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 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-18711

REPLY TO RESPONDENTS ANSWER TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

On December 17, 2025, Respondents filed an answer to Petitioner's, Octavio De Gabriel Perez, ("Mr. Perez"), Motion for Temporary Restraining Order. Within their answer, Respondents contended: 1. Mr. Perez's detention is lawful under 8 U.S.C. § 1225(b)(2) and comports with due process; and 2. Mr. Perez fails to demonstrate the requisite elements for said relief. Mr. Perez respectfully resubmits to this Honorable Court that Respondents detention unlawfully violates his due process rights and Mr. Perez does exceedingly demonstrate a Temporary Restraining Order is warranted.

ARGUMENT

I. MR. PEREZ'S DETENTION IS UNLAWFUL & VIOLATES THE DUE PROCESS CLAUSE.

Within their Answer, and specifically concerning the legality of Mr. Perez's detention, Respondents allege Mr. Perez's detention is lawful under 8 U.S.C. § 1225(b)(2) 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. Perez's mandatory detention under 8 U.S.C. 1225 (b) (2) is improper and unconstitutional.

Prior to the BIA's unconstitutional decision in *Matter of Yajure-Hurtado,* 29 I&N Dec. 216 (BIA 2025), individuals who entered this nation without being admitted or paroled could quite often, and under the long standing interpretation of INA §§ 235, 8 U.S.C. 1225, and 236, 8 U.S.C. 1226, seek a bond hearing before an Immigration Judge; however, and since the instant decision, all individuals who were not admitted or paroled are subject to mandatory detention without the opportunity to bond where the non-citizen was apprehended or **how long the non-citizen has resided in the United States.** *Id.* This is further without regards to the recent *Maldonado Bautista v. Santacruz, Jr., et al.*, Case No. 5:25-cv-01873 (C.D. Cal, Nov. 20, 2025) decision.

Respondents contend Mr. Perez is properly subject to mandatory detention pursuant to 8 U.S.C. §1225 (b) (2), because he satisfies the applicant for admission and applicant seeking

admission prongs under 8 U.S.C. §1225 (b) (2), and in doing so, cites to an array of recent 2025 unpublished decisions; such contentions are presumptuous and incorrect. Mr. Perez should not be subject to mandatory detention under to 8 U.S.C. §1225 (b) (2), for a myriad of reasons. First, Mr. Perez has lived in this nation since 2007 – **for over eighteen years**. A noncitizen with long-term residence in the U.S., such as Mr. Perez, is not properly considered an "applicant for admission" and "applicant seeking admission" under 8 U.S.C. §1225 (b) (2), 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. *Bethancourt- Soto v. Soto, et al.*, No. 25-cv-16200, F. Supp. 2d, 2025 WL 2976572 (D.N.J. Oct. 22, 2025). 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).

Second, *Matter of Yajure-Hurtado* is subjecting Mr. Perez to mandatory detention and that is regardless of the recent decision in *Maldonado Bautista v. Santacruz, Jr., et al.*, Case No. 5:25-cv-01873 (C.D. Cal, Nov. 20, 2025), which certified a nationwide class of noncitizens who are legally entitled to bond hearings under 8 U.S.C. § 1226(a). *Matter of Yajure-Hurtado* 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 re-enforced of INA § 236(a), not INA § 235(b)(2), and further, many grants in habeas petition reliefs based on the resounding due process violations set forth by the *Matter of 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]).

Third, Respondents contention that the only immediate remedy for the relief sought is a bond hearing under 8 U.S.C. §1226 (a). As this Honorable Court knows, it has long standing authority to grant release in response to Writ of Habeas Corpus petitions. Even further, this Court has very recently released an immigrant detainee, with only pending immigration applications, who had endured very similar circumstances to Mr. Perez. *De Fatima Lomeu v. Soto, et al.,* No. 2:25-cv-16589 (D.N.J. Oct. 23, 2025). In said matter, Delaney Hall Detention Facility failed to take Ms. Lomeu's blood pressure and timely provide Ms. Lomeu with her blood pressure medication and ovarian medication – she suffers with high blood pressure and an ovarian disorder. As a result of not receiving her timely medications, Ms. Lomeu suffered with persistent splitting headaches, feelings of wooziness, amplified ovarian pain, and profuse and non-stop menstrual bleeding. On October 23, 2025, the Honorable Evelyn Padin, D.N.J. entered an order releasing her from custody.

