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5 *Pro Bono* Attorney for Petitioner

6
7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 KEVIN ALEXANDER PORTILLO LUNA,

10 Petitioner,

11 v.

12 CHRISTOPHER J. LAROSE, Warden, Otay
13 Mesa Detention Center;
DANIEL A. BRIGHTMAN, Acting Field Office
14 Director, U.S. Immigration and Customs
Enforcement;
15 TODD M. LYONS, Acting Director, U.S.
16 Immigration and Customs Enforcement;
KRISTI NOEM, Secretary of United States
17 Department of Homeland Security;
and
18 PAMELA BONDI, Attorney General of the
United States.

19 Respondents.
20
21
22
23
24

Case No.: '26CV1645 TWR AHG

**PETITION FOR WRIT OF HABEAS
CORPUS**

Agency Doc. No.



1 INTRODUCTION

2 1. Petitioner, Mr. Kevin Alexander Portillo Luna ("Mr. Portillo" or "Petitioner"),
3 entered the United States on March 19, 2014. Upon entry, he presented himself to U.S. Border
4 Patrol. He was briefly detained and was released into the United States on or about March 21, 2014,
5 by Respondents. That same day, Respondents served a non-compliant NTA to the Petitioner,
6 through his mother, as Petitioner was 16-years old at that time. Petitioner's NTA did not set the
7 time or date for Petitioner to present himself before the immigration court.

8 2. Upon release, Petitioner immediately moved to the state of Illinois and has resided
9 there since 2014. Petitioner provided an address to Respondents informing them where he would
10 reside in Illinois.

11 3. On June 24, 2015, Petitioner was ordered removed *in absentia*, Petitioner was 17-
12 years old at that time. There is no evidence showing that Respondents informed Petitioner, or his
13 mother, of the time and date Petitioner needed to present himself before the immigration court.
14 Neither is there any evidence showing that Respondents sought to detain Petitioner in an
15 individualized way for about 10 years after he was ordered removed *in absentia*.

16 4. Petitioner has 3 U.S. Citizen daughters ages 9, 8, and 5 years old, respectively.
17 Petitioner's daughters depend on him for financial and emotional support. Petitioner's daughters'
18 teachers describe Mr. Portillo as devoted father who played a central role in the life of her daughters
19 and provided emotionally and financially for his family. Further, Petitioner's daughters' teachers
20 describe the negative impact that Mr. Portillo's unlawful detention and removal, and current
21 detention, have had on his daughters.

22 5. On or about November 8, 2025, Petitioner was unlawfully arrested by Respondents
23 in Illinois during a raid at Petitioners job while the *Castañon Nava* settlement agreement was in
24

1 place. Respondents immediately removed Petitioner. Respondents refer to these actions as
2 “arrested and process[ed] as a Bag and Baggage.”

3 6. On January 1, 2026, Petitioner returned to the United States for two reasons: to
4 continue supporting his family, and due to his fear of persecution. That same day, Petitioner was
5 detained by Respondents.

6 7. On February 11, 2026, Respondents commenced removal proceedings against
7 Petitioner in immigration court, entitling Petitioner to due process rights.

8 8. On March 13, 2026, an immigration judge denied the Petitioner the right to a bond
9 hearing on jurisdictional grounds.

10 9. Accordingly, to vindicate Petitioner’s rights, this Court should grant the instant
11 petition for a writ of habeas corpus and order his immediate release from custody. Petitioner asks
12 this Court to find that his current detention is arbitrary and capricious and in violation of the law.

13 JURISDICTION

14 10. This action arises under the United States Constitution and the Immigration and
15 Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Petitioner’s detention
16 under the INA and any inherent or plenary powers the government may claim to continue holding
17 him.

18 11. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§ 701–706
19 (Administrative Procedure Act, “APA”); and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2,
20 and the Fifth and Eighth Amendments of the United States Constitution. Jurisdiction is not limited
21 by a petitioner’s nationality, immigration status, or any other classification. *See Boumediene v.*
22 *Bush*, 553 U.S. 723, 747 (2008). The Court may grant relief under the Suspension Clause; the Fifth
23 and Eighth Amendments; 5 U.S.C. § 706 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651
24 (All Writs Act), §2201 (Declaratory Judgment Act), and §2241 (habeas corpus).

16. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. Thus, 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).

17. Petitioner is “in custody” for the purposes of §2241 because Petitioner was arrested and is detained by Respondents.

PARTIES

18. Petitioner, Mr. Portillo, is a citizen of Honduras. He is currently in Respondents' legal and physical custody at the Otay Mesa Detention Center in San Diego, California.

19. Respondent, Christopher J. Larose (“Larose”), is the Warden at the Otay Mesa Detention Center, where Petitioner is being held. Respondent Larose is the Petitioner’s immediate custodian. Petitioner sues him in his official capacity.

20. Respondent Daniel A. Brightman is the Acting Director of ICE's San Diego Field Office for Enforcement and Removal Operations. That office determines whether the Petitioner will be detained in ICE custody or released. Respondent Brightman has custodial authority over Petitioner, who names him in his official capacity.

21. Respondent Todd M. Lyons is the Acting Director of ICE. ICE is a component of the DHS, 6 U.S.C. § 271, and an “agency” within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is detaining Petitioner. Respondent Lyons has custodial authority over Petitioner, who names him in his official capacity.

22. Respondent Kristi Noem is the Secretary of the DHS. DHS is the federal agency responsible for enforcing immigration laws and granting immigration benefits. *See* 8 U.S.C. §

1 1103(a); 8 C.F.R. § 2.1. Respondent Noem has ultimate custodial authority over the Petitioner,
2 who names her in her official capacity.

3 23. Respondent Pamela Bondi is the Attorney General of the United States. She is
4 responsible for the Department of Justice. The Executive Office for Immigration Review is a
5 component agency of the Department of Justice; the immigration court system is part of this
6 component agency and its judges issue bond redetermination hearing decisions. She is sued in her
7 official capacity.

8
9 **FACTUAL BACKGROUND**

10 24. Petitioner entered the United States on March 19, 2014, at the age of 16, with his
11 mother. Upon entry, they presented themselves to U.S. Border Patrol. Petitioner and his mother
12 were briefly detained and released into the United States on, or about, March 21, 2014, by
13 Respondents.

14 25. Petitioner provided an address to Respondents informing them where he would reside
15 in Illinois. Upon release, Petitioner moved to the address indicated in the state of Illinois.

16 26. That same day, March 21, 2014, Respondents served a non-compliant NTA to the
17 Petitioner, through his mother, as Petitioner was 16-years old at that time. Petitioner's NTA did
18 not set the time or date for Petitioner to present himself before the immigration court. Petitioner
19 does not know when Respondents commenced removal proceedings against him.

20 27. On June 24, 2015, Petitioner was ordered removed *in absentia*, Petitioner was 17-
21 years old at that time. There is no evidence showing that Respondents informed Petitioner of the
22 time and date Petitioner needed to present himself before the immigration court. Neither is there
23 any evidence showing that Respondents sought to detain Petitioner in an individualized way for
24 about 10 years after he was ordered removed *in absentia*.

1 28. Between [REDACTED] 2016, and [REDACTED] 2020, Petitioner's daughters were born in
2 the state of Illinois. Petitioner has provided financial and emotional support to his three U.S. Citizen
3 daughters from day one until he was unlawfully arrested by Respondents. Petitioner worked to
4 sustain his family, was active in the education of his daughters, and never had an arrest due to a
5 criminal issue for about 10 years.

6 29. On February 8, 2022, The U.S. District Court for the Northern District of Illinois
7 approved a settlement agreement in the class action lawsuit *Castañon Nava et al. v. Department of*
8 *Homeland Security et al.* ("the Agreement"). *The Agreement* had a three-year term that was set to
9 expire on May 12, 2025, unless enforcement provisions within *the Agreement* triggered its
10 extension.

