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Attorney for Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
CIVIL DIVISION

Martin ASCENCION ANGEL Petitioner, v. Brian MCSHANE, Field Office Director of Enforcement and Removal Operations, Philadelphia Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; The EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; and J.L. JAMISON as Warden of the Philadelphia Federal Detention Center Respondents.	Case No. 2:26-cv-791 **PETITION FOR WRIT OF HABEAS CORPUS**

PETITION FOR WRIT OF HABEAS CORPUS

1. This is a petition for a writ of habeas corpus filed on behalf of Martin Ascencion Angel seeking relief to remedy his unlawful detention. Respondents are currently detaining Mr. Ascencion Angel subject to initiation of immigration proceedings.

INTRODUCTION

2. Petitioner, Martin Ascencion Angel is in the physical custody of Respondents at the Philadelphia Federal Detention Center. He now faces unlawful detention as the Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have placed into operation procedures which meaningfully deprive Petitioner of release.

3. Petitioner was detained on or about February 5, 2026 by Immigration and Customs Enforcement ("ICE") Enforcement Removal Operations ("ERO") officers in Norristown, Pennsylvania.

JURISDICTION

4. Petitioner is in the physical custody of Respondents. Petitioner is presently being held at the Philadelphia Federal Detention Center in Philadelphia, Pennsylvania.

5. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

6. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.,* and the All Writs Act, 28 U.S.C. § 1651.

VENUE

7. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Pennsylvania, the judicial district in which Petitioner currently is detained.

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

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

PARTIES

11. Petitioner Martin Ascencion Angel is a citizen and national of Mexico who is presently in physical custody of Respondents. Following the arrest of Petitioner in

Pennsylvania, ICE placed Petitioner into custody in the Philadelphia Federal Detention Center pending removal proceedings.

12. Respondent, Brian McShane is the Director of the Field Office of ICE's Enforcement and Removal Operations division which oversees the Philadelphia Office and immigrant detention at the Philadelphia Federal Detention Center. As such, Director McShane is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

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

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

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

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

17. Respondent J.L. Jamison, as Warden of the Philadelphia Federal Detention Center, where Petitioner is detained is named in their official capacity having immediate physical custody of Petitioner. He is sued in their official capacity.

LEGAL FRAMEWORK

18. The Fourth Amendment protects "[t]he right of the people to be secure in their persons…against unreasonable searches and seizures." U.S. Const. amend. IV.

19. Immigration detention is a form of civil confinement that "constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979).

20. Immigration officers may arrest an individual without a warrant in limited circumstances. *See Arizona v. United States*, 567 U.S. 387, 407-08 (2012) (conferring the preference of Congress, as expressed in the INA, for immigration arrests to be based on warrants).

21. The INA permits warrantless arrest if an immigration officer has reason to believe that a noncitizen (1) is in the United States in violation of the immigration laws and (2) "is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(i)-(ii).

22. ICE officers are bound not only by statute and due process, but also by its national policy adopted pursuant to settlement agreement in *Castanon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.). Under this poly, ICE officers must consider a delineated list of factors before making an arrest, including (a) the officer's ability to determine the individual's identity; (b) knowledge of the individual's prior escapes or evasions of immigration authorities; (c) the individual's attempts to flee to avoid being discovered by

immigration; and (d) the individual's ties to the community, such as a family, home, or employment. Settlement Agreement, *Castanon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.), *available at* https://immigrantjustice.org/sites/default/files/content-type/page/documents/2025-01/Nava_Settlement_ICE_Warrantless_Arrest-Vehicle_Stop_Policy_2021.pdf.

23. Civil immigration detention must rest on lawful, individualized determination that detention is justified under the statutory framework as established by Congress. It cannot be imposed as the byproduct of a generalized enforcement campaign or arbitrary numerical targets. Yet the circumstances surrounding Petitioner's arrest and continued detention strongly indicate that his custody is not the result of a particularized assessment, but rather flowed from a broader enforcement posture designed to maximize arrests and detention irrespective of individualized risk.[1]

24. Such seizures raise serious constitutional concerns. When enforcement practices become quota-driven, the risk of arbitrary detention increases substantially, eroding the constitutional boundary between permissible civil enforcement and impermissible dragnet policing.

