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Attorney for Petitioner

**IN THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE DISTRICT OF
FLORIDA
FORT MYERS DIVISION**

Sandro Rodriguez Brito,
Petitioner

v.

GARRETT J. RIPA, Miami Field Office
Director, Immigration and Customs
Enforcement and Removal Operations (ICE/
ERO); U.S. Immigration and Customs
Enforcement; KRISTI NOEM, Secretary of
the Department of Homeland Security; U.S.
Department of Homeland Security (DHS);
PAMELA BONDI, Attorney General of
the United States, and TODD LYONS, Director,
Immigration and Customs Enforcement.

Respondents

PETITION FOR WRIT
OF HABEAS CORPUS

CASE No: 1:26cv20704

PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENTS' RESPONSE TO

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner, Sandro Rodriguez Brito, who will be referred to as “Petitioner” from hereon in, introduces for the Court’s consideration his response to the Respondents’ Response to Petitioner’s Writ of Habeas Corpus.

EXHAUSTION

1. Respondents argued that the Petitioner has not exhausted administrative remedies, but, exhaustion of administrative remedies is not required when administrative remedies are likely futile. *See Vasquez- Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) (“where the agency's position appears already set and recourse to administrative remedies is very likely futile, exhaustion is not required.”). Appealing to the BIA would be futile as the agency’s position appears to be set. Regardless, the Petitioner has appealed to the BIA and is awaiting a decision. *See Exhibit A*. However, due to the BIA’s position in *Hurtado*, it is likely to be futile to wait for a decision from the BIA. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Awaiting a decision from the BIA would unduly extend Petitioner’s detention. In *Hurtado*, the BIA held that immigration judges lack jurisdiction to hold bond hearings or grant bond to all individuals charged with entering the country without inspection. *Id.*

Procedural Due Process

2. The Petitioner’s detention is in violation of his Fifth Amendment right to due process. There are only two reasons why a detention is permissible which are (1) for preventing flight and (2) protecting the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003). Respondents state that the Petitioner is a flight risk. But, in the Petitioner’s case

there is no risk of flight nor danger to the community. The Petitioner is not a flight risk because he has ample close ties to the community. Petitioner has a U.S citizen fiancé who lives in the U.S and also has family located in the U.S., such as his sister. Petitioner has a Commercial Driver's License (CDL) and works as a long-haul trucker. Finally, the Petitioner is not a flight risk because he has a clear path to Residency via Adjustment of Status under Cuban Adjustment. There is simply no incentive for the Petitioner to flee, and in fact, it is quite the contrary as he can only benefit from continuing to participate in his immigration proceedings.

3. The Petitioner is also not a danger to the community as he has no serious felony charges. The only charge that Petitioner has is catching a fish that is undersized without a license to fish. Respondents cite *Bell v. Wolfish*, 441 U.S. 520, 538-39 (1979) which states that Petitioner must show that the detention is not reasonably related to a legitimate governmental goal and therefore the detention would be implicitly considered a punishment or, alternatively, the Petitioner must show that there is an express intent to punish on the part of detention facility officials. There is no legitimate government purpose to keep the Petitioner detained due to the aforementioned reasons, including that he is not a flight risk or a danger to society. The sole purpose of detaining the Petitioner is to punish him and coerce him into signing his own deportation order. Indeed, even in Respondents' response, Respondents do not point to a single reason why the Petitioner is either a flight risk or a danger to society. The current administration has also made clear that its goal is mass deportation and its intent is to deport as many people as possible regardless of whether they are a risk to the community or a flight risk. The Petitioner is a clear example of a detainee that is in no way a danger to society or a flight risk, but is

nonetheless detained.

Violation of Eighth Amendment

4. Though Respondents did not address the violation of Eighth Amendment directly, the Petitioner has been detained for an extended period of time for simply fishing without a license and keeping an undersized fish. The punishment does not fit the crime and such a lengthy detention is cruel and unusual punishment. Additionally, according to *Robinson v. California*, 370 U.S. 660(1962), it was held that a person cannot be punished because of their status or condition. In the instant case, the Petitioner was punished for his status /condition which is that of an immigrant.