11 30. The class members under *the Agreement* consisted of "all current and future persons
12 arrested without a warrant for a civil violation of U.S. immigration laws within the ICE Chicago
13 Field Office's Area of Responsibility." *Case 1:18-cv-03757* (N.D. Ill), Doc. 214, at 2584. *The*
14 *Agreement* imposed several obligations on ICE for arrests of person without a warrant, among them
15 "(1) officers are required before making a warrantless arrest to have probable cause that the
16 individual is in the United States in violation of U.S. immigration law *and* that the individual is
17 likely to escape before a warrant can be obtained for the arrest; (2) when determining "likelihood
18 of escape," ICE officers are required to consider the totality of the circumstances, including the
19 officer's ability to determine the person's identity; knowledge of that individual's prior escapes or
20 evasions of immigration authorities; attempted flight from an ICE officer; and the person's ties to
21 the community (such as a family, home, or employment; (3) ICE officers must document the facts
22 and circumstances surrounding a warrantless arrest in the narrative section of the foreign national's
23 I-213 Form as soon as practicable; and (4) the documentation must include: a statement that the
24 foreign national was arrested without a warrant; the location of the arrest and the nature of the

1 location where the arrest took place (e.g., residence, business, etc.); whether the foreign national is
2 connected to the location (e.g., are they an employee of the business or resident of the home); the
3 foreign national's ties to the community, if known at the time of the arrest; and the specific,
4 particularized facts supporting the conclusion that the foreign national was likely to escape before
5 a warrant could be obtained." *Id.* at 2586-87.

6 31. On October 7, 2025, the N.D. Ill Court extended *the Agreement* until February 2,
7 2026.

8 32. On or about November 8, 2025, while *the Agreement* was in place, ICE arrested
9 Petitioner without a warrant at his place of work, in Illinois. Regardless of Petitioner's status as a
10 class member of *the Agreement*, Respondent's transferred Petitioner to Texas without providing
11 him with any documentation or explanation. From Texas, Respondents immediately removed
12 Petitioner.

13 33. Respondents refer to these actions as "arrested and process[ed] as a Bag and
14 Baggage."

15 34. On January 1, 2026, Petitioner returned to the United States for two reasons: to
16 continue supporting his family, and due to his fear of persecution in his country of origin.
17 Respondent's detained Petitioner.

18 35. On February 11, 2026, Respondents commenced removal proceedings against
19 Petitioner by filing a NTA with the immigration court, entitling Petitioner to due process rights.
20 Furthermore, Petitioner was designated as "an alien present in the United States who has not been
21 admitted or paroled."

22 36. On March 13, 2026, present counsel attended Petitioner's bond hearing. At the
23 hearing, an Otay Mesa immigration judge denied Petitioner's bond hearing in jurisdictional
24 grounds stating that *Matter of Yajure Hurtado* applied to Petitioner. That same day, the

1 immigration judge issued a decision denying Petitioner's bond because "[t]he evidence indicates
2 that the respondent entered the country without inspection and thus is an applicant for admission
3 under INA section 235(a)(1) and subject to mandatory detention under INA section
4 235(b)(1)(B)(iii)(IV). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The court notes
5 that the Maldonado Bautista orders were stayed by the 9th Circuit on 6 March 2025. See *Maldonado*
6 *Bautista v. DHS*, No 26-1044 (9th Cir. Mar. 6, 2026)..." Moreover, the immigration judge changed
7 the ruling given to Petitioner at the hearing and the one given to Petitioner in writing.

8 37. That same day, Petitioner's counsel received a notice rejecting Petitioner's evidence
9 in support of his bond request. Therefore, the immigration judge did not consider all the evidence
10 as stated in his written order.

11 38. The reasoning on *Matter of Yajure Hurtado* has been shown to be erroneous by
12 several courts, particularly important in this case is the ruling in *Maldonado Bautista v. Santacruz*,
13 No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) on November 25, 2025. Although, the nationwide
14 certification has been stayed by the 9th Cir., the Court clarified that the interpretation of 8 U.S.C. §
15 1225(b)(2)(A) was not the subject of the stay motion. Rather, the stay is related as to whether there
16 can be a "nationwide" certification. Thus, the interpretation of 8 U.S.C. § 1225(b)(2)(A) as applied
17 in *Maldonado Bautista* still is persuasive guidance.

18 LEGAL FRAMEWORK

19 39. Immigration detention should not be used as a punishment and should only be used
20 when, under an individualized determination, a noncitizen is a flight risk because they are unlikely
21 to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678,
22 690 (2001).