25. The facts of this case reflect the predictable consequences of that policy environment. Petitioner has been present in the United States for nearly twenty (20) years. He is the father to four U.S. citizens, one of whom currently serves as a member of our armed

[1] Elizabeth Findell, et al., The White House Marching Orders That Sparked the L.A. Migrant Crackdown, The Wall Street Journal (June 9, 2025), https://www.wsj.com/us-news/protests-losangeles-immigrants-trump-f5089877; Julia Ainsley, et al., A sweeping new ICE operation shows how Trump's focus on immigration is reshaping federal law enforcement, NBC News (June 4, 2025), https://www.nbcnews.com/politics/justicedepartment/ice-operation-trump-focusimmigration-reshape-federal-lawenforcement-rcna193494; Brittany Gibson & Stef W. Kight, Scoop: Stephen Miller, Noem tell ICE to supercharge immigration arrests, Axios (May 28, 2025), available at https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller.

forces. The Petitioner has no criminal record, and no history which would support a finding that he is a risk to the community or a risk of flight.

26. The constitutional concerns raised by Petitioner's arrest are not merely theoretical; they are compounded by the government's subsequent misapplication of the statutory detention scheme in what is now a nationwide issue of mass mandatory detention.

27. Even assuming arguendo that Petitioner's initial apprehension were lawful, his continued detention must still comport with the framework Congress enacted in the Immigration and Nationality Act ("INA"). That framework requires individualized custody determination and carefully distinguishes between discretionary and mandatory detention.

28. Rather than adhere to those statutory limits, DHS and EOIR have attempted to reclassify broad categories of long-term resident as "applicants for admission," thereby subjecting them to mandatory detention and stripping immigration judges of their traditional custody authority.

29. Understanding the structure of the INA's detention provisions is therefore essential, as it demonstrates that Petitioner's ongoing confinement is not only constitutionally suspect, but also contrary to the plain text, history, and settled application of the governing statute.

30. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

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

32. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

33. The detention provisions at § 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. 119-1, 139 Stat. 3 (2025).

34. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *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).

35. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearing, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

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

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

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

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

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

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

42. On September 5, 2025, the Board of Immigration Appeals ("BIA") took this misapplication of law a step further, issuing a precedential decision, binding on all immigration judges, holding that the immigration judge does not have authority to consider bond redetermination requests to any individual who entered the United States without inspection. *See Matter of Yajure Hurtado,* 29 I. & N. Dec. 216 (BIA 2025).

43. In effect, the BIA transformed the government's contested enforcement position into a categorical jurisdiction bar, foreclosing individualized custody determinations for a broad class of noncitizens historically deemed bond-eligible under § 1226(a).

44. Federal district courts have rejected this sweeping reclassification. In *Maldonado Bautista v. Santacruz*, the Central District of California certified a nationwide "Bond Eligible Class" and granted declaratory relief, holding that DHS's interpretation "runs counter to the plain language of the INA, foundational principles of statutory interpretation, and the INA's statutory scheme," and that class members are entitled, at minimum, to individualized bond hearings. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *4 (C.D. Cal. Nov. 25, 2025).

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

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

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

48. Despite the District Court's findings and relief ordered, the Executive Office for Immigration Review and the Department of Homeland Security (DHS) have continued to refuse to abide by the declaratory relief and have continuously appealed lawful orders of release granted by immigration judges, forcing non-citizens to remain detained despite an issued order of bond.

49. Respondents have now operationalized that defiance through a coordinated litigation strategy that ensures continued detention even where an Immigration Judge has lawfully exercised jurisdiction, conducted an individualized custody analysis, and ordered release on bond. This practice directly undermines the relief granted by federal courts, including the declaratory judgment issued in *Maldonado Bautista v. Santacruz,* and renders that relief functionally meaningless for detained individuals. *See* Attached Exhibit 2.

50. Under DHS's current posture, even when a petitioner succeeds in obtaining a bond hearing and prevails before an Immigration Judge—often by establishing members in the generally recognized Bond Eligible Class and eligibility for discretionary detention under §

1226(a)—DHS responds by reflexively filing an appeal to the Board of Immigration Appeals ("BIA").

51. This strategy does not reflect case-specific judgment, but rather, it presents yet another blanket policy by the Respondents to appeal bond grants in all cases where it has been ordered, circumventing the Immigration Judge's lawful authority and nullifying the effect of federal court relief recognizing bond eligibility. The Respondents have transformed discretionary appellate review into a mechanism of categorical detention—achieving through procedure what it cannot lawfully obtain through statute.