II. MR. PEREZ'S MOTION FOR A TEMPORARY RESTRAINING ORDER IS MERITORIOUS.

Within their Answer, Respondents contend Mr. Perez fails to demonstrate the relief sought for a temporary restraining order and even further specifically under the irreparable injury

prong that this Court lacks jurisdiction over Mr. Perez's confinement condition claim. Again, Respondents contentions are flawed and incorrect.

For brevity, 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 lives with Type 2 diabetes mellitus, essential hypertension, and hyperlipidemia, serious and lifelong conditions that require uninterrupted treatment and daily prescription medication simply to keep his body functioning safely. ICE has long known of these diagnoses. Yet while in custody, Mr. Perez has been deprived of the very medications that control his illnesses, placing him at constant risk of severe complications. This callous disregard for Mr. Perez's health and well-being transforms his detention from civil confinement into unconstitutional punishment in violation of the Fifth Amendment.

Second, absent the preliminary relief requested, Mr. Perez will suffer irreparable harm. ***The forced interruption of treatment for his diabetes and hypertension places Mr. Perez in immediate and escalating danger of stroke, cardiovascular events, permanent organ damage, or death.*** These are not speculative risks - they are the predictable and well-documented consequences of untreated chronic illness. Each day Mr. Perez remains detained without access to lifesaving medication inflicts a new and irreversible injury, steadily degrading his health and pushing him closer to catastrophic harm.

Additionally, Respondents allege this Court lacks jurisdiction over confinement condition claims. 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).

Third, the balance of equities weighs overwhelmingly in Mr. Perez's favor. Mr. Perez poses no danger to the community and presents no risk of flight. By contrast, the harm he faces is immediate, grave, and irreversible. Any claimed burden on the government is minimal, speculative, and entirely outweighed by the profound human cost of continued detention without medical care. Detaining Mr. Perez under these circumstances serves no legitimate governmental purpose. Instead, it needlessly endangers his life while imposing avoidable fiscal and administrative costs on the government.

Fourth, the public interest is powerfully served by granting relief. The public has a profound interest in ensuring that the government complies with the Constitution, protects human life, and does not inflict punishment through civil detention. It is also in the public interest to preserve meaningful judicial review under 28 U.S.C. § 2241 and to prevent unlawful confinement under conditions that offend basic principles of due process and human dignity.

III. RELEASE IS THE APPROPRIATE REMEDY

Even following the grant of bond hearings in habeas corpus petitions by Federal District Court Judges, Immigration Judges have been denying bond to applicants with otherwise meritorious claims. This development appears attributable to the administration's widespread removal of seasoned Immigration Judges, who have traditionally adjudicated such matters with appropriate rigor, and its simultaneous, active installation of judges whose professional orientation lies primarily in deportation and enforcement functions.

This administration's current political agenda that egregiously limits access to bond hearings, ***and further supports denial of bond when such hearings are granted by habeas petitions***, is blatantly against our Constitution, against U.S. Supreme Court decisions, and BIA decisions - the unconstitutional elimination of bond through employment of deportation judges and instillment in fear to current immigration judges forcing complicity with said agenda constitutes exceptional circumstances.

Should this Honorable Court grant solely a bond hearing before an IJ, Mr. Perez runs risk of being denied bond regardless of not being a danger to the community and not being a flight risk.

CONCLUSION

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

1. Assume jurisdiction over the instant matter;
2. Issue an Order granting the instant Temporary Restraining order, and further 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: 12/19/25

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 using the PACER system.

Dated: 12/19/25

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