23 40. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth
24 Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

1 41. The Immigration and Nationality Act (INA) establishes various procedures through
2 which individuals may be detained pending a decision on whether the noncitizen is to be removed.
3 8 U.S.C. § 1226(a).

4 42. Immigration detention is a form of civil confinement that “constitutes a significant
5 deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 4253
6 (1979).

7 43. Once a determination to release an individual from custody is made, the release order
8 may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C.
9 § 1226(b). For an individual who was once in custody, the Attorney General may take that
10 individual back into custody by revoking the individual’s release when the facts and circumstances
11 warrant it.

12 44. Revocation and return to custody is authorized only based on the individualized facts
13 and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited in
14 nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).

15 45. On February 8, 2022, The U.S. District Court for the Northern District of Illinois
16 approved a settlement agreement in the class action lawsuit *Castañon Nava et al. v. Department of*
17 *Homeland Security et al.* (“*the Agreement*”). *The Agreement* had a three-year term that was set to
18 expire on May 12, 2025. On October 7, 2025, the N.D. Ill Court extended *the Agreement* until
19 February 2, 2026. *The Agreement* imposed several obligations on ICE for arrests of person without
20 a warrant, among them “(1) officers are required before making a warrantless arrest to have
21 probable cause that the individual is in the United States in violation of U.S. immigration law *and*
22 that the individual is likely to escape before a warrant can be obtained for the arrest; (2) when
23 determining “likelihood of escape,” ICE officers are required to consider the totality of the
24 circumstances, including the officer’s ability to determine the person’s identity; knowledge of that

1 individual's prior escapes or evasions of immigration authorities; attempted flight from an ICE
2 officer; and the person's ties to the community (such as a family, home, or employment; (3) ICE
3 officers must document the facts and circumstances surrounding a warrantless arrest in the
4 narrative section of the foreign national's I-213 Form as soon as practicable; and (4) the
5 documentation must include: a statement that the foreign national was arrested without a warrant;
6 the location of the arrest and the nature of the location where the arrest took place (e.g., residence,
7 business, etc.); whether the foreign national is connected to the location (e.g., are they an employee
8 of the business or resident of the home); the foreign national's ties to the community, if known at
9 the time of the arrest; and the specific, particularized facts supporting the conclusion that the
10 foreign national was likely to escape before a warrant could be obtained." *1:18-cv-03757* (N.D.
11 Ill), Doc. 214, at 2586-87.

12 46. On November 20, 2025, the District Court for the Central District of California
13 granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025,
14 certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado*
15 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at
16 *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-
17 Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---
18 -, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners'
19 proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from
20 Order Granting Petitioners' Motion for Partial Summary Judgment).

21 47. The declaratory judgment held that the Bond Denial Class members are detained
22 under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under §
23 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

Maldonado Bautista still is persuasive guidance.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

Abuse of Discretion

Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

allegations in the paragraphs above.

abuse of discretion. 5 U.S.C. § 706(2)(A).

463 U.S. 29, 43 (1983)).

of Com. v. New York, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

1 53. By unlawfully detaining Petitioner without an arrest warrant and subsequently
2 removing him as a “Bag and Baggage” without consideration of Petitioner’s individualized facts
3 and circumstances Respondents have violated the APA. Moreover, Petitioner’s current situation
4 was caused by Respondent’s abuse of discretion.

5 54. By denying Petitioner’s bond hearing without consideration of his individualized
6 facts and circumstances, Respondents have violated the APA.

7 55. By rejecting Petitioner’s evidence in support of his bond hearing and stating as
8 rejection reasons “1. No Pending Case. 2. Rejection Reason Not Found (Other),” Respondents have
9 further abused their discretion because there was no reason to reject the evidence and this shows
10 that the immigration judge did not consider all the evidence presented by the parties, but only the
11 evidence presented by DHS.

12
13
COUNT TWO

14 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)**

15 **Not in Accordance with Law and in Excess of Statutory Authority**

16 **Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

17 56. Petitioner realleges and incorporates by reference, as if fully set forth herein, the
18 allegations in the paragraphs above.

19 57. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in
20 accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction,
21 authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. §
22 706(2)(A)-(D).

23 58. It is a well-established administrative principle that “agency action taken without
24 lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d
1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); *see also*

1 *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency
2 action because it was taken by unauthorized official).