52. Compounding this issue, Department of Homeland Security ("DHS") appeals these bond grants to the very adjudicatory body that has already aligned itself with the Department's contested interpretation of the detention statutes. The Board of Immigration Appeals has issued precedential decisions adopting DHS's position and depriving judges of jurisdiction over custody redeterminations for individuals who entered without inspection. As a result, the appeals process offers no meaningful opportunity for relief, rather, it serves as a foregone conclusion that prolongs detention while preserving the appearance of administrative process.

53. The cumulative effect of this regime acts to trap petitioners in a procedural loop: a lawful bond order is issued, DHS appeals as a matter of course, detention continues automatically, and the appeal is adjudicated by a body that has already endorsed DHS's position. *See* Attached Exhibit 3.

54. This closed circuit—self-reinforcing and outcome-determinative—functions as a form of administrative ouroboros, consuming the very relief federal courts have declared petitioners are entitled to receive. Petitioners are left to run a short and futile race toward

administrative relief while standing on a plank that has been deliberately shortened by agency design.

55. Habeas corpus exists precisely to address this type of structural deprivation of liberty. Where the government's coordinated use of stays, appeals, and binding precedent ensures continued detention regardless of individualized findings or federal court declarations, administrative remedies are not merely inadequate—they are illusory.

56. Continued detention under these circumstances is not authorized by statute, is inconsistent with the separation of powers, and violates fundamental principles of due process. Accordingly, this Court's intervention is necessary to enforce the rule of law and to prevent DHS from nullifying federal judicial relief through procedural gamesmanship.

57. This is not an isolated incident. Counsel for Petitioner has observed this same coordinated enforcement and litigation posture repeatedly in other matters involving similarly situated noncitizens.

58. In those cases, Respondents have effectuated arrests without meaningful individualized inquiry, pursued detention despite the absences of criminal history or flight risk, and then operationalized a uniform strategy of opposing release through jurisdictional challenges and automatic appeals. The attached redacted exhibits further demonstrate that this pattern is systemic rather than anecdotal, reflecting an agency practice those functions to deprive noncitizens of any realistic avenue for custody review, release, or ultimate relief in immigration court. *See* Attached Exhibits 2-3

59. Evidence of such a pattern is highly probative of the constitutional infirmities present here, as it confirms that Petitioner's detention did not arise from a particularized determination, but from an enforcement architecture designed to maximize detention while

minimizing the effectiveness of procedural safeguards guaranteed by statute and due process. *Id.*

EXHAUTION AND FUTILITY OF ADMINISTRATIVE REMEDIES

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

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

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

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

Attached Exhibit 3. There is no indication that the Board is reconsidering or retreating from that holding as it continues to overturn bond orders issued by immigration judges. *Id.*

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

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

66. Under these circumstances, further administrative pursuit of relief is not merely inadequate—it is futile.

67. Accordingly, this Court should expeditiously grant this petition, and order Petitioner's release from detention.

STATEMENT OF FACTS

68. Petitioner, Martin Ascencion Angel is a citizen and national of Mexico who has been present in the United States for approximately twenty (20) years. During this time, Petitioner has established deep family, economic, and community ties. He is the parent of four (4) United States citizen children and has long supported his family through consistent employment. Petitioner's children include his oldest son, a member of our armed forces who serves our country with honor. *See* Attached Exhibit 4.

69. On or about February 5, 2026, Petitioner was apprehended by officers of U.S. Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO"), while awaiting a ride to work in the morning in Norristown, Pennsylvania. He was taken into immigration custody and is presently being held at the Philadelphia Federal Detention Center.

70. Prior to this arrest, Petitioner had not been the subject of any immigration enforcement action for decades despite his long-term presence in the United States. Petitioner has no criminal history that would render him subject to mandatory detention. Rather, Petitioners long record of presence in the United States is starkly devoid of any interactions with the criminal justice system.

71. He has never been arrested for, charged with, or convicted of any offense involving violence, controlled substances, weapons, or moral turpitude. He is not subject to mandatory detention under any provision of the Immigration and Nationality Act ("INA"), including INA § 236(c) or INA § 241, 8 U.S.C. §§ 1226(c), 1231.

