

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CIVIL ACTION No. 1:26-cv-202

Melkis de Jesus Gomez Martinez,	)	
	)	
Petitioner, v.	)	PETITION FOR WRIT OF
	)	HABEAS CORPUS PURSUANT TO
CHARLOTTE COLLINS , Warden, T. Don Hutto	)	28 U.S.C. § 2241
Detention Center;	)	
	)	
MIGUEL VERGARA , Field Office Director, San	)	
Antonio Field Office, United States	)	
Immigration and Customs Enforcement:	)	
	)	
TODD M. LYONS , Acting Director,	)	
United States Immigration and	)	
Customs Enforcement:	)	
	)	
KRISTI NOEM , Secretary of United States	)	
Department of Homeland Security; and	)	
	)	
PAMELA BONDI , United States Attorney	)	
General,	)	
<i>in their official capacities.</i>	)	
	)	
Respondents	)	
	)	
	)	
	)	

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

INTRODUCTION

1. Petitioner Melkis de Jesus Gomez Martinez brings this petition for a writ of habeas corpus to seek enforcement of his rights as a member of the Bond Denial Class certified in *Maldonado*

Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner is currently detained at the T. Don Hutto Detention Center. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*.

2. On December 18, 2025, the district court entered final judgement in favor of the Bond Eligible Class which declared the Bond Eligible Class was detained under Section 1226(a) and are not subject to mandatory detention under Section 1225(b)(2) and that the Bond Eligible Class members are entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge.
3. Nonetheless, the Executive Office for Immigration Review and its subagency the Office of the Chief Immigration Judge and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.
4. Petitioner Melkis de Jesus Gomez Martinez is a member of the Bond Eligible Class, as he:
 - a) Does not have lawful status in the United States and is currently detained at the T. Don Hutto Detention Center. He was apprehended by immigration authorities on or about January 18, 2026.
 - b) Entered the United States without inspection over 10 years ago and was not apprehended upon arrival, *cf. id.*; and
 - c) Is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.
5. After apprehending Petitioner on or about January 18, 2026, the DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. Per Petitioner, he has not yet received a Notice to Appear charging him with inadmissibility.

6. The Court should expeditiously grant this petition.

7. Respondents are bound by the judgement in *Maldonado Bautista*, as it has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

8. Immigration judges have informed class members in bond hearings that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency’s prior decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

9. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista*, the Court should accordingly order that within one day, Respondent DHS must release Petitioner.

10. Alternatively, the Court should order Petitioner’s release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within five days.

PARTIES

1. Petitioner Melkis de Jesus Gomez Martinez is an adult citizen of El Salvador. He is detained at the T. Don Hutto Detention Center located at 1001 Welch Street, Taylor, Texas 76574.

2. Respondent Charlotte Collins is the Warden for the T. Don Hutto Detention Center. She is the legal and physical custodian of Petitioners and is named in her official capacity. Her address is 1001 Welch Street, Taylor, Texas 76574.

3. Respondent Miguel Vergara is the Field Office Director of the San Antonio Field Office of

ICE, which has administrative jurisdiction over Petitioners' case. He is a legal custodian of Petitioners and is named in his official capacity. His address is 1777 NE Loop 410, Floor 15, San Antonio, TX 78217.

4. Respondent Todd Lyons is the Acting Director of ICE. He is a legal custodian of Petitioners' and is named in his official capacity. His address is U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisor, 500 12th St. SW, Mailstop 5900, Washington, D.C. 20536.

5. Respondent Kristi Noem is the Secretary of DHS. She is a legal custodian of Petitioners' and is named in her official capacity. Her address is Office of the General Counsel, MS 0485 Department of Homeland Security, 2707 Martin Luther King, Jr. Ave. SE, Washington, D.C. 20528-0525.

6. Respondent Pamela Bondi is the Attorney General of the United States Department of Justice (DOJ). She is a legal custodian of Petitioners' and is named in her official capacity. Her address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530-0001.

JURISDICTION AND VENUE

7. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

8. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

9. Venue is proper in the United States District Court for the Western District of Texas because at least one Respondent is in this District, Petitioners are detained in this District, and their immediate physical custodian is in this District. *See* 28 U.S.C. § 1391(b).

REQUIREMENTS OF 28 U.S.C. § 2243

10. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents “forthwith,” unless Petitioners are not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

11. 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).

EXHAUSTION NOT REQUIRED

12. Exhaustion is not required where a claimant raises a constitutional claim that the agency would reject. *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012)

13. No statutory exhaustion requirement applies to a petition challenging immigration detention under 28 U.S.C. § 2241. *See, e.g., Montano v. Texas*, 867 F.3d 540, 542 (5th Cir. 2017) (“Unlike 28 U.S.C. § 2254, Section 2241’s text does not require exhaustion.”); *Robinson v. Wade*, 686 F.2d 298, 303 n.8 (5th Cir. 1982) (“[S]ection 2241 contains no statutory requirement of exhaustion like that found in section 2254(b)”); *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007) (“Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.”).

FACTUAL BACKGROUND

14. Petitioner Melkis de Jesus Gomez Martinez is a thirty-one-year-old male and native and citizen of El Salvador.

15. Petitioner came to the United States on or about December 30, 2015. He has resided in the country ever since. He has two U.S. citizen children and another baby on the way.

