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**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW JERSEY**

Jose Mauricio Perez Sierra, A[redacted]

*Petitioner*,

v.

Daren K. Margolin, Director of Executive Office of Immigration Review;

Todd Lyons, Acting Director of U.S. Immigration and Customs Enforcement;

Kristi Noem, Secretary of Department of Homeland Security;

*Respondents*

Civil Action No. 3:25-cv-18829

**PETITION FOR WRIT OF HABEAS CORPUS**

## INTRODUCTION

1. Petitioner, Jose Mauricio Perez Sierra, is a 31-year-old citizen of Colombia. After entering the United States in September 2022, he was granted parole and settled in New Jersey. For three years, Mr. Perez Sierra established a life in Toms River, working a steady job as a model employee

and maintaining a clean criminal record. He complied with all requirements of the government's Alternative to Detention program.

2. On September 13, 2025, Mr. Perez Sierra was taken into custody by Immigration and Customs Enforcement ("ICE") and transferred to the Elizabeth Contract Detention Center. His counsel promptly requested a custody redetermination hearing pursuant to 8 C.F.R. § 1236. On October 9, 2025, an Immigration Judge denied the request for bond, citing the decision in Matter of Yajure Hurtado as having stripped the court of jurisdiction to consider his release.

3. Beginning the very next day, Respondents initiated a series of transfers that have systematically thwarted Petitioner's access to the courts. On October 10, 2025, he was moved from New Jersey to a facility in Aurora, Colorado. As counsel prepared to file a habeas petition in the District of Colorado, Mr. Perez Sierra was abruptly transferred again on December 2, 2025.

4. On December 8, 2025, he was moved twice in one day, first to Florence, Arizona, and then to Natchez, Mississippi. After counsel engaged local counsel to file a petition in the Southern District of Mississippi Respondents moved Petitioner a fifth time on December 12, 2025, to Los Fresnos, Texas.

5. Petitioner's current location is unknown. His counsel has been unable to contact him, and ICE's own online detainee locator system provides no information regarding his whereabouts. Inquiries to the responsible ICE office have gone unanswered. As a result of these actions, Petitioner remains indefinitely detained without a constitutionally adequate hearing to determine if his detention is justified, a flagrant violation of his fundamental right to due process.

## CUSTODY

6. Petitioner is in the physical custody of Respondents. His current location is unknown after being transferred at least 5 times since his detention on September 13th, 2025. However, Petitioner is still in custody as per the available online system maintained by Respondents.

## JURISDICTION AND VENUE

7. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq.

8. This Court has 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 (the Suspension Clause).

9. 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.

10. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(a)(5), 1252(b)(9), 1225(g), or 1226(e). District courts have jurisdiction under 28 U.S.C. § 2241 to decide habeas claims by individuals challenging the lawfulness or constitutionality of their civil immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

11. Venue is proper under 28 U.S.C. § 1391(e) because Respondents, all of whom are officers, employees, or agencies of the United States, have detained Petitioner in New Jersey where he is a resident. In addition, venue is proper in this District because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District.

12. In *Braden t*he U.S. Supreme Court interpreted the "within their respective jurisdictions" phrase of 28 U.S.C. § 2241 to conclude that it does not require that the Petitioner be physically present in the district, but only that the court issuing the writ have jurisdiction over the custodian who is responsible for the allegedly unlawful custody. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484. As the current exact location of the Petitioner is unknown and he is still in Respondents' custody, we maintain that Respondents are the custodian.

**REQUIREMENTS OF 28 U.S.C. § 2243**

13. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14. There is no statutory exhaustion requirement for habeas challenges under 28 U.S.C § 2241. In the absence of a statutory exhaustion requirement, "sound judicial discretion governs." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). Here, it would be futile for Petitioner to appeal the Immigration Judge's denial of bond on jurisdictional grounds because the BIA adopted a binding legal position that categorically denies bond eligibility to anyone present in the United States who is charged as being inadmissible. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) *Sacvin v. Anda-Ybarra*, No. 2:25-cv-01031-KG-JFR, 2025 U.S. Dist. LEXIS 224815, at *4 (D.N.M. Nov. 14, 2025) (noting that the BIA's decision in Yajure Hurtado renders prudential exhaustion futile).