72. Petitioner has viable relief available in removal proceedings in the form of Non-Lawful Permanent Resident Cancellation of Removal under INA § 240A(b), based on his more than ten years of continuous physical presence in the United States, good moral character, and the exceptional and extremely unusual hardship that removal would cause to his United States citizen child. Additionally, Petitioner has relief available via his U.S. citizen child, through Military Parole in Place, and may be further eligible for U-Visa relief as the victim of a violent crime who assisted authorities in the subsequent investigation.

73. Petitioner can establish that he is a member of the Bond Eligible Class certified in *Maldonado Bautista v. Santacruz*, and therefore subject to discretionary detention under INA § 236(a), rather than mandatory detention under INA § 235(b).

74. Petitioner's continued detention is not based on any statutory mandate, any criminal history, or any individualized finding of danger or flight risk, but solely on the government's present political posture.

CLAIM FOR RELIEF

COUNT I

Violation of the Fourth Amendment of the United States Constitution
Unreasonable Seizure

1. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
2. Except at the border and its functional equivalents, the Fourth Amendment to the U.S. Constitution prohibits Respondents from conducting a detained stop to question a person without reasonable suspicion that a person is a noncitizen unlawfully in the United States. Moreover, the Fourth Amendment prohibits Respondents from making an arrest without probable cause to believe that a person is a noncitizen unlawfully in the United States.
3. Petitioner was detained by Respondents despite a lack of reasonable suspicion based on articulable facts that Petitioner was unlawfully in the United States. Further, Petitioner was arrested despite lack of probable cause to believe that Petitioner was a flight risk.

COUNT II

Violation of the INA:

Request for Relief Pursuant to Maldonado Bautista

1. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
2. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).
3. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(A), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

COUNT III

Violation of Due Process

4. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
5. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "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 v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).
6. Petitioner has a fundamental interest in liberty and being free from official restraint.
7. The government's detention of Petitioner without meaningful access to bond redetermination to determine whether he is a flight risk or danger to others violates his right to due process.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;

c. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

d. Grant any other and further relief that this Court deems just and proper.

DATED this 6th of February, 2026.

ANTONIO A. MATURANO
Attorney for Petitioner

JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Martin ASCENCION ANGEL

(b) County of Residence of First Listed Plaintiff Montgomery
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Maturano & Associates , LLC
616 Dekalb St., Norristown, PA 19401 Ph: 6163133120

DEFENDANTS

BRIAN MCSHANE, J.L. JAMISON, KRISTI NOEM, PAMELA BONDI, US DHS, EOIR

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

U.S. Attorney for Eastern District of Pennsylvania
615 Chestnut Street, Philadelphia, PA 19106

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- [ ] 1 U.S. Government Plaintiff
- [ ] 3 Federal Question *(U.S. Government Not a Party)*
- [x] 2 U.S. Government Defendant
- [ ] 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	[ ] 1	[ ] 1	Incorporated *or* Principal Place of Business In This State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[ ] 2	Incorporated *and* Principal Place of Business In Another State	[ ] 5	[ ] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- [ ] 110 Insurance
- [ ] 120 Marine
- [ ] 130 Miller Act
- [ ] 140 Negotiable Instrument
- [ ] 150 Recovery of Overpayment & Enforcement of Judgment
- [ ] 151 Medicare Act
- [ ] 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- [ ] 153 Recovery of Overpayment of Veteran's Benefits
- [ ] 160 Stockholders' Suits
- [ ] 190 Other Contract
- [ ] 195 Contract Product Liability
- [ ] 196 Franchise

REAL PROPERTY
- [ ] 210 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 290 All Other Real Property

TORTS

PERSONAL INJURY
- [ ] 310 Airplane
- [ ] 315 Airplane Product Liability
- [ ] 320 Assault, Libel & Slander
- [ ] 330 Federal Employers' Liability
- [ ] 340 Marine
- [ ] 345 Marine Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Product Liability
- [ ] 360 Other Personal Injury
- [ ] 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- [ ] 365 Personal Injury - Product Liability
- [ ] 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- [ ] 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [ ] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

CIVIL RIGHTS
- [ ] 440 Other Civil Rights
- [ ] 441 Voting
- [ ] 442 Employment
- [ ] 443 Housing/ Accommodations
- [ ] 445 Amer. w/Disabilities - Employment
- [ ] 446 Amer. w/Disabilities - Other
- [ ] 448 Education

