

1 MATURANO & ASSOCIATES  
BY: Antonio A. Maturano, III, Esquire  
2 Pa. Identification No. 64391  
616 DeKalb Street  
3 Norristown, PA 19401  
(610) 313-3120 (Office)  
4 (610) 313-3221 (Fax)  
[amaturano@maturanolaw.com](mailto:amaturano@maturanolaw.com)

5  
6 Attorney for Petitioner

7  
8 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA  
9 CIVIL DIVISION

10  
11 Rafael GONZALEZ ORTIZ  
Petitioner,

Case No.

12 v.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

13 Brian MCSHANE, Field Office Director of  
14 Enforcement and Removal Operations,  
Philadelphia Field Office, Immigration and  
15 Customs Enforcement; Kristi NOEM,  
Secretary, U.S. Department of Homeland  
16 Security; U.S. DEPARTMENT OF  
HOMELAND SECURITY; Pamela BONDI,  
17 U.S. Attorney General; EXECUTIVE OFFICE  
FOR IMMIGRATION REVIEW; J.L.  
18 JAMISON, Warden of Philadelphia Federal  
Detention Center

19 Respondents.

20  
21 **PETITION FOR WRIT OF HABEAS CORPUS**

1 This is a petition for a writ of habeas corpus filed on behalf of Rafael Gonzalez Ortiz  
2 seeking relief to remedy his unlawful detention. Respondents are currently detaining Mr. Gonzalez  
3 Ortiz subject to initiation of immigration proceedings.

4 **INTRODUCTION**

- 5
- 6 1. Petitioner, Rafael Gonzalez Ortiz is in the physical custody of Respondents at the  
7 Philadelphia Federal Detention Center. He now faces unlawful detention as the Department  
8 of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR)  
9 have placed into operation procedures which meaningfully deprive Petitioner of release.
  - 10 2. Petitioner was detained on January 15, 2025 by Immigration and Customs Enforcement  
11 (“ICE”) Enforcement Removal Operations (“ERO”) officers.

12 **JURISDICTION**

- 13
- 14 3. Petitioner is in the physical custody of Respondents. Petitioner is presently being held at  
15 the Philadelphia Federal Detention Center in Philadelphia, Pennsylvania.
  - 16 4. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331  
17 (federal question jurisdiction), and Article I, section 9, clause 2 of the United States  
18 Constitution (the Suspension Clause).
  - 19 5. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act,  
20 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

21 **VENUE**

- 22
- 23 6. Pursuant to *Braden v. 30<sup>th</sup> Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500  
24 (1973), venue lies in the United States District Court for the Eastern District of  
Pennsylvania, the judicial district in which Petitioner currently is detained.

1 7. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) as Respondent are  
2 employees, officers, and agencies of the United States, and because a substantial part of  
3 the events or omissions giving rise to the claims occurred in the Eastern District of  
4 Pennsylvania.

5 **REQUIREMENTS OF 28 U.S.C. § 2243**

6  
7 8. The Court must grant the petition for writ of habeas corpus or order Respondents to show  
8 cause “forthwith,” unless the petition is not entitled to relief. 28 U.S.C. § 2243. If an order  
9 to show cause is issued, the Respondent must file a return “within three days unless for  
10 good cause additional time, not exceeding twenty days, is allowed.” *Id.*

11 9. Habeas corpus is “perhaps the most important writ known to the constitutional  
12 law...affording as it does a *swift* and imperative remedy in all cases of illegal restraint or  
13 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application  
14 for the writ usurps the attention and displaces the calendar of the judge or justice who  
15 entertains it and receives prompt action from him within the four corners of the application.”  
16 *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

17 **PARTIES**

18 10. Petitioner Rafael Gonzalez Ortiz is a citizen of Mexico who has been in immigration  
19 detention since approximately 2008. Following the arrest of Petitioner in Norristown,  
20 Pennsylvania, ICE placed Petitioner into custody in the Philadelphia Federal Detention  
21 Center in Philadelphia, Pennsylvania.

22 11. Respondent, Brian McShane is the Director of the Philadelphia Field Office of ICE’s  
23 Enforcement and Removal Operations division. As such, Director McShane is Petitioner’s  
24

1 immediate custodian and is responsible for Petitioner's detention and removal. He is named  
2 in his official capacity.

3 12. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is  
4 responsible for the implementation and enforcement of the Immigration and Nationality  
5 Act ("INA"), and oversees ICE, which is responsible for Petitioner's detention. Secretary  
6 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

7 13. Respondent Department of Homeland Security ("DHS") is the federal agency responsible  
8 for implementing and enforcing the INA, including the detention and removal of  
9 noncitizens.

10 14. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible  
11 for the Department of Justice, of which the Executive Office for Immigration Review and  
12 the immigration court system it operates is a component agency. She is sued in her official  
13 capacity.

