

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NAHUM SANTOS-BARAHONA

Petitioner,

Case No. _____

: Before the Honorable
_____ =

JL JAMISON, in his official capacity as warden of
Federal Detention Center in Philadelphia;
~~BRIAN MCSHANE, in his official capacity as~~
~~Acting Philadelphia Field Office Director,~~
~~United States Immigration and Customs~~

Admin. No. A 

Enforcement; TODD LYONS, in his
Official capacity as Acting Director of
Immigration and Customs Enforcement; KRISTI
NOEM, in her official capacity as:
Secretary of the Department of Homeland
Security; THE U.S. DEPARTMENT OF
HOMELAND SECURITY; PAMELA BONDI,;
Attorney General of the United States

Respondents.:

PETITION FOR WRIT OF HABEAS CORPUS

NAHUM SANTOS BARAHONA, Administrative Case Number A 

submits this petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. 2241 and the
Suspension Clause (Article 1 , Section 9, Clause 2) of the United States Constitution.

Petitioner requests that this Court release him from detention by the Immigration and Customs Enforcement("ICE") or, alternatively, conduct or order a bond hearing in which the Respondents bear the burden of justifying Petitioner's continued detention. Petitioner also requests that the Court set aside recent policies implemented by Respondents that are contrary to the statutory right of non-citizens like Petitioner to seek release and bail through an exercise of the Respondents' discretion.

Mr. Santos Barahona is a native of Honduras and has been physically present in the United States since he last entered the United States in February of 2013. He was not apprehended at that time He has been living for the past seven (7) years at the following address: [REDACTED] On February 15, 2026, Mr. Santos Barahona was arrested in connection with charges of domestic violence against his wife, a lawful permanent resident. He pled guilty to reduced charges of reckless endangerment, second degree in the Court of Common Pleas of the State of Delaware, Sussex County, and was sentenced to ten months (10) suspended. At the moment of sentencing, an Immigration and Customs Enforcement detainer was placed against him, and he was taken into custody by ICE on or about March 16, 2026. Upon information and belief, he is currently detained at the Federal Detention Center in Philadelphia, Pennsylvania.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. 1651 (All Writs Act); 28 U.S.C. 1331 (federal question); 5 U.S.C. 702 (Administrative Procedures Act); U.S. Const. amend. V (Due Process Clause); and U.S. Const. art. I, 9, cl. 2 (Suspension Clause).

2. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. 1391(b) and 28 U.S.C. 2241(d), because at the time of filing his Petition for Writ of Habeas Corpus (Doc. 1), Mr. Ali is imprisoned at the Federal Detention Center ("FDC") in Philadelphia, Pennsylvania.

PARTIES

3. Petitioner Santos Barahona is a native of Honduras who has been present in the United States for approximately thirteen (13) years and is the father of an eight (8) year old US citizen. He is also the stepfather of a minor US citizen aged eleven (11) years, and the stepfather of a minor Lawful Permanent Resident aged thirteen (13). Attached as **Exhibit A** is a copy of the redacted birth certificate of the US citizen child and a redacted copy of the birth certificate of the US citizen stepchild, as well as the marriage certificate of the Lawful Permanent Resident spouse and the Petitioner;

4. Respondent JL Jamison is named in his official capacity as the Warden of Federal Detention Facility in Philadelphia, PA, which detains individuals suspected of civil immigration violations. Respondent Jamison is the immediate physical custodian responsible for the detention of Petitioner.

5. Respondent Brian McShane is the Acting Philadelphia Field Office Director for Immigration and Customs Enforcement's ("ICE") Enforcement and Removal Operations. In this capacity he is responsible for the custody of all noncitizens detained by ICE at FDC, Philadelphia, where the Petitioner is currently detained, and has the authority to order the release Santos Barahona or transfer him to a different facility. He is one of Mr. Ali's immediate custodians and is sued in his official capacity.

6. Respondent Todd Lyons is the Acting Director of ICE. In this capacity he is responsible for enforcing immigration laws, and as such is a legal custodian of Mr. Santos Barahona. He is sued in his official capacity.

7. Respondent Kristi Noem is Secretary of Homeland Security. In this capacity she runs the Department of Homeland Security, and is charged pursuant to 8 U.S.C. 1 103(a)(1) with administering and enforcing immigration laws. She is the ultimate legal custodian of Mr. Santos Barahona and is sued in her official capacity.

8. The Department of Homeland Security ("DHS") is the agency of the federal government responsible for enforcing the immigration laws. DHS is also

Mr. Santos Barahona's legal custodian.