PRISONER PETITIONS

Habeas Corpus:
- [x] 463 Alien Detainee
- [ ] 510 Motions to Vacate Sentence
- [ ] 530 General
- [ ] 535 Death Penalty

Other:
- [ ] 540 Mandamus & Other
- [ ] 550 Civil Rights
- [ ] 555 Prison Condition
- [ ] 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- [ ] 625 Drug Related Seizure of Property 21 USC 881
- [ ] 690 Other

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- [ ] 710 Fair Labor Standards Act
- [ ] 720 Labor/Management Relations
- [ ] 740 Railway Labor Act
- [ ] 751 Family and Medical Leave Act
- [ ] 790 Other Labor Litigation
- [ ] 791 Employee Retirement Income Security Act

IMMIGRATION
- [ ] 462 Naturalization Application
- [ ] 465 Other Immigration Actions

BANKRUPTCY
- [ ] 422 Appeal 28 USC 158
- [ ] 423 Withdrawal 28 USC 157

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- [ ] 820 Copyrights
- [ ] 830 Patent
- [ ] 835 Patent - Abbreviated New Drug Application
- [ ] 840 Trademark
- [ ] 880 Defend Trade Secrets Act of 2016

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- [ ] 861 HIA (1395ff)
- [ ] 862 Black Lung (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID Title XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 Taxes (U.S. Plaintiff or Defendant)
- [ ] 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- [ ] 375 False Claims Act
- [ ] 376 Qui Tam (31 USC 3729(a))
- [ ] 400 State Reapportionment
- [ ] 410 Antitrust
- [ ] 430 Banks and Banking
- [ ] 450 Commerce
- [ ] 460 Deportation
- [ ] 470 Racketeer Influenced and Corrupt Organizations
- [ ] 480 Consumer Credit (15 USC 1681 or 1692)
- [ ] 485 Telephone Consumer Protection Act
- [ ] 490 Cable/Sat TV
- [ ] 850 Securities/Commodities/ Exchange
- [ ] 890 Other Statutory Actions
- [ ] 891 Agricultural Acts
- [ ] 893 Environmental Matters
- [ ] 895 Freedom of Information Act
- [ ] 896 Arbitration
- [ ] 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- [ ] 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- [x] 1 Original Proceeding
- [ ] 2 Removed from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from Another District *(specify)*
- [ ] 6 Multidistrict Litigation - Transfer
- [ ] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 USC 2241

Brief description of cause:
Alien detanied by respondents without due process of law.

VII. REQUESTED IN COMPLAINT:

[ ] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: [ ] Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
02/[ ]6/2026

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

TABLE OF CONTENTS

EXHIBIT	DOCUMENT
1	Copy of District Court's Order in Lazaro Maldonado Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM, Doc. 94 (C.D. Cal. Dec. 18, 2025)
2	Examples of Redacted Form EOIR-43, Notice of Intent to Appeal filed in Immigration Court following Favorable Bond Order
3	Redacted BIA Decision Overturning Favorable Bond Finding by the Immigration Judge
4	Copies of Birth Certificates for Petitioner's U.S. Citizen Children

EXHIBIT 1

UNITED STATES DISRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Lazaro MALDONADO BAUTISTA, *et al.*, on behalf of themselves and others similarly situated, *Plaintiffs-Petitioners*, v. Kristi NOEM, Secretary, Department of Homeland Security; *et al.*, *Defendants-Respondents*.	Case No.: 5:25-cv-01873-SSS-BFM Judge: The Hon. Sunshine Suzanne Sykes **FINAL JUDGMENT**

In light of this Court's Order granting Partial Summary Judgment and Class Certification against Respondents in the instant action [Dkt. No. 93], judgment is hereby **ENTERED** in favor of Petitioners and members of the Bond Eligible Class as follows:

The Court:

1. **DECLARES** that the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2).
2. **DECLARES** that, pursuant to Defendants' regulations, *see* 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a), are not subject to mandatory detention under § 1225(b)(2), and are entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge.
3. **VACATES** the Department of Homeland Security policy described in the July 8, 2025, "Interim Guidance Regarding Detention Authority for Applicants for Admission" under the Administrative Procedure Act as not in accordance with law. 5 U.S.C. § 706(2)(A).
4. **GRANTS** final judgment as to Claims I, II, and III of the Amended Class Complaint, and certifies those claims for appeal pursuant to Federal Rule of Civil Procedure 54(b).