16. On January 18, 2026, Petitioner was going to work when he was pulled over by Austin

police for a routine traffic stop. He was subsequently taken into ICE custody. After Petitioner was arrested in Austin, Texas, ICE did not set bond.

17. Petitioner has developed substantial ties to the United States during his decade of residence. He is a loving father to his children and has embraced the culture and values of this country. Petitioner has no criminal history and is not a danger to the community.

18. The government has failed to provide any meaningful justification for his continued detention. Given the absence of individualized findings supporting custody, and the grave and immediate harms at stake, Petitioners now submit this Petition for Writ of Habeas Corpus and respectfully requests that this Honorable Court order his immediate release.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the INA:

Request for Relief Pursuant to Maldonado Bautista

19. Petitioner re-alleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.

20. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

21. The order granting summary judgement in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

22. The order granting class certification in *Maldonado Bautista* further orders that “[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.”

23. Respondents are parties to *Maldonado Bautista* and bound by the Court’s declaratory judgement, which has the full “force and effect of a final judgment.” 28 USC § 2201(a).

24. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to

mandatory detention under Section 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

25. The mandatory detention provision at 8 U.S.C. Section 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and were released from custody under section 1226(a) and placed into section 1229a removal proceedings. Such noncitizens are detained under section 1226(a), unless they are subject to sections 1225(b)(1), 1226(c), or 1231.

26. The continued application of section 1225(b)(2) to Petitioner, resulting in his mandatory detention, violates the INA.

COUNT TWO

Violation of Bond Regulations

27. Petitioner re-alleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.

28. An administrative agency is required to adhere to its regulations. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

29. In 1997, after Congress amended the INA through IIRIRA, EOIR and 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 Aliens," the agencies explained that "[d]espite being applicants for admission, *aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.*" 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under section 1226 and its implementing regulations.

30. Federal regulations require the government to grant bond hearings to people detained under

section 1226(a) at the outset of their detention. 8 C.F.R. § 1236.1(d)(1); *see Jennings*, 583 U.S. at 306.

31. Nonetheless, pursuant to *Matter of Yajure Hurtado*, and in violation of long-standing regulations, EOIR now has a policy and practice of applying section 1225(b)(2) to individuals like Petitioner.

32. The continued application of section 1225(b)(2) to Petitioner, resulting in his mandatory detention, violates federal regulations.

COUNT THREE

Fifth Amendment Procedural Due Process

33. Petitioner re-alleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.

34. The government's infringement on Petitioners' liberty interests triggers a right to contest that infringement, for example, through a hearing before the right is deprived. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569–70 (1972).

35. The sufficiency of any process afforded is determined by weighing three factors: (i) the private interest that will be affected by the official action, (ii) the risk of erroneous deprivation of that interest through the available procedures, and (iii) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). "The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time." *M.S.L. v. Bostock*, No. 25-cv-1204, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025) (citing *Mathews*, 424 U.S. at 348).

36. Petitioner has a private right to a bond hearing because he is detained under a statute, 8 U.S.C. § 1226, that allows for release on bond. Because he is denied any hearing or any other of

the procedural protections that such a significant deprivation of their liberty interests would require, their continued detention violates their procedural due process rights. *See Mathews*, 424 U.S. at 332–33.

37. Respondents’ failure to grant an individualized hearing on whether Petitioner’s detention is justified to prevent flight or mitigate risk of danger to the community creates the highest risk of erroneous deprivation of liberty. *See Zadvydas*, 533 U.S. at 690.

38. Respondents incur no additional burden by providing Petitioner with such process because it merely comports with both the requirements of the INA and the constitutional protections guaranteed by the Fifth Amendment.

39. At least one Court in this District has found that individuals in Petitioners’ position are entitled to a bond hearing and that an individual’s entitlement to due process under the Fifth Amendment is not capped by the statute governing his detention. *See Vieira v. Anda-Yharra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 at *4 (W.D. Tex. Oct. 16, 2025) (rejecting the argument that an immigration detainee “is not entitled to more process than what Congress provided him by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a),” when that detainee is challenging their detention rather than removal, and was detained after living in the U.S. for years rather than on arrival).

40. As to the first *Mathews* factor, a “noncitizen’s interest in his freedom pending the conclusion of his removal proceedings deserves great “weight and gravity.”” *Id.* at *6 (citing *Addington v. Texas*, 441 U.S. 418, 427 (1979); *Landon v. Plasencia*, 459 U.S. 21, 34 (1982)).

41. Denial of a bond hearing under section 1225(b)(2) “creates a substantial risk of erroneous deprivation of Petitioner’s interest in being free from arbitrary confinement pending resolution of their removal proceedings,” particularly when the petitioner is not a flight risk or danger and has lived in the U.S. for several years. *Id.* at *7. The value of an additional safeguard through a bond

hearing to determine “whether continued detention is necessary to ensure presence at removal hearings and safety for the community” is high. *Id.*

42. Respondents’ “generalized interest in ensuring noncitizens appear for their removal hearing and do not pose a risk to the communities in which they live” is extremely “diluted” in this case, because Petitioners’ detention has harmed their ability to appear for their immigration court proceedings and they do not pose a danger or flight risk. *Id.* at *6. “Further, any fiscal or administrative burdens Respondents may assert by having to provide a bond hearing are also diminished given [...] the government has conducted such hearings for the past thirty years