9. Respondent Pamela Bondi is the Attorney General of the United States and the head of the U.S. Department of Justice, which encompasses the Board of Immigration Appeals ("BIA") and immigration courts, known collectively as the Executive Office of Immigration Review ("EOIR"). Ms. Bondi shares responsibility for the implementation and enforcement of immigration laws along with Respondent Noem. Ms. Bondi is a legal custodian of Mr. Santos Barahona. She is sued in her official capacity.

LEGAL FRAMEWORK

10. For non-citizens attempting to enter the United States, the INA provides under 8 U.S.C. 1225(b)(2)(A) that "in the case of [a non-citizen] who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained." "A noncitizen detained under Section 1225(b)(2) may be released only if he is paroled 'for urgent humanitarian reasons or significant public benefit' pursuant to 8 U.S.C. 1182(d)(5)(A)." *Gomes v. Hyde*, 25 Civ. 11571, 2025 WL 1868288, at *2 (D. Mass. July 7, 2025) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018)).

11. In contrast, the Supreme Court has found that "U.S. immigration law authorizes the Government to detain certain [non-citizens] already in the country pending the outcome of removal proceedings under 1226(a) and (c)."

Jennings, 583 U.S. at 288-89.

12. Section 236 of the INA provides in relevant part as follows:

(a) Arrest Detention and Release. On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole ...

13. The Supreme Court has interpreted similar "may" language in other provisions of the INA to require "some level of individualized determination." *I.N.S. v. Nat'l Ctr. For Immigrants' Rights*, 502 U.S. 183, 194 (1991). The regulation implementing Respondents' authority to arrest non-citizens present in the United States reads:

"Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien not described in [8 U.S.C. § 1236(c)(1)] of the Act, under the conditions at section [8 U.S.C. § 1236(a)(2) and (3)]; provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger

to property or persons, and that the alien is likely to appear for any future proceeding.”

8 U.S.C. 1236.1

14. Noncitizens may request a review of an initial custody determination before an Immigration Judge ("IJ"). 8 C.F.R. 1236.1(d)(1); 8 C.F.R.

§ 1002.19(a). At this hearing an IJ may make the decision "upon any information that is available to the [Immigration Judge] or that is presented to him or her by the [non-citizen] or the [government]." 8 C.F.R. 1003.19(d)•, see also *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006). Non-citizens may appeal a negative decision in a custody review before an IJ to the Board of Immigration Appeals. 8

C.F.R. 1236.1(d)(3)(i). The current statutory scheme was created through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA").

15. For the first time in nearly three decades, Respondents have taken the position through a series of precedential decisions by the Board of Immigration Appeals that non-citizens residing in the interior of the United States are not entitled to a custody redetermination (a "bond hearing") before an Immigration Judge.

16. First, in *Matter of Q. Li*, 29 Dec. 66 (BIA 2025), the BIA held that a non-citizen who had been apprehended at the border and subsequently released into the United States is subject to mandatory detention without a possibility of bail upon re-detention, pursuant to 8 U.S.C. 1225(b), even if that re-detention occurs years after

their initial release from custody. The BIA reasoned that "an applicant for admission who is arrested and detained without a warrant while in the process of arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section [1225(b)] [J, and is ineligible for any subsequent release on bond under section [1226(a)]." Q. Li,

29 Dec. at 74.

17. Then in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA stated that all non-citizens who are present in the United States without admission are subject to mandatory detention under Section 1225(b), regardless of how long they have been residing in the U.S. and absent any prior interaction with immigration authorities.

FACTS AND PROCEDURAL HISTORY

18. Mr. Santos Barahona is a native and citizen of Honduras;

19. On March 16, 2026, Petitioner was taken into custody by officers of Immigration and Customs Enforcement;

20. He is currently detained at the Federal Detention Center in Philadelphia, Pennsylvania;

CLAIM FOR RELIEF
COUNT ONE VIOLATION
OF DUE PROCESS, U.S.
CONST. AMEND. V

21. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

22. The Fifth Amendment's Due Process Clause prevents the Government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V.

23. The Due Process Clause extends to noncitizens residing in the United States, whether they have lawful status or not. See *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Specifically, "[i]t is well established that the Fifth Amendment entitles [non-citizens] to due process of law in deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993); see also *Abdulai v. Ashcroft*, 239 F.3d 542, 549 (3d Cir. 2001) ("[Non-citizens] facing removal are entitled to due process"); *Calderon-Rosas v. Atty ' Gen.*, 957 F.3d 378, 386 (3d Cir. 2020) ("In sum, petitioners seeking discretionary relief are entitled to fundamentally fair removal proceedings, which constitutes a protected interest supporting a due process claim.").