Dated: December 18, 2025

Hon. Sunshine S. Sykes
United States District Court Judge

EXHIBIT 2

Uploaded on: 01/12/2026 at 05:02:01 PM (Eastern Standard Time) Base City: ELZ

U.S. Department of Justice
Executive Office for Immigration Review

Notice of ICE Intent to Appeal Custody Redetermination

Date: 1/12/2026

Alien Number: [redacted]

Alien Name: [redacted]

1. Immigration and Customs Enforcement (ICE) has:

   ☒ a. Held the respondent without bond.

   ☐ b. Set the respondent's bond at $ _____ .

2. The Immigration Judge on _____ (Date)

   ☐ a. Authorized the respondent's release.

   ☒ b. Redetermined the ICE bond to $ 5,000.00 .

3. Filing this form on 1/12/2026 (Date) automatically stays the Immigration Judge's custody redetermination decision. See 8 C.F.R. §1003.19(i)(2).

4. The stay shall lapse if ICE does not file a notice of appeal along with appropriate certification within ten business days of the issuance of the order of the Immigration Judge, or upon ICE's withdrawal of this notice, or as set forth in 8 C.F.R. §1003.6(c)(4) and (5).
   See 8 C.F.R. §1003.6(c)(1).

[redacted] Digitally signed by [redacted]
Date: 2026.01.12 17:00:48 -05'00'

ICE Counsel

I, [redacted] (Name), served the Notice of ICE Intent to Appeal Custody Redetermination on Alexis Price- VIA ECAS (Respondent or Respondent's Representative), on 1/12/26 (Date).

[redacted] Digitally signed by [redacted]
Date: 2026.01.12 17:01:25 -05'00'

Signature

EOIR — 1 of 1

Form EOIR-43
Rev. Oct. 2006

[redacted]

[redacted]

[redacted] [redacted]

[redacted]

[redacted] [redacted]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ELIZABETH IMMIGRATION COURT

Respondent Name:
[redacted]

To:

Price, Alexis M
616 Dekalb St.
Suite 1
Norristown, PA 19401

A-Number:
[redacted]
Riders:
In Custody Redetermination Proceedings

Date:
01/12/2026

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☐ Denied, because

☑ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
- ☑ released from custody under bond of $ 5,000.00
- ☐ other:

☐ Other:

[redacted] [redacted]

Immigration Judge: MULLICAN, LEILA 01/12/2026

Appeal: Department of Homeland Security: ☐ waived ☑ reserved
Respondent: ☑ waived ☐ reserved

Appeal Due: 02/11/2026

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [ ] Alien | [ ] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : [redacted] | A-Number : [redacted]

Riders:

Date: 01/13/2026 By: VITALI, PATRICIA, Court Staff

[redacted] [redacted]

Uploaded on: 01/12/2026 at 04:58:00 PM (Eastern Standard Time) Base City: ELZ

U.S. Department of Justice
Executive Office for Immigration Review

Notice of ICE Intent to Appeal Custody Redetermination

Date: 1/12/2026

Alien Number: [redacted]

Alien Name: [redacted]

1. Immigration and Customs Enforcement (ICE) has:

   ☒ a. Held the respondent without bond.

   ☐ b. Set the respondent's bond at $ _____ .

2. The Immigration Judge on _____ (Date)

   ☐ a. Authorized the respondent's release.

   ☒ b. Redetermined the ICE bond to $ 3,000.00 .

3. Filing this form on 1/12/2026 (Date) automatically stays the Immigration Judge's custody redetermination decision. See 8 C.F.R. §1003.19(i)(2).

4. The stay shall lapse if ICE does not file a notice of appeal along with appropriate certification within ten business days of the issuance of the order of the Immigration Judge, or upon ICE's withdrawal of this notice, or as set forth in 8 C.F.R. §1003.6(c)(4) and (5).
   See 8 C.F.R. §1003.6(c)(1).

[redacted] Digitally signed by [redacted]
Date: 2026.01.12 16:56:44 -05'00'

ICE Counsel

I, [redacted] (Name), served the Notice of ICE Intent to Appeal Custody Redetermination on Alexis PRICE- VIA ECAS (Respondent or Respondent's Representative), on 1/12/26 (Date).