3 59. Respondents arrested and removed Petitioner without the established process agreed
4 by ICE in the *Castañon Nava Agreement*. Therefore, Respondents' arrest and removal of Petitioner
5 was not in accordance with law and in excess of statutory authority. Furthermore, Respondent's
6 unlawful action has placed Petitioner in its current situation.

7 60. Although the December 18, 2025, declaratory judgment of the Central District of
8 California District Court regarding the Bond Eligible Class under *Maldonado Bautista*, was stayed
9 by the 9th Cir. on March 6, 2026, Petitioner is entitled to consideration for release on bond under 8
10 U.S.C. § 1226(a) due to the individualized circumstances of his most recent entry.

11 61. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject
12 to mandatory detention under § 1225(b)(2), Respondents violated Petitioner's statutory rights
13 under the INA. Therefore, the immigration judge's order is not in accordance with the law.
14 Furthermore, the court's rejection of Petitioner's evidence in support of his bond application
15 without a reason is not in accordance with law and in excess of statutory authority.

16
17 **COUNT THREE**
Violation of Fifth Amendment Right to Due Process
Procedural Due Process
18

19 62. Petitioner realleges and incorporates by reference, as if fully set forth herein, the
20 allegations in the paragraphs above.

21 63. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits
22 the federal government from depriving any person of "life, liberty, or property, without due process
23 of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States,
24

1 including [non-citizens], whether their presence here is lawful, unlawful, temporary, or
2 permanent.” *Zadvydas*, 533 U.S. at 693; *accord Flores*, 507 U.S. at 306.

3 64. Due process requires that government action be rational and non-arbitrary. *See U.S.*
4 *v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

5 65. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a)
6 this discretion is not “unlimited” and must comport with constitutional due process. *See Zadvydas*,
7 533 U.S. at 698.

8 66. Here, Respondents have chosen to ignore Respondent’s right to a bond hearing in an
9 arbitrary manner and not based on a rational and individualized determination of whether he is a
10 safety or flight risk, in violation of due process. Furthermore, Respondents have even taken away
11 Petitioner’s right to present evidence in support of his bond request, showing that in this present
12 case, the government actions are not rational and the government has acted arbitrarily. Therefore,
13 it is clear that Respondents’ detention of Petitioner violates his right to procedural due process.

14
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Petitioner respectfully requests this Court to grant the following relief:

- 17 (1) Assume jurisdiction over this matter;
- 18 (2) Issue a Writ of Habeas Corpus requiring that within one day, Respondents release
19 Petitioner;
- 20 (3) Alternatively, issue and Order to Show Cause ordering Respondents to show cause why
21 this petition should not be granted within three days;
- 22 (4) Declare that Petitioner’s arrest and removal “as a bag and baggage” was made in violation
23 of statute and regulation;
- 24

- 1 (5) Declare that Respondent's rejection of Petitioner's evidence is arbitrary and capricious
2 and in violation of due process;
- 3 (6) Declare that Petitioner's detention without an individualized determination violates the
4 Due Process Clause of the Fifth Amendment;
- 5 (7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
6 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
7 (8) Grant any other and further relief that this Court deems just and proper.
- 8
9

10 Dated: March 16, 2026

11 Respectfully Submitted,

12 By: /s/ Rocio Sanchez Flores
13 Rocio Sanchez Flores
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16 San Diego, CA 92113
17 Tel: 619 738 5792
18 rocio@sfrlawcorp.com
19 *Attorney for Petitioner*
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21
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VERIFICATION STATEMENT PURSUANT TO 28 U.S.C. § 2242

I, Rocio Sanchez Flores, declare as follows:

I represent Petitioner, Mr. Portillo, in these habeas corpus proceedings. Petitioner is currently being held in detention at Otay Mesa Detention Center, in San Diego, California, and cannot appear in my office to sign this Verification. I have reviewed the record of his detention and discussed this matter with Mr. Portillo. I verify that the information contained in the foregoing petition is true and correct to the best of my knowledge and belief

Dated: March 16, 2026

Respectfully Submitted,

By: /s/ Rocio Sanchez Flores
Rocio Sanchez Flores
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Attorney for Petitioner