Respondent respectfully requests that the Court deny Petitioner's motion for a TRO. We thank the Court very much for its consideration of this matter.

Respectfully submitted,

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