[redacted] Digitally signed by [redacted]
Date: 2026.01.12 16:57:20 -05'00'

Signature

EOIR — 1 of 1

Form EOIR-43
Rev. Oct. 2006

[redacted]

[redacted]

[redacted] [redacted]

[redacted]

[redacted] [redacted]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ELIZABETH IMMIGRATION COURT

Respondent Name:
[redacted]

To:

Price, Alexis M
616 Dekalb St.
Suite 1
Norristown, PA 19401

A-Number:
[redacted]

Riders:
In Custody Redetermination Proceedings

Date:
01/12/2026

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☐ Denied, because

☑ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
- ☑ released from custody under bond of $ 3,000.00
- ☐ other:

☐ Other:

Immigration Judge: MULLICAN, LEILA 01/12/2026

Appeal: Department of Homeland Security: ☐ waived ☑ reserved
Respondent: ☑ waived ☐ reserved

Appeal Due: 02/11/2026

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [ ] Alien | [ ] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : [redacted] | A-Number : [redacted]

Riders:

Date: 01/12/2026 By: VITALI, PATRICIA, Court Staff

Uploaded on: 07/31/2025 at 04:51:22 PM (Eastern Daylight Time) Base City: ELZ

U.S. Department of Justice
Executive Office for Immigration Review

Notice of ICE Intent to Appeal Custody Redetermination

Date: July 31, 2025

Alien Number: [redacted]

Alien Name: [redacted]

1. Immigration and Customs Enforcement (ICE) has:

   ☒ a. Held the respondent without bond.

   ☐ b. Set the respondent's bond at $ _____ .

2. The Immigration Judge on July 31, 2025 (Date)

   ☐ a. Authorized the respondent's release.

   ☒ b. Redetermined the ICE bond to $ 5,000 .

3. Filing this form on July 31, 2025 (Date) automatically stays the Immigration Judge's custody redetermination decision. See 8 C.F.R. §1003.19(i)(2).

4. The stay shall lapse if ICE does not file a notice of appeal along with appropriate certification within ten business days of the issuance of the order of the Immigration Judge, or upon ICE's withdrawal of this notice, or as set forth in 8 C.F.R. §1003.6(c)(4) and (5).
   See 8 C.F.R. §1003.6(c)(1).

[redacted]
ICE Counsel

I, [redacted] (Name), served the Notice of ICE Intent to Appeal Custody Redetermination on Alexis Price, Esq. (Respondent or Respondent's Representative), on July 31, 2025 (Date).

[redacted]
Signature

EOIR – 1 of 1

Form EOIR-43
Rev. Oct. 2006

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ELIZABETH IMMIGRATION COURT

Respondent Name:
[redacted]

To:

Price, Alexis M
616 Dekalb St.
Suite 1
Norristown, PA 19401

A-Number:
[redacted]
Riders:
In Custody Redetermination Proceedings

Date:
07/31/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☐ Denied, because

☑ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
- ☑ released from custody under bond of $ 5,000.00
- ☐ other:

☐ Other:

[redacted] [redacted]

Immigration Judge: PANOPOULOS, ADAM 07/31/2025

Appeal: Department of Homeland Security: ☐ waived ☑ reserved
Respondent: ☑ waived ☐ reserved

Appeal Due: 09/02/2025

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [ ] Noncitizen | [ ] Noncitizen c/o custodial officer | [E] Noncitizen's atty/rep. | [E] DHS

Respondent Name : [redacted] | A-Number : [redacted]

Riders:

Date: 08/01/2025 By: ARANGO, HAROLD, Court Staff

[redacted] [redacted]

Uploaded on: 07/30/2025 at 06:44:33 PM (Eastern Daylight Time) Base City: ELZ

U.S. Department of Justice
Executive Office for Immigration Review

Notice of ICE Intent to Appeal Custody Redetermination

Date: July 30, 2025

Alien Number: [redacted]

Alien Name: [redacted]

1. Immigration and Customs Enforcement (ICE) has:

   ☒ a. Held the respondent without bond.

   ☐ b. Set the respondent's bond at $ _____ .

2. The Immigration Judge on July 30, 2025 (Date)

   ☐ a. Authorized the respondent's release.

   ☒ b. Redetermined the ICE bond to $ 12,000 .

3. Filing this form on July 30, 2025 (Date) automatically stays the Immigration Judge's custody redetermination decision. See 8 C.F.R. §1003.19(i)(2).