Petitioner is not subject to Mandatory Detention

5. Petitioner was not inspected nor admitted, and therefore, is not subject for mandatory detention under *Matter of Yajuaré Hurtado*, 29 I&N Dec.216 (B.I.A.2025). *Hurtado* was vacated by *Bautista v. Santacruz*, No.5:25-CV-01873-sss-BFM. Although the decision of *Bautista* has been stayed by the court in *Maldonado Bautista v. DHS*, No.261044 (9th Cir. Mar.6, 2026), the stay is temporary and the Petitioner cannot be forced to stay in detention awaiting an outcome of the case. Additionally, regardless of the outcome, the Petitioner is still being unconstitutionally held for the reasons outlined above. The Habeas Corpus protection is strongest when challenging unconstitutional detentions, “The federal Habeas statute, 28 U.S.C. § 2241, provides authority to issue writs of habeas corpus when an individual is “[i]n custody in violation of the Constitution or law or treaties of the United States.” Id. § 2241(c)(3). “At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.” *Cecilio Blanco Romero*

v DHS, 2:26-cv-353-KCD-NPM (citing *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001)). The Petitioner is being held in an executive detention center and the *Hurtado* Court is an executive court. Therefore, the issue at hand is the constitutionality of Petitioner's detention.

6. Respondents claim that they are not proper parties to this suit but this is incorrect. U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens. Additionally, the Attorney General is also a proper party to the suit as she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

Conclusion

7. Due to the aforementioned reasons the Petitioner requests that he be granted Relief in the form of release from unlawful and excessive detention.

DATED: March 27, 2026

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EXHIBIT A



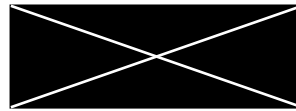
**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS**

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Name:

RODRIGUEZ-BRITO, SANDRO



Riders:

Date of Notice: 02/20/2026

FILING RECEIPT FOR APPEAL OR MOTION

The Board of Immigration Appeals (Board or BIA) acknowledges receipt of the appeal or motion and fee or fee waiver request (where applicable) on 02/20/2026, in the above-referenced case, filed by the Respondent

Additional Comments
N/A

WARNING FOR APPEALS:

Departure. If you leave the United States after filing this appeal but before the Board issues a decision, your appeal may be considered withdrawn and the Immigration Judge's decision will become final as if no appeal had been taken (unless you are an "arriving alien" as defined in the regulations under 8 C.F.R. § 1001.1(q)).

Proof of posting voluntary departure bond. If you have been granted voluntary departure by the Immigration Judge, you must submit proof of having posted the voluntary departure bond set by the Immigration Judge to the Board. Your submission of proof must be provided to the Board within 30 days of filing this appeal. If you do not timely submit proof to the Board that the voluntary departure bond has been posted, the Board cannot reinstate the period of voluntary departure. 8 C.F.R. § 1240.2(c)(3)(ii).

Autostay Bond Appeals. Please note that the automatic stay will expire 90 days from the date of receipt of the DHS' appeal. 8 C.F.R. § 1003.6(c)(3). If the Board grants the respondent's request for additional briefing time, then the 90-day automatic stay period will be tolled for the same number of days. 8 C.F.R. § 1003.6(c)(4).

Form EOIR-27. If the appeal was filed by DHS and the respondent/applicant wishes to be represented by an attorney or accredited representative in these new proceedings, counsel must complete a new Form EOIR-27 (Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals). Unless a Form EOIR-27 is received from counsel, the respondent/applicant will be considered pro se before the Board and all future notices, including the Board's decision, will be sent directly to the respondent/applicant and not to counsel.

WARNING FOR MOTIONS:

Stay of removal. Filing a motion with the Board does not automatically stop the DHS from executing an order of removal. If the respondent/applicant is in DHS detention and is about to be removed, you may request the Board to stay the removal on an emergency basis. For more information, call the Clerk's Office at (703) 605-1007.

Form EOIR-27. If the motion was filed by DHS and the respondent/applicant wishes to be represented by an attorney or accredited representative in these new proceedings, counsel must complete a new Form EOIR-27 (Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals). Unless a Form EOIR-27 is received from counsel, the respondent/applicant will be considered pro se before the Board and all future notices, including the Board's decision, will be sent directly to the respondent/applicant and not to counsel.

FILING INSTRUCTIONS:

If you have any questions about how to file something at the Board, please review the Board's Practice Manual which is available on EOIR's website at www.justice.gov/eoir.

Accepted by: VonackS

CC