24. Evaluating the adequacy of the process provided to a non-citizen requires a balancing of factors. "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

25. First, Mr. Santos Barahona faces a violation of "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Second, Respondents have erroneously deprived Mr. Ali of his liberty without any individualized assessment of his circumstances. Third, Respondents did not make any individualized finding that Mr. Santos Barahona was a danger or flight risk, so there does not appear to be a significant government interest in detaining Mr. Santos Barahona;

26. An application of these factors requires that Mr. Santos Barahona should have been provided with additional process before being detained.

COUNT TWO

**VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8
U.S.C. 12260)**

31. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

32. 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 grounds of inadmissibility. As, relevant here, it does not apply to those who have been residing in the United States at liberty after being briefly detained at or near the border. Such noncitizens, if detained, are done so under 1226(a), and are generally eligible release on bond.

33. Respondents' authority to detain Mr. Santos Barahona is derived from 8 U.S.C. 1226(a) as Mr. Santos Barahona is already present in the United States.

34. Respondents have detained Mr. Santos Barahona without making an individualized determination regarding whether he posed a danger or flight risk as required by 8 U.S.C. 1226(a) and its regulations.

35. Moreover, Respondents' current policies as set forth in the BIA's decisions in Matter of Q. Li and Matter of Yajure Hurtado unlawfully prevent Mr. Ali

from obtaining a custody redetermination in front of an Immigration Judge as is his right by statute.

COUNT THREE

VIOLATION OF THE BOND REGULATIONS, 8 C.F.R. 236.1, 1236.1 and 1003.19

36. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

37. In 1997, after Congress amended the INA through IIRIRA, EOIR the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Non-citizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination. " 62 Fed. Reg. at 10323 (emphasis added). Thus, the agencies made clear that non-citizens present in the United States would be eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. 1226 and its implementing regulations.

38. Yet, Respondents have adopted a policy and practice of applying § 1225(b)(2) to non-citizens like Mr. Santos Barahona who are present in the United States without being admitted or paroled.

39. The application of 1225(b)(2) to Mr. Santos Barahona unlawfully mandates his continued detention in violation of 8 C.F.R. 236.1, 1236.1, and 1003.19.

COUNT FOUR

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT ("APA"), 5 U.S.C. 701, et. seq.

40. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

41. Mr. Santos Barahona is aggrieved by agency action under the Administrative Procedure Act, 5 U.S.C. 701 et. seq. Specifically, Respondents have acted arbitrarily in detaining Mr. Santos Barahona without conducting an individualized determination into his circumstances. In other words, Respondents have not presented any indication that Mr. Santos Barahona's circumstances have changed such that he is now a danger or flight risk in a way that he was not when he entered the country in 2013.

42. Additionally, Respondents' recent policies announced through administrative decisions issued by the BIA unlawfully withhold the right to a bond

hearing under 8 U.S.C. 1226(a) to Mr. Santos Barahona and make any exhaustion of his remedies moot.

43. These policies are arbitrary, capricious, and not in accordance with the text of the INA.

PRAYER FOR RELIEF

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

Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody immediately on his own recognizance or under parole, bond or reasonable conditions of supervision, on the ground that his continued detention by the Department of Homeland Security violates his Due Process rights;

Set aside Respondents' unlawful detention policy contained Matter of Q. Li and Matter of Yajure Hurtado under the APA, 5 U.S.C. 706(2), as contrary to law, arbitrary and capricious, and contrary to constitutional right;

Issue a writ requiring an immediate, constitutionally adequate hearing before an Immigration Judge, at which: (i) DHS bears the burden to demonstrate, by clear and convincing evidence, that Petitioner's continued detention is necessary, and (ii) the immigration judge considers Petitioner's ability to pay a bond.

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While this petition is pending, order Petitioner's immediate release pursuant to the Court's inherent authority to release habeas corpus petitioners on bail;

Enter a judgment declaring that Respondents' detention of Petitioner is unauthorized by statute and contrary to law and the U.S. Constitution;

Award Petitioner reasonable costs and attorneys' fees;

Grant any further relief that this Court may deem fit and proper

Dated: March 18, 2026 Respectfully submitted,

A handwritten signature in blue ink, reading "Christine M. Flowers", is written over a horizontal line.