14 15. Respondent Executive Office for Immigration Review ("EOIR") is the federal agency  
15 responsible for implementing and enforcing the INA in removal proceedings, including for  
16 custody redetermination in bond hearings.

17 16. Respondent J.L. Jamison is employed by the Philadelphia Federal Detention Center as  
18 Warden of the Philadelphia Federal Detention Center, where Petitioner is detained. He has  
19 immediate physical custody of Petitioner. He is sued in his official capacity.

20 **LEGAL FRAMEWORK**

21  
22 17. The INA prescribes three basic forms of detention for the vast majority of noncitizens in  
23 removal proceedings.  
24

1 18. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal  
2 proceedings before an Immigration Judge (“IJ”). *See* 8 U.S.C. § 1229a. Individuals in §  
3 1226(a) detention are generally entitled to a bond hearing at the outset of their detention,  
4 *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged  
5 with, or convicted of certain crimes are subject to mandatory detention. *See* 8 U.S.C. §  
6 1226(c).

7 19. Second, the INA provides for mandatory detention of noncitizens subject to expedited  
8 removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission  
9 referred to under § 1225(b)(2).

10 20. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

11 21. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal  
12 Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No.  
13 119-1, 139 Stat. 3 (2025).

14 22. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in  
15 general, people who entered the country without inspection were not considered detained  
16 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and  
17 Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal  
18 Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

19 23. Thus, in the decades that followed, most people who entered without inspection and were  
20 placed in standard removal proceedings received bond hearing, unless their criminal  
21 history rendered them ineligible. That practice was consistent with many more decades of  
22 prior practice, in which noncitizens who were not deemed “arriving” were entitled to a  
23 custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see*  
24

1 also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates”  
2 the detention authority previously found at § 1252(a)).

3 24. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected  
4 well-established understanding of the statutory framework and reversed decades of practice.

5 25. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants  
6 for Admission,” claims that all persons who entered the United States without inspection  
7 shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore are  
8 subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies  
9 regardless of when a person is apprehended and affects those who have resided in the  
10 United States for months, years, and even decades.

11 26. In a May 22, 2025, unpublished decision from the Board of Immigration Appeals (BIA),  
12 EOIR adopts the same position. That decision holds that all noncitizens who entered the  
13 United States without admission or parole are considered applicants for admission and are  
14 ineligible for immigration judge bond hearings.

15 27. ICE and EOIR have adopted this position even though federal courts have rejected this  
16 exact conclusion. For example, after IJs in the Tacoma, Washington immigration court  
17 stopped providing bond hearings for persons who entered the United States without  
18 inspection and who have since resided here, the U.S. District Court in the Western District  
19 of Washington found that such a reading of the INA is likely unlawful and that § 1226(a),  
20 not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United  
21 States. *Rodriguez Vazquez v. Bostock*, ---F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash.  
22 Apr. 24, 2025).

1 28. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court explained,  
2 the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies  
3 to people like Petitioner.

4 29. Section 1226(a) applies by default to all persons "pending a decision on whether the  
5 [noncitizen] is to be removed from the United States." These removal hearings are held  
6 under § 1229a. to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

7 30. On November 20, 2025, the district court granted partial summary judgment on behalf of  
8 individual plaintiffs and on November 25, 2025, certified a nationwide class and extended  
9 declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-  
10 CV-01873-SSS-BFM, ---F. Supp. 3d ---, 2025 WL 3288403, at \*9 (C.D. Cal. Nov. 25,  
11 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class,  
12 incorporating and extending declaratory judgment from Order Granting Petitioners'  
13 Motion for Partial Summary Judgment).

14 31. That declaratory judgment held that the Bond Denial Class members are detained under 8  
15 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under §  
16 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at \*11.

17 32. On December 18, 2025 the District Court issued a final judgment affirming that all class  
18 members are eligible for bond hearings. Further, the Court vacated DHS's July 8, 2025  
19 policy memorandum entitled *Interim Guidance Regarding Detention Authority for*  
20 *Applicants for Admission*, holding that the policy was "not in accordance with law" under  
21 the Administrative Procedure Act. *See* Attached Exhibit 1.

1                    **EXHAUSTION AND FUTILITY OF ADMINISTRATIVE REMEDIES**

2                    33. Despite the ruling of the federal court, on January 15, 2026, EOIR—through the Office of  
3                    the Chief Immigration Judge—issued a memorandum instructing immigration judges that  
4                    because the district court issued declaratory relief rather than a nationwide injunction, they  
5                    remain bound by the Board of Immigration Appeals’ decision in *Matter of Yajure-Hurtado*,  
6                    and therefore lack jurisdiction to conduct bond or custody redetermination hearings for  
7                    individuals deemed “applicants for admission.”

