

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

**JULIE CRUZ SANTANA**

IN REPRESENTATION OF DIOGENE FERMIN  
FERNANDEZ

**Petitioners,**

v.

**Civil No. 26-cv-1036 (PAD)**

**REBECCA GONZÁLEZ RAMOS**, Special Agent in Charge of Homeland Security Investigations in San Juan; **GARRET J. RIPA** is Miami Field Office Director for U.S. Immigration and Customs Enforcement, overseen Puerto Rico's Immigration and Removal Operations, ICE Office in GSA Guaynabo Detention Facility; **TODD LYONS** in his official capacity, Acting Director for U.S. Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary of Homeland Security; **PAMELA BONDI**, United States Attorney General; **W. STEPHEN MULDROW**, US District Attorney for the District of Puerto Rico; *all in their official capacities*

PETITION FOR A WRIT OF  
*HABEAS CORPUS*

**URGENT MOTION TO STAY  
TRANSFER OF PETITIONER  
TO OTHER JURISDICTION**

**Respondents.**

**URGENT MOTION REQUESTING ORDER PROHIBITING THE TRANSFER OF PETITIONER  
FROM PUERTO RICO TO OTHER JURISDICTION AND THAT THIS COURT CONDUCT A  
BOND HEARING  
FORTHWITH**

**TO THE HONORABLE COURT:**

Come now the Petitioners, through the undersigned legal counsel and respectfully state, allege and pray as follows:

1. On January 22, 2026, the Petitioners filed a Habeas Corpus Petition (Dkt. 1)
2. On January 23, 2026 summons were issued and Petitioners proceeded to initiate service of process on Respondents.
3. The Petitioner has filed a Petition for Writ of Habeas Corpus (Dkt. 1) where he asserts that his detention by Immigration and Customs Enforcement ("ICE") violates his due process rights and seeks his immediate release. Not even a notice to appear has been issue in this case according to Order of Immigration

4. The Petitioner filed a *Motion for Bond* before the Immigration court, in order to exhaust administrative remedies which could not be scheduled due to the omission as to the Notice to Appear. Therefore his detention is illegal also on these grounds and should be released immediately.

5. Mr. Fermin Fernandez respectfully requests that in the alternative to his release, the court orders that a bond hearing be held forthwith pursuant to 8 U.S.C. § 1226(a) or that this Court conducts a **Bond hearing**.

6. Mr. Fermin Fernandez is a national of Dominican Republic who has resided in the United States for many years. He entered the United States without inspection and was not apprehended by government officials upon entry.

8. Based on his marriage to a US citizen, he filed and received approval for a Petition for Alien Relative. There is also an application for a provisional waiver pending adjudication before USCIS. If approved, Mr. Fermin Fernandez could be eligible for Permanent Residence.

9. **In addition**, before the Immigration Court and as a defense Mr. Fermin Fernandez qualifies for a Cancellation of Removal for Non-Permanent Resident that will give him Permanent Resident Status in the United States, if approved by the Immigration Judge, before the immigration court.

10. A person detained under 8 U.S.C. § 1226(a), must, upon his request, receive a custody redetermination hearing ('bond hearing') with strong procedural protections.

11. Immigration Judges are proceeding under the presumption that they do not have authority over Bond request, under *In the Matter of Yajure Hurtado*, 29 I&N Dec 215(BIA 2025)

12. Petitioner respectfully states that the BIA's decision in *Yajure Hurtado*, is not binding and this court "must exercise independent judgment in determining the meaning of statutory provisions." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).

13. The *Yajure* decision is contrary to US district courts uniform approach to interpreting 8 U.S.C. §§ 1225 and 1226. See decision in *Doe v. Moniz, F. Supp. 3d, 2025 U.S. Dist. LEXIS 173360, 2025 WL 2576819 (D. Mass. Sept. 5, 2025), at \*5 (collecting cases)*.

14. *Multiple* district courts within the First Circuit have recently noted in rejecting the BIA's reasoning in *Matter of Yajure Hurtado*, the decision is inconsistent with other BIA decisions and with

decades of the Department of Homeland Security's practice. See [Elias] *Escobar v. Hyde*, Civil Action No. 25-cv-12620-IT, 2025 U.S. Dist. LEXIS 196284, 2025 WL 2823324 (D. Mass. Oct. 3, 2025), and *Maza v. Hyde*, Civil Action No. 25-cv-12407-IT, -- F. Supp. 3d --, 2025 U.S. Dist. LEXIS 205956, 2025 WL 2951922 (D. Mass. Oct. 20, 2025); *Chogllo Chafra v. Scott*, 2025 U.S. Dist. LEXIS 184909, 2025 WL 2688541, at \*7-S8 (D. Me. Sept. 22, 2025); see also *Sampiao v. Hyde*, F. Supp. 3d , 2025 U.S. Dist. LEXIS 175513, 2025 WL 2607924, at \*8 n.11 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, Warden, F. Supp. 3d , 2025 U.S. Dist. LEXIS 176165, 2025 WL 2639390, at \*10 n.9 (D.N.H. Sept. 8, 2025).