## PARTIES

15. Petitioner Jose Mauricio Perez Sierra has been in custody since September 13, 2025 when he was arrested by ICE agents. His current whereabouts is unknown as he remains in Respondents' custody. Before detention, Petitioner resided in New Jersey.

16. Respondent Daren K. Margolin is sued in his official capacity as the Director of the Executive Office of Immigration Review ("EOIR"), which is an agency within the Department of Justice that is responsible for the administration of immigration court proceedings, including removal proceedings and custody redeterminations under the INA.

17. Respondent Kristi Noem is sued in her official capacity as the Secretary of Department of Homeland Security ("DHS"). Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, which is the agency responsible for Petitioner's detention. She is the legal custodian of Petitioner and has the ultimate authority to release him.

18. Respondent Todd M. Lyons is sued in his official capacity as the Acting Director of ICE, a component agency of DHS. Respondent Lyons has authority over the operations of ICE and broad authority over the enforcement of immigration laws, including the detention and removal of noncitizens. He is the legal custodian of Petitioner and has the ultimate authority to release him.

## FACTUAL ALLEGATIONS

19. Petitioner Jose Mauricio Perez Sierra is a 31-year-old citizen of Colombia who entered the United States at Lukeville, Arizona, on September 13, 2022 and was apprehended by officials. He was released with parole on September 14, 2022. **Exhibit A, Form I-213**

20. Upon release Petitioner came to New Jersey and fulfilled the requirements of Respondents' Alternative to Detention program. On October 11, 2022 he went to ICE Field Office

in Mount Laurel, NJ as instructed. There, he was served with a Notice to Appear ordering him to appear before an immigration judge at Newark, NJ Immigration Court at a later date. **Exhibit B, Notice to Appear.**

21. Before ICE detained him, Petitioner worked a steady job, was a model employee, and resided in Toms River, New Jersey for three years. Mr. Perez Sierra has no criminal history.

22. On September 13, 2025, Mr. Perez Sierra was taken into custody at the ICE field office and transferred to the Elizabeth Contract Detention Center. **Exhibit C, ICE Form I-830**

23. Consistent with 8 C.F.R. § 1236, Petitioner's counsel in his underlying proceedings requested a custody redetermination before the Immigration Court. A hearing was held on October 9, 2025. That same day, the Immigration Judge denied bond based solely on the finding that *Matter of Yajure Hurtado* stripped the Immigration Court of jurisdiction to consider Petitioner's request for release on bond. **Exhibit D, Order of the Immigration Judge**.

24. On the morning of October 10, 2025, Mr. Perez Sierra was transferred from the Elizabeth Contract Detention Center to the Aurora Contract Detention Facility in Aurora, Colorado. **Exhibit E, ICE Transfer Records.**

25. On December 2, 2025 Counsel for Petitioner emailed the U.S. Attorney's Office in Colorado to discuss a matter regarding the nature of Petitioner's parole. Without an opportunity to discuss Petitioner was abruptly transferred as counsels assumed that this Petition could no longer be filed in Federal District Court for the District of Colorado. **Exhibit F, Email Exchange with Mr. Traskos**

26. On December 8, 2025, Respondents moved Petitioner twice. First to Florence Service Processing Center in Florence AZ and then to Adams County Correctional Center in Natchez Mississippi. **Exhibit E, ICE Transfer Records.**

27. As Counsel for Petitioner assumed that the Petitioner would stay in Natchez, Mississippi and this petition would be filed in Federal District Court for the Southern District of Mississippi. Counsel corresponded with local counsel from this district for assistance with pro hac vice admission. **Exhibit G, Email Exchange with local counsel**

28. On December 12, 2025 Respondents moved the Petitioner once more to Port Isable PSC in Los Fresnos TX. His current location is unknown. Counsel has been unable to contact Petitioner.

29. ICE system currently has no information about Petitioner's whereabouts. **Exhibit H, ICE Custody Information**

30. Counsel for Petitioner emailed the listed ICE office and called them for a confirmation. There was no response to our email and there was no answer on the phone number listed. **Exhibit I, Email to ICE ERO Denver, CO**

31. Furthermore, Petitioner remains in detention without access to a hearing to determine whether he may be released on bond. Petitioner faces significant hardship and serious deprivation of his fundamental right to be free from unlawful detention. Without relief from this Court, he will remain indefinitely detained in violation of his due process rights.

## LEGAL FRAMEWORK

32. There are three statutes that govern civil immigration detention. *See* 8 U.S.C. §§ 1225, 1226, 1231.

33. Section 1226(a) authorizes discretionary detention of noncitizens in standard removal proceedings under 8 U.S.C. § 1229a.

34. Noncitizens in detention under Section 1226(a) are entitled to an initial bond hearing. *Jennings*, 583 U.S. at 306 (noting "[f]ederal regulations provide that aliens detained under §1226(a) receive bond hearings at the outset of detention."); 8 C.F.R. §§ 1236.1(d)(1), 1003.19(a). Within Section 1226 is a carve-out provision that subjects noncitizens with applicable criminal history to mandatory detention. 8 U.S.C. § 1226(c).

35. Section 1225 authorizes mandatory detention of individuals subject to expedited removal, 8 U.S.C. § 1225(b)(1), and other recent arrivals "seeking admission" to the United States. *Id.* § 1225(b)(2).

36. Finally, Section 1231 authorizes detention of noncitizens subject to a final or reinstated order of removal. Id. § 1231(a)–(b).

37. This Petition presents a pure legal question regarding whether Petitioner's detention is governed by 8 U.S.C. §§ 1225 or 1226.

***Statutory Context and Legal Background***

38. The detention provisions at Sections 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Congress most recently amended Section 1226 earlier this year through the Laken Riley Act. 8 U.S.C. § 1226(c)(1)(E), *as amended* by Pub. L. 119-1, 139 Stat. 3 (2025).

39. Closely following the enactment of IIRIRA, the U.S. Department of Justice, EOIR drafted regulations explaining that, in general, people who enter the United States without inspection are

not considered detained under Section 1225; rather detention under Section 1226(a) applies. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

40. In the decades that followed, individuals who entered without inspection and were subsequently placed in removal proceedings were granted bond hearings if detained by ICE, except in cases where their criminal history required mandatory detention under Section 1226(c). This practice aligned with decades of prior practice before enactment of IIRIRA, in which noncitizens who entered the United States, even without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, individuals stopped at the border or port-of-entry were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that Section 1226(a) simply "restates" the detention authority previously found at Section 1252(a)).

41. Despite the long-established statutory construction of Sections 1225 and 1226, and Respondents' own historical practice of providing bond hearings to noncitizens like Petitioner, ICE reversed course in July 2025 and began asserting that all individuals present in the United States without inspection should be considered "seeking admission" and subject to mandatory detention under Section 1225(b)(2)(A) without a bond hearing.

42. On September 5, 2025, the BIA issued a binding decision adopting ICE's interpretation. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Matter of Yajure Hurtado* strips

Immigration Courts of jurisdiction to hold bond hearings for any noncitizen present in the United States without inspection, regardless of how long they have resided in the United States or where ICE encountered them within the country. *Id.* at 216, 229.

43. Respondents' and the BIA's overly broad interpretation of Section 1225(b)(2)(A) departs from the INA's text, federal precedent, existing regulations, and longstanding agency practice. Respondents' new policy is contrary to law and arbitrary and capricious in violation of the Administrative Procedure Act ("APA").. *See FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 537 (2009) (agencies "cannot simply disregard contrary or inconvenient factual determinations that it made in the past.").

44. The overwhelming majority of courts have properly rejected Respondents' interpretation and instead found that Section 1226—not Section 1225—authorizes detention of individuals who entered without inspection and were charged as inadmissible.

45. This Court must "exercise independent judgment in determining the meaning of statutory provisions," and give no weight or deference to Respondents' expansive interpretation of Section 1225(b)(2) because it conflicts with statute, regulation, and precedent. *Loper Bright v. Raimondo*, 603 U.S. 369, 394 (2024). However, longstanding determinations by "agenc[ies] charged with enforcing [the detention statutes]" are "powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting). Thus, consistent prior agency practice and interpretations on this issue can inform the Court's determination on the proper construction of the law. *See Loper Bright*, 603 U.S. at 386.

***Statutory Interpretation of Section 1225 and 1226***

46. The INA's context and structure make clear that Section 1226 applies to individuals who entered without inspection and have not been admitted to the United States.

47. Section 1225 begins by defining an "applicant for admission" as a noncitizen "who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1). With limited exceptions not applicable here, Section 1225(b)(2) applies to all other applicants for admission outside of Section 1225(b)(1) who are seeking admission. *Id.* § 1225(b)(2)(A).

48. Section 1225(b)(2)(A) states that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained" during standard removal proceedings. *Id.* (emphasis added). Clearly, Congress defined in Section 1225(a)(1) the broad term "applicant for admission" but added the narrowing qualifier "seeking admission" in Section 1225(b)(2)(A), thereby limiting its application to those who are "seeking admission." Respondents' interpretation ignores the plain language of Section 1225(b)(2)(A) and violates basic principles of statutory construction.

49. By contrast, Section 1226(a) detention applies when a noncitizen is arrested and "detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Pending a decision on removal, the individual may be detained or released on bond or conditional parole. *Id.* § 1226(a)(1)-(2).

50. Although in a different context, the Supreme Court has explained that Section 1225(b) is concerned "applies primarily to aliens seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings*, 583 U.S. 281 at 287, 297. Whereas Section 1226

"authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.* at 289 (emphases added). Accordingly, discretionary detention under Section 1226(a) is often referred to as the "default rule" for noncitizens already present in the United States. *Id.* at 288.

51. This interpretation aligns with the statutory framework governing immigration detention and ensures no provision is rendered meaningless. *Corley v. United States*, 556 U.S. 303, 314 (2009) (reiterating rule that statutes should be construed as a whole so that effect is given to all its provisions). If inadmissible individuals present in the United States are already subject to mandatory detention under Section 1225(b)(2)(A), as Respondents contend, then Section 1226(c) and amendments to the Laken Riley Act would be superfluous. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257–58 (W.D. Wash. 2025) (explaining that Section 1226(c)(1)(E) which mandates detention for inadmissible noncitizens who are implicated in an enumerated crime, including those present without admission, would be meaningless since Section 1225 mandatory detention would already govern detention of all noncitizens present without admission). There would be no need for Section 1226(c) or Congress's recent amendments to that provision.

52. The text of the Laken Riley Act explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Logically, the Laken Riley Act's reference to individuals who entered without inspection makes clear that, by default, those individuals *are* afforded a bond hearing under Section 1226(a).

53. Accordingly, the mandatory detention provision of Section 1225(b)(2) does not apply to Petitioner, as he entered the United States without inspection and was released by immigration authorities with parole pursuant to Section 1226. His subsequent detention in September 2025,

Respondents' attempt to retroactively apply Section 1225 to deny him a bond hearing amounts to a significant violation of his liberty interests without due process.

## CLAIMS FOR RELIEF

### COUNT ONE
### FIFTH AMENDMENT DUE PROCESS VIOLATION
### (Procedural Due Process)

54. Petitioner alleges and incorporates by reference the paragraphs above.

55. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. The Supreme Court has long-established that noncitizens are afforded due process rights. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Demore*, 538 U.S. at 523.

56. To determine whether civil detention violates an individual's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under Mathews, courts weigh three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

57. Petitioner has a significant liberty interest in being free from detention. This interest is the "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

58. Respondents' assertion of the wrong detention authority presents a significant risk of erroneous deprivation of Petitioner's liberty interest. Respondents' position lacks support in the plain text of the INA and contravenes longstanding interpretation and prevailing case law.

59. Any appeal to the BIA would be futile because the BIA has adopted the same erroneous interpretation of the law as Respondents. In essence, Petitioner has no meaningful opportunity, outside of this Petition, to challenge the fact of his detention based on an incorrect reading of the law.

60. There is no significant governmental interest in keeping Petitioner detained. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. To the extent that the government has an interest in ensuring Petitioner is not a danger or a flight risk, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35. Petitioner is prepared to prove that he is not a danger and there is no flight risk. Petitioner's denied bond request already included substantive evidence to prove the same.

61. Petitioner's continued detention without procedural due process amounts to a serious deprivation of his constitutional rights and violates the Due Process Clause of the Fifth Amendment.

**COUNT TWO**
**FIFTH AMENDMENT DUE PROCESS VIOLATION**
**(Substantive Due Process)**

62. Petitioner alleges and incorporates by reference the paragraphs above.

63. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690. Due process "applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

64. As a resident of the United States with established community ties, Petitioner has a fundamental interest in freedom from arbitrary detention.

65. Respondents' continued detention of Petitioner based on the erroneous statutory interpretation presented in *Matter of Yajure Hurtado* and Respondents' position that 8 U.S.C. § 1225(b)(2)(A) retroactively applies to Petitioner constitutes arbitrary government action that violates Petitioner's substantive due process rights.

66. Petitioner has no meaningful avenue before Respondents or the BIA to challenge his continued detention in violation of the law.

67. Petitioner's continued detention, when he is indeed subject to discretionary detention under 8 U.S.C. § 1226(a) and is neither dangerous, nor a flight risk, does not serve a compelling governmental interest.

68. Respondents' actions violate Petitioner's substantive due process rights.

**COUNT THREE**
**VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT**
**(Unlawful Denial of Bond Hearing)**

69. Petitioner alleges and incorporates by reference the paragraphs above.

70. Petitioner's detention is squarely governed by Section 1226(a), as Respondents' plainly establish.

71. Under Section 1226(a) and applicable regulations, Petitioner is entitled to a bond hearing before an Immigration Judge. *See* 8 C.F.R. §§ 1236.1(d), 1003.19(a)-(f).

72. Respondents erroneous interpretation and imposition of mandatory detention under Section 1225(b)(2)(A) prevents Petitioner from being afforded a bond hearing as required by law.

73. Petitioner's continued detention under Section 1225(b)(2)(A) without any access to bond is unlawful and violates the INA.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Issue an Order to Show Cause ordering Respondents to show cause within three days why this Petition should not be granted;
3. Order Respondents to immediately transfer the Petitioner to New Jersey.
4. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this District pending the resolution of this case;
5. Issue a Writ of Habeas Corpus ordering Petitioner's release from detention, or in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) days where Respondents bear the burden of justifying detention;
6. Award reasonable attorneys' fees and costs under the Equal Access to Justice Act, as amended 28 U.S.C. § 2412, and on any other basis justified under law; and
7. Grant any further relief this Court deems just and proper.

Date: December 19th, 2025.

Respectfully submitted,

/s/ Mustafa Cetin, Esq.

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

I am submitting this verification on behalf of Petitioner Jose Mauricio Perez Sierra as his attorney. I have discussed with Mr. Perez Sierra the events described in this Petition and have examined all documents referenced herein. On the basis of those discussions and upon my review of those documents, on information and belief, I hereby verify that the factual statements made in the foregoing Verified Writ of Habeas Corpus under 28 U.S.C. § 2241 are true and correct to the best of my knowledge.

Date: December 19th, 2025.

/s/ Mustafa Cetin, Esq.
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*Attorney for Petitioner*