Christine M. Flowers, Esquire
(PA Bar 51181)

Joseph M. Rollo and
Associates PC
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Street
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com

ATTORNEY FOR PETITIONER

LIST OF EXHIBITS

Ex. A. Marriage Certificate

Lawful Permanent Resident Card of Spouse

Birth Certificate of US Citizen Child (redacted)

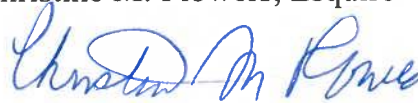
Birth Certificate of US Citizen stepchild (redacted)

CERTIFICATE OF SERVICE

I certify that on this date I filed the foregoing Petition for Habeas Corpus via the court CM/ECF System, thereby making it available for viewing and download for all parties in this case.

Dated: March 18, 2026

Christine M. Flowers, Esquire

A handwritten signature in blue ink, appearing to read "Christine M. Flowers", is written over the printed name.

Joseph M Rollo and Associates PC

Attorneys for Petitioner

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NAHUM SANTOS BARAHONA

Petitioner,

v.

JL JAMISON, WARDEN.

Federal Detention Center

Respondent.

Civil Action No. 2:26-cv-01776

Administrative Case Number: A



**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND
ORDER TO SHOW CAUSE**

Immigration Habeas Case

INTRODUCTION

Petitioner, by and through undersigned counsel, respectfully moves this Court pursuant to **Fed. R. Civ. P. 65(b)**, **28 U.S.C. § 2241**, and **Local Civil Rule 65.1** for an **Emergency Temporary Restraining Order** to prevent imminent and irreparable harm arising from Petitioner's unlawful detention and/or removal while the accompanying Petition for Writ of Habeas Corpus is pending.

FACTUAL BACKGROUND

1. Petitioner is a citizen and a national of HONDURAS, previously detained at the Philadelphia Federal Detention Center located at 700 Arch Street, within the jurisdiction of this Court.
2. A petition for a writ of habeas was filed and is currently pending with this court;
3. ICE has apprehended the petitioner and intends to remove despite the existence and the pendency of the habeas;
4. Removal before adjudication of the habeas petition will cause irreparable harm, including the possibility/probability of being subjected to violence, loss of legal rights, and potential persecution.

LEGAL STANDARD

Under **Fed. R. Civ. P. 65(b)** and **E.D. Pa. Local Civil Rule 65.1**, a TRO may issue without notice to the adverse party if specific facts in an affidavit or verified complaint clearly show that immediate and irreparable injury will result before the adverse party can be heard.

The Third Circuit applies the four-factor test:

- (1) likelihood of success on the merits.
- (2) irreparable harm absent relief.
- (3) balance of equities; and
- (4) public interest. *See Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700 (3d Cir. 2004).

ARGUMENT

1. **Likelihood of Success** – Petitioner’s detention/removal violates statutory and constitutional protections, including due process under the Fifth. and the Fourteenth amendments
2. **Irreparable Harm** – Deportation before judicial review would permanently deprive Petitioner of the ability to pursue lawful relief.
3. **Balance of Equities** – The harm to Petitioner outweighs any administrative burden on Respondents.
4. **Public Interest** – Upholding constitutional rights and ensuring lawful process serves the public interest.

REQUEST FOR RELIEF

Petitioner respectfully requests that this Court:

1. Issue a Temporary Restraining Order Enjoining Respondents from removing Petitioner from the United States until final resolution of the Habeas petition.
2. Order Respondents to show cause why a preliminary injunction should not be issued; and
3. Grant such other relief as the Court deems just and proper

PROPOSED ORDER

AND NOW, this ____ day of _____, 2026, upon consideration of Petitioner’s Emergency Motion for Temporary Restraining Order, it is hereby ORDERED that:

1. Respondents, and all persons acting on their behalf, are temporarily restrained from removing Petitioner from the United States pending further order of this Court;

2. Respondents shall appear before this Court on the ____ day of _____, 2026, at : __. m., to show cause why a preliminary injunction should not issue; and
3. This Order shall remain in effect until further order of the Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Christine M. Flowers', written over a horizontal line.

Christine M. Flowers, Esquire

Joseph M Rollo & Associates P.C.

2527 South Broad Street

Phila Pa 19148

team@rollolawoffice.com

Dated :

CERTIFICATE OF SERVICE

I certify that on this date I filed the foregoing Temporary Restraining Order via the court CM/ECF System, thereby making it available for viewing and download for all parties in this case.

Dated: March 19, 2026



Christine M. Flowers, Esquire

Joseph M Rollo and Associates PC

Attorneys for Petitioner