15. Mr. Fermin Fernandez is a member of the nationwide class certified in *Maldonado-Bautista*, (C.D. of California, Case No. :25-cv-01873-SSS-BFM) and that remain in limbo without real access to justice and the rule of law due to illegal instructions received by immigration judges across the United States. Exhibits 2 and 3. See *Pablo Lora Salazar v. Garret J. Ripa et als*, Civil No. 26-cv-1014 (MAJ), where the US District for the District of Puerto Rico stated:

"Emergency Motion for Order to Show Cause." On January 13, 2025, this Court enjoined the Defendants from transferring Petitioner out of the District of Puerto Rico until Petitioner was afforded an opportunity for a bond hearing, since 8 U.S.C. § 1226(a) entitles Petitioner to a bond hearing as of right. (**ECF No. 5**) (citing *Elias Escobar v. Hyde*, Civ. No. 25-12620, 2025 WL 2823324, at \*3 (D. Mass. Oct. 3, 2025)). **Since the subsequent bond proceedings held before an Immigration Judge were dismissed for lack of jurisdiction, (ECF No. 8 at 2), that prior Order remains in effect. Accordingly, at this time Respondents may not transfer Petitioner out of the District.** The Court notes that in other recent cases where the Government has argued that there is no right to a bond hearing for individuals detained under circumstances similar to those of Petitioner, their arguments have been rejected again and again by various district courts. *See, e.g., Elias Escobar*, 2025 WL 2823324; *Moreira Aguiar v. Moniz*, 25-cv-12706, 2025 WL 2987656 (D. Mass. Oct. 22, 2025); *Tomas Elias v. Hyde*, 25-cv-540, 2025 WL 3004437 (D.R.I. Oct. 27, 2025); *Rodriguez v. Nessinger*, 25-cv-505, 2025 WL 3306576 (D.R.I. Oct. 17, 2025); *Los Caballero v. Baltazar*, 25-cv-3120, 2025 WL 2977650 (D. Co. Oct. 22, 2025); *Barco Mercado v. Francis*, 25-cv-6582, 2025 WL 3295903 (S.D.N.Y. Nov. 26, 2025). In each of those cases, federal district judges granted habeas relief and ordered the Government to comply with the well-established rule that a person detained under Section 1226(a) is entitled to a bond hearing. This Court will do the same. **Accordingly, the Court GRANTS 1 "Petition for Writ of Habeas Corpus."** Respondents are hereby **ORDERED** to provide Petitioner with a bond hearing under Section 1226(a) within 10 days of this Order. Respondents are further **ORDERED** to release Petitioner immediately pending that bond hearing. The Government shall set minimal release conditions that will reasonably assure Petitioner's appearance at the bond hearing.

Respondents are further **ORDERED** to provide individualized reasons at the bond hearing as to why Petitioner is granted or denied bond. If Respondents do not provide Petitioner with a bond hearing under Section 1226(a) as hereby ordered, **or if said bond hearing is dismissed for lack of jurisdiction**, Petitioner must be immediately released from detention. No later than 1/29/2026 the Parties shall file a Joint Status Report concerning (1) the results of any bond hearing that was conducted or, if no hearing was held, advise the Court of the date Petitioner was released from custody; and (2) whether any additional proceedings in this matter are required. Signed by Judge Maria Antongiorgi-Jordan on 1/16/2026. (ao) (Entered: 01/16/2026)” (Emphasis added).

Petitioner seek an immediate TRO to enjoin Respondents from transferring him out of the District of Puerto Rico and to ensure his immediate release from ICE custody, pending the final Habeas Corpus hearing due to the irreparable harm that it would have on the Petitioner. For the reasons stated herein, the Court should grant the Motion for a Temporary Restraining Order. Another TRO was issued yesterday in a similar controversy in. See *Cruz v. González*, Civil No. 26-cv-1028 (GMM) Exhibit 4.

## I. APPLICABLE LAW

The standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. A plaintiff seeking such relief must establish that he is likely to succeed on the merits, that [they are] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [their] favor, and that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Where a petitioner raises “serious questions going to the merits” and the balance of hardships “tips sharply” in their favor, a TRO may be issued, provided the other two *Winter* factors are also met. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011).

## II. DISCUSSION

### A. Petitioners Have Shown a Strong Likelihood of Success on the Merits.

Petitioner has raised serious, substantial, and compelling questions regarding the legality of his detention.

**1. Administrative Procedure Act (APA) Claim:** Petitioner is likely to succeed in showing that his

arrest and detention are the result of an arbitrary and capricious agency action. Respondents' decision to detain Petitioner is an agency action that is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, in violation of the APA, 5 U.S.C. § 706(2). The decision to detain is arbitrary because it fails to consider crucial factors, including Petitioners' pending applications, his lack of a criminal record, his strong ties to the community, the profound and irreparable harm of separating him from his U.S. citizen children, and the availability of less restrictive alternatives to detention. The decision appears based on impermissible punitive motives rather than a reasonable application of statutory criteria. This demonstrates a strong likelihood of success on the APA claim.

