

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

WILMER URBINA AND RUTILO	)	
ROMERO-RAMIREZ on behalf of OMAR	)	
ROMERO-VILLEGAS, a minor,	)	
individually and on behalf of all others	)	
similarly situated,	)	
Petitioners,	)	
	)	
v.	)	Civil Action No.
	)	
RAMON C. RUSTIN, Warden, Allegheny	)	Class Action
County Jail,	)	
Respondent.	)	
	)	

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

**I. Preliminary Statement**

Attorneys Donald Driscoll and Evalynn Welling on behalf of Wilmer Urbina and Rutilo Romero-Ramirez, parent of Omar Romero-Villegas, a minor, and on behalf of Omar Romero-Villejas in his own right and all others similarly situated petition this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Wilmer Urbina, Omar Romero-Villegas and others have been detained in the Allegheny County Jail without due process nor any other lawful authority. In support thereof the following is stated:

**II. Jurisdiction and Venue**

1. This Court has jurisdiction and may issue relief pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question) and 42 U.S.C. § 1983 (civil rights).
2. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 2241 because Wilmer Urbina, Omar Romero-Villegas and others on whose behalf this matter is brought are in custody at the Allegheny County Jail in Pennsylvania.

### **III. Parties**

3. Petitioner Wilmer Urbina is an adult individual who is presently detained in the Allegheny County Jail.

4. Petitioner Rutilo Romero-Ramirez is an adult individual and the father of Omar Romero-Villegas, who is 17 years old and is presently detained in the Allegheny County Jail.

5. Respondent Ramon C. Rustin is the Warden of the Allegheny County Jail and is the immediate custodian of Mr. Urbina, Mr. Romero-Villegas and others who are similarly situated.

### **IV. Class Action Allegations**

6. This action is brought, as in Fed.R.Civ.P. 23(b)(2) and (3), on behalf of a class consisting of all who are or will be detained in the Allegheny County Jail without being provided due process and based solely on an immigration detainer which does not authorize their detention.

7. The class is so numerous that joinder of all members is impracticable. Although the precise size of the class is unknown, in one recent month it is believed that there were as many as 76 individuals being improperly held on immigration detainers and without due process.

8. There are questions of law or fact common to the class, specifically whether an immigration detainer authorizes the Respondent Warden to detain members of the class indefinitely and without due process.

9. The claims of the representative parties are typical of the claims of the class. Each have been detained pursuant to the same alleged authority.

10. The representative parties will fairly and adequately protect the interests of the class. Their counsel is experienced in class actions raising civil rights claims.

11. Adjudications with respect to individual members of the class would, as a practical matter, be dispositive of the interests of the class who are not parties or substantially impair their ability to protect their interests.

12. The Respondent has acted or refused to act on grounds generally applicable to the class, thereby making appropriate relief with respect to the class as a whole.

13. To the extent there are individual issues among class members involving relief, these are subordinate to the common question raised, making a class action a superior method for the fair and efficient adjudication of the controversy.

**V. Factual Allegations**

14. Wilmer Urbina was arrested following a traffic stop in Wilkesburg, Pa. on April 3, 2008.

15. At the request of the charging police officer his preliminary hearing was continued from April 10, 2008 until June 26, 2008 and upon the initiation of the Magisterial District Judge from June 26, 2008 until July 3, 2008. All pending charges were dismissed on July 3, 2008.

16. Omar Romero-Villegas was arrested after leaving his place of employment in Ross Township Pa. on June 11, 2008.

17. All criminal charges against Omar Romero-Villegas were withdrawn on or before June 27, 2008.

18. Petitioners and others have been continuously confined in the Allegheny County Jail due to detainers placed on them by federal Immigration and Customs Enforcement agents.

19. At most these detainers provide that those subject to them be held for no more than 48 hours from the time state authorized custody has ended.

20. Petitioners Urbina and Romero-Villegas and others similarly situated are entitled to immediate release.

**VI. Causes of Action**

**Violation of the Due Process Clause of the Fourteenth Amendment**

21. Because there is no authority for the petitioners' detention and they have been provided with no process to demonstrate that this detention is erroneous, this continued detention violates the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

**VII. Prayer for Relief**

WHEREFORE, Petitioners respectfully request that this Court:

- a. Assume jurisdiction over this matter;
- b. Order Respondent to show cause why the writ of habeas corpus should not be granted, pursuant to 28 U.S.C. § 2243;
- c. Grant the writ of habeas corpus and order the immediate release from custody of Mr. Urbina and Mr. Romero-Villegas and all others similarly situated on the grounds that their detention is not authorized by statute and violates due process;
- d. Grant such other relief as is authorized by the laws upon which Petitioners rely.

Respectfully submitted,

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Counsel

for Petitioners

OJS 44 (Rev. 11/04)

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 THE REVERSE OF THE FORM.)

I. (a) **PLAINTIFFS** Wilmer Urbina and Rutilo Romero-Ramirez on behalf of **DEFENDANTS** Ramon C. Rustin, Warden, Allegheny County Jail

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

(c) Attorneys Donald Driscoll and Evalynn B. Welling, Community Justice Project  
Suite 1705, 429 Forbes Av., Pittsburgh, PA 15219 (412)434-6002  
 (Firm Name, Address, and Telephone Number)

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

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

Attorneys Michael H. Wojcik, Dennis R. Biondo, County Law Department  
445 Fort Pitt Blvd., Suite 300, Pittsburgh, PA 15219  
 Attorneys (If Known)

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)

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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input checked="" type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input checked="" type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

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

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  
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC § 1983

Brief description of cause: Deprivation of liberty without due process.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ \_\_\_\_\_

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

VIII. RELATED CASE(S) IF ANY (See instructions): \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 7/10/08 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

JS 44AREVISED OCTOBER, 1993

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

THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the  Erie  Johnstown  Pittsburgh) calendar.

1. ERIE CALENDAR - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.

2. JOHNSTOWN CALENDAR - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.

3. Complete if on ERIE CALENDAR: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.

4. Complete if on JOHNSTOWN CALENDAR: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.

PART B (You are to check ONE of the following)

- 1.  This case is related to Number \_\_\_\_\_ Judge \_\_\_\_\_
2.  This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

1. CIVIL CATEGORY (Place x in only applicable category).

- 1.  Antitrust and Securities Act Cases
2.  Labor-Management Relations
3.  Habeas Corpus
4.  Civil Rights
5.  Patent, Copyright, and Trademark
6.  Eminent Domain
7.  All other federal question cases
8.  All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9.  Insurance indemnity, contract and other diversity cases.
10.  Government Collection Cases (shall include HEW Student Loans (Education), VA Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, S.BA. Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

DATE 7/10/08 ATTORNEY AT LAW [Signature]

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.