

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

**CARLOS YOVANI ASENCIO-
MARROQUIN,
PETITIONER,
V.**

CASE NO. 3:26-CV-00043-KC

**PAM BONDI, *ET AL*,
RESPONDENTS.**

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

STATEMENT OF ISSUES

1. Whether Petitioner, who was apprehended in the interior more than two years after his unlawful entry into the United States, is properly designated by statute as an applicant for admission subject to mandatory detention under 8 U.S.C. § 1225(b) while he pursues relief from removal in full removal proceedings before an immigration judge.
2. Whether this Court has jurisdiction to review DHS's initial decision to detain Petitioner while prosecuting him in full removal proceedings absent a valid as-applied constitutional challenge.
3. Whether mandatory detention of an applicant for admission during removal proceedings comports with due process.
4. Whether this case differs materially from this Court's decision in *Martinez v. Noem*, No. 3:25-cv-430-KC, 2025 WL 2965859, at *1–5 (W.D. Tex. Oct. 21, 2025).

Federal¹ Respondents provide the following abbreviated timely response to Petitioner's habeas petition. Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief he seeks, and this Court should deny this habeas petition without the need for an evidentiary hearing. The legal issues presented in this Petition for Writ of Habeas Corpus ("Petition") concern the statutory authority for U.S. Immigration and Customs Enforcement's ("ICE") detention of Petitioner, and whether Petitioner is entitled to a bond hearing. While reserving all rights, including the right to appeal, Respondents submit this abbreviated response to preserve the legal issues and to conserve judicial and party resources. *See* ECF No. 2.

Respondents acknowledge that this Court's prior rulings concerning similar challenges to the government policy or practice at issue in this case, and the common question of law between this case and those rulings would control the result in this case should this Court follow its legal reasoning in its prior decisions. *See id.* Specifically, the pertinent facts related to Petitioner's entry into the United States in this case do not differ materially² from those in *Martinez v. Noem*, No. 3:25-cv-430-KC, 2025 WL 2965859, at *1–5 (W.D. Tex. Oct. 21, 2025). *See id.*

While Respondents respectfully disagree with the merits of the decision in *Martinez*, the factual and legal issues presented in the instant habeas petition do not differ in any material fashion from those presented in that case. Both the instant petition and *Martinez* concern whether an alien who is present in the United States without admission is properly subject to mandatory detention (*i.e.*, detention without the prospect of release on bond) pursuant to 8 U.S.C. § 1225(b) during the

¹ The Department of Justice represents only federal employees in this action.

² Federal Respondents aver that Petitioner here has been given three bond hearings before the Immigration Judge, yet each hearing resulted in no action. Petitioner's next (detained) hearing in his immigration removal proceedings is scheduled for February 3, 2026. *See* <https://acis.eoir.justice.gov/en/caseInformation> (last accessed Jan. 20, 2026).

pendency of his administrative removal proceedings. Federal Respondents incorporate by reference herein their arguments in *Martinez* and other similarly situated cases. Should the Court prefer to receive a more exhaustive opposition brief, Respondents respectfully request leave (up to 20 days) to file such a brief upon the Court's request. *See* ECF No. 2 at 2.

Discussion

Petitioner, who is appearing *pro se* in this matter, principally seeks an order from this Court directing ICE to immediately release him from detention or order a bond hearing. Petitioner argues that his detention is governed by INA § 236, 8 U.S.C. § 1226, that he is being unlawfully detained and deprived of a bond hearing, and that the detention violates the Fifth Amendment to the United States Constitution and 8 U.S.C. § 1226.

Respondents contend that Petitioner's detention is governed by INA § 235, 8 U.S.C. § 1225, because as an alien who entered without inspection or parole was, and remains, an applicant for admission. As such, Petitioner is subject to mandatory detention and not entitled to a bond hearing before the immigration judge. Respondents further contend Petitioner should be required to exhaust administrative remedies before bringing a habeas challenge in federal court.

Respondents further rely upon *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) to support their position. There, the BIA examined the plain statutory language of the INA, including its legislative history, in conjunction with Supreme Court and BIA precedent and related government practice. *Id.* After doing so, the BIA held that "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United

States without admission.” 29 I&N Dec. at 225. Respondents contend this Court should rule the same, and many courts within the Fifth Circuit agree.³

Respondents acknowledge that questions of law in this case and the challenges to the government’s policy and practice substantially overlap with those at issue in the litigation cited above. Accordingly, while preserving all rights, Respondents incorporate by reference the legal arguments it presented in that case and in related cases. Should the Court apply the same reasoning it did in *Martinez* to this one, the legal principles espoused in those cases would likely result in the same outcome here. Because of this, Respondents submit that further briefing on the issues addressed in those cases is not a good use of judicial or party resources. In its current posture, and based upon the Court’s prior rulings, the Court can decide this matter without delay. If, however, the Court prefers a full opposition brief in this matter, Respondents will provide a brief upon the Court’s request.

³ See e.g., *Garabay-Robledo*, 2026 WL 81679 at *4; *Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, -- F.Supp.3d --, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026) (Hendrix, J.); *De Leon Lopez, et al, v. Ladwig, et al*, No. 6:25-CV-01884, 2026 WL 19095, W.D. La. Jan. 2, 2026) (Joseph, J.); *Naranjo v. Uhls*, No. 4:25-CV-05756, 2025 WL 3771447 (S.D. Tex. Dec. 31, 2025); *Zuniga v. Lyons*, No. 1:25-CV-221-H, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025) (Hendrix, J.); *Rivera Hernandez v. Noem*, No. 9:25-CV-00326, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) (Truncale, J.); *P. B. v. Bergami*, No. 3:25-CV-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025) (O’Connor, J.); *Delgado v. Noem*, No. 9:25-CV-00329, 2025 WL 3639439 (E.D. Tex. Dec. 12, 2025) (Truncale, J.); *Rodriguez v. Noem*, No. 9:25-CV-00320, 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025) (Truncale, J.); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.); *Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (Eskridge, J.); *Andrade v. Patterson*, No. 6:25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025) (Joseph, J.); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (Eskridge, J.); *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646 (W.D. La. Oct. 22, 2025), (Whitehurst, M.J.), *report and recommendation adopted*, 2025 WL 3113644 (W.D. La. Nov. 6, 2025) (Joseph, J.); *Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (Joseph, J.); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.).

Should this Court order release of Petitioner, Respondents request that the release order specify a date for release expressed by a calendar day instead of hours. Respondents further request that a time for release not be set. Releases from detention facilities carry unique security considerations for each person being released. It requires coordination within the detention facility and with the Petitioner, their family and/or their counsel. Setting an exact time for release beyond the calendar date can unduly burden the already complicated process.

Conclusion

Respondents appreciate the Court's consideration of this abbreviated response and respectfully request that the Court deny this Petition.

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: /s/ Lacy L. McAndrew

Lacy L. McAndrew
Assistant United States Attorney
Florida Bar No. 45507
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7325 (phone)
(210) 384-7312 (fax)
lacy.mcandrew@usdoj.gov

Attorneys for Federal Respondents

CERTIFICATE OF SERVICE

On or about January 20, 2026, I directed a copy of this filing be mailed to Petitioner at the below address:

Carlos Yovani Ascencio-Marroquin



Camp East Montana Detention Facility
6920 Digital Road
El Paso, TX 79936

/s/ Lacy L. McAndrew
Lacy L. McAndrew