**2. Fifth Amendment Due Process Claim:** Petitioner have demonstrated a strong likelihood of prevailing on his claim that his detention violates his Fifth Amendment rights.

- **Liberty Interest:** The detention appears arbitrary and punitive, serving no legitimate non-punitive purpose, as Petitioner is not a flight risk or danger.
- **Access to Counsel:** The right to counsel in immigration proceedings is rooted in the Fifth Amendment's Due Process Clause. *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 554 (9th Cir. 1990). Respondents have a policy, pattern, and practice at the detention facility in Puerto Rico of impeding detainees' access to legal counsel. These impediments include, but are not limited to, turning away attorneys, failing to provide a means for confidential legal consultations by phone, creating other unreasonable barriers to communication and even failing to provide proper documentation, like the Notice to Appear (NTA) in a timely manner.
- **Conditions of Confinement:** Civil detainees' conditions of confinement are unconstitutional if they "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). There are multiple findings of inhumane conditions of detention at immigration detention centers further strengthening Petitioner's due process claims.

**B. Petitioner Has Established He Will Suffer Irreparable Harm.**

Absent a TRO, Petitioner will suffer multiple forms of immediate and irreparable harms.

First, the deprivation of a constitutional right, such as the right to due process and freedom from unlawful seizure, unquestionably constitutes irreparable injury. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). Every day of unlawful detention is a harm that cannot be remedied later.

Second, if Respondents transfer Petitioner outside of this judicial district, this Court could be divested of jurisdiction over his habeas petition, leaving him with no meaningful remedy. This risk is concrete and immediate.

Third, the continued detention of Petitioner results in the traumatic and ongoing separation of a family, inflicting profound and irreparable psychological harm upon Petitioner and his partner. This is a substantial injury that monetary reparations cannot compensate.

**C. The Balance of Hardships and the Public Interest Favor a Writ of Habeas Corpus.**

The balance of equities tips sharply in Petitioner’s favor. The harm they face—loss of their constitutional rights, separation from his family, and denial of access to the courts—is catastrophic. In contrast, the harm to Respondents is minimal. The requested TRO merely requires them to maintain the status quo by keeping Petitioner in this district and allowing him to speak with his lawyers. The government is not harmed “in any legally cognizable sense by being enjoined from constitutional violations.” *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

Finally, the public interest is overwhelmingly served by issuing the TRO. The public has a profound interest in upholding the Constitution, ensuring the executive branch acts within the limits of the APA, maintaining the integrity of the judicial process, and protecting the sanctity of the family unit. “*Proper enforcement of immigration laws is in the public interest; and the Government will not be harmed by - nor do they have an interest in - the violation of the plain text of federal law*”. See, e.g., Loa Caballero, 2025 WL 2977650, at \*9 n.7. as cited in *Cruz v. González*, Civil No. 26-cv-

1028 (GMM)

**WHEREFORE**, the Petitioner respectfully asks that the Honorable Court order that Mr. Fermin Fernandez, or any other person in similarly situated circumstances as described in the nationwide class certification under *Maldonado Bautista*, NOT be transferred from Puerto Rico, and to either order a Bond Hearing forthwith or that this court conducts the bond hearing, which apparently is the right course of action, and GRANT Petitioners' Emergency Motion for a Temporary Restraining Order.

1. **ENJOINED** Respondents—including their officers, agents, employees, attorneys, and all persons acting in concert with them—from transferring, relocating, or removing Petitioner from the District of Puerto Rico without further order of this Court.
2. Respondents shall provide Petitioners with meaningful access to their legal representatives. This includes, but is not limited to, permitting legal visitation, and providing access to confidential, unmonitored telephone calls with their attorneys and legal assistants at no cost to the Petitioners.
3. After finding a strong likelihood of success on the merits and that the balance of equities overwhelmingly favors Petitioners, **ORDERS** that no security shall be required under Federal Rule of Civil Procedure 65(c).
4. Order Respondents **TO SHOW CAUSE**, in writing, why a TRO should not be issued ordering the relief requested herein pending the final disposition of this action.
5. To **SET** a hearing on the writ of Habeas Corpus petition.
6. To issue an *ex-parte* Temporary Restraining Order, that shall remain in effect for fourteen (14) calendar days.

**RESPECTFULLY SUBMITTED**, in San Juan, Puerto Rico on January 23, 2026

*s/ Fermín L. Arraiza-Navas*  
#215705 (US District Court Puerto Rico)

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Dated: January 23<sup>th</sup>, 2026

**CERTIFICATE OF SERVICE** : I hereby certify that, on January 23<sup>th</sup>, 2026, I electronically filed the foregoing document with the United States District Court of Puerto Rico by using the CM/ECF system, which will send notifications of such filing to all CM/ECF counsel of record.

Dated this 23<sup>th</sup> day of January, 2026.

*s/ Fermín L. Arraiza-Navas*  
Attorney Name

#### **VERIFICATION OF COUNSEL**

I, Fermín L. Arraiza Navas, hereby certify that I am familiar with the case of the named petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

Dated this 23 day of December, 2025.

*s/Fermin L. Arraiza Navas*  
Attorney Name