4. The stay shall lapse if ICE does not file a notice of appeal along with appropriate certification within ten business days of the issuance of the order of the Immigration Judge, or upon ICE's withdrawal of this notice, or as set forth in 8 C.F.R. §1003.6(c)(4) and (5).
   See 8 C.F.R. §1003.6(c)(1).

[redacted]
ICE Counsel

I, [redacted] (Name), served the Notice of ICE Intent to Appeal Custody Redetermination on Antonio Alberto Maturano, Esquire (Respondent or Respondent's Representative), on July 30, 2025 (Date).

[redacted]
Signature

EOIR – 1 of 1

Form EOIR-43
Rev. Oct. 2006

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ELIZABETH IMMIGRATION COURT

Respondent Name:
[redacted]

To:

Maturano, Antonio Alberto
616 Dekalb Street
Norristown, PA 19401

A-Number:
[redacted]

Riders:
In Custody Redetermination Proceedings

Date:
07/30/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☐ Denied, because

☑ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
- ☑ released from custody under bond of $ 12,000.00
- ☐ other:

☐ Other:

Immigration Judge: BAILEY, RICHARD 07/30/2025

Appeal: Department of Homeland Security: ☐ waived ☑ reserved
Respondent: ☑ waived ☐ reserved

Appeal Due: 08/29/2025

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [ ] Noncitizen | [ ] Noncitizen c/o custodial officer | [E] Noncitizen's atty/rep. | [E] DHS

Respondent Name : [redacted] | A-Number : [redacted]

Riders:

Date: 07/30/2025 By: VITALI, PATRICIA, Court Staff

EXHIBIT 3

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

[redacted]
616 Dekalb St. Suite 1
Norristown PA 19401

DHS/ICE Office of Chief Counsel - ELZ
625 Evans Street, Room 135
Elizabeth NJ 07201

Name: [redacted] **A** [redacted]-682

Date of this Notice: 10/31/2025

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

John Seiler
Acting Chief Clerk

Enclosure

Userteam: Docket

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

[redacted]

Respondent

FILED
Oct 31, 2025

ON BEHALF OF RESPONDENT: Alexis M. Price, Esquire

ON BEHALF OF DHS: John D. Staples, Assistant Chief Counsel

IN BOND PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Elizabeth, NJ

Before: Gemoets, Appellate Immigration Judge

GEMOETS, Appellate Immigration Judge

The respondent is a native and citizen of Brazil. The Department of Homeland Security appeals from the Immigration Judge's July 30, 2025, bond order granting the respondent a $12,000 bond. On August 15, 2025, the Immigration Judge issued a bond memorandum memorializing his decision. The respondent opposes the appeal. The appeal will be sustained, and the Immigration Judge's order will be vacated.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

In intervening precedent, we held that, pursuant to section 235(b)(2)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025). We find no error in the Immigration Judge's finding that the respondent is present in the United States without admission (IJ Bond Mem. at 1; Exh. B2 at 1). On this record, the Immigration Judge lacked jurisdiction to hear the respondent's motion for a bond because he is an applicant for admission and therefore subject to mandatory detention.

We disagree with the respondent's argument that *Matter of Yajure Hurtado* cannot be retroactively applied to his case because it was issued after the Immigration Judge's bond order (Respondent's Br. at 7-10). The application of our interpretation of the INA's detention statutes in *Matter of Yajure Hurtado* "is not subject to retroactivity concerns because an alien's eligibility (or continued eligibility) for release on bond should be considered a form of prospective relief in the context of" *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). *Matter of Valdez*,

21 I&N Dec. 703, 710 (BIA 1997). The INA "does not give detained aliens any *right* to release on bond." *Matter of D-J-*, 23 I&N Dec. 572, 575 (BIA 2003) (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). As such, application of *Matter of Yajure Hurtado* to the respondent does not "impair rights [he] possessed when he acted, increase [his] liability for past conduct, or impose new duties with respect to transactions already completed." *Matter of Valdez*, 21 I&N Dec. at 709-10 (quoting *Landgraf*, 511 U.S. at 280). The respondent's inability to seek release on bond before an Immigration Judge does not have any effect on the immigration consequences of his unlawful entry into the United States, such as whether he is removable from the United States or eligible for relief from removal. It "at most creates a practical disadvantage, not an impairment of protected rights." *Id.* at 711.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The Immigration Judge's July 30, 2025, custody order is vacated, and the respondent is ordered detained without bond.