8                    34. Accordingly, immigration judges are now uniformly instructed to refuse jurisdiction over  
9                    custody proceedings despite the district court’s ruling. This instruction renders any request  
10                    for bond before the Immigration Court functionally meaningless. Where adjudicators are  
11                    instructed in advance that they lack jurisdiction and must deny relief, exhaustion is excused  
12                    because the outcomes is foreordained. *See Franco-Gonzalez*, 767 F.Supp. 2d at 1059.

13                    35. The Respondents here are bound by the judgment in *Maldonado Bautista*, as it has the full  
14                    “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondent  
15                    continue to flagrantly defy the judgment in that case and continue to subject those members  
16                    of the defined class to unlawful detention despite their clear entitlement to consideration  
17                    for release on bond as a Bond Eligible Class member. *See Attached Exhibit 1.*

18                    36. While Respondents present policy directive and refusal to comply with the *Maldonado*  
19                    *Bautista* judgment are central components of the futility of any administrative attempts on  
20                    relief, other policy directives further frustrate any possibilities of relief.

21                    37. Assuming *arguendo* that Petitioner could obtain a bond hearing and a favorable bond  
22                    determination from an Immigration Judge, DHS practice through the Office of the Principal  
23                    Legal Advisor (“OPLA”) independently renders that relief ineffective.

1 38. OPLA's standing practice has been to appeal bond determination which authorize release  
2 from DHS custody. The filing of Form EOIR-43, *Notice of Intent to Appeal Custody*  
3 *Redetermination*, automatically stays the Immigration Judge's custody order for ten  
4 business days. *See* Attached Exhibit 2.

5 39. During that period, the noncitizen remains detained. OPLA then routinely files an appeal  
6 to the Board of Immigration Appeals, which further stays release during the pendency of  
7 the appeal. Such appeals frequently remain pending for months, during which time the  
8 individual remains in custody despite a judicial finding that release is warranted.

9 40. Any appeal by Petitioner to the Board of Immigration Appeals is equally futile. The Board  
10 has already articulated its binding position in *Matter of Yajure-Hurtado*, which EOIR  
11 continues to enforce nationwide notwithstanding contrary federal district court rulings. *See*  
12 Attached Exhibit 3.

13 41. There is no indication that the Board is reconsidering or retreating from that holding as it  
14 continues to overturn bond orders issued by immigration judges. *Id.*

15 42. Thus, even if Petitioner were to navigate the procedural barriers to reach the Board, the  
16 governing precedent compels denial of relief. Exhaustion is not required where the  
17 agency's controlling precedent forecloses relief as a matter of law. *See El Rescate Legal*  
18 *Servs., Inc. v. EOIR*, 959 F.2d 742, 747 (9th Cir. 1991).

19 43. Taken together, EOIR's directive that Immigration Judges lack jurisdiction to conduct  
20 bond hearings for individuals like Petitioner, DHS's systematic practice of staying and  
21 appealing any bond grants, and the Board's continued adherence to *Matter of Yajure-*  
22 *Hurtado* establish that administrative processes are incapable of providing Petitioner with  
23 timely or effective relief from detention.  
24

1 44. Even successful litigation before the Immigration Court does not result in actual release,  
2 and therefore cannot provide the prompt and effective relief that habeas corpus is designed  
3 to secure.

4 45. Accordingly, this Court should expeditiously grant this petition.

5 **CLAIM FOR RELIEF**

6 **COUNT I**

7 **Violation of the INA:**

8 **Request for Relief Pursuant to Maldonado Bautista**

9 46. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in  
10 the preceding paragraphs as if fully set forth herein.

11 47. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release  
12 on bond under 8 U.S.C. § 1226(a).

13 48. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
14 noncitizens residing in the United States who are subject to the grounds of inadmissibility.  
15 As relevant here, it does not apply to those who previously entered the country and have  
16 been residing in the United States prior to being apprehended and placed in removal  
17 proceedings by Respondents. Such noncitizens are detained under § 1226(A), unless they  
18 are subject to § 1225(b)(1), § 1226(c), or § 1231.

19 **COUNT II**

20 **Violation of Due Process**

21 49. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in  
22 the preceding paragraphs as if fully set forth herein.

23 50. The government may not deprive a person of life, liberty, or property without due process  
24 of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody,

1 detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause  
2 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

3 51. Petitioner has a fundamental interest in liberty and being free from official restraint.

4 52. The government’s detention of Petitioner without meaningful access to bond  
5 redetermination to determine whether he is a flight risk or danger to others violates his right  
6 to due process.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 9 a. Assume jurisdiction over this matter;
- 10 b. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;
- 11 c. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”),  
12 as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- 13 d. Grant any other and further relief that this Court deems just and proper.
- 14

15 DATED this 16<sup>th</sup> of January, 2026.

16

17 ANTONIO A. MATURANO

18 *Attorney for Petitioner*

19

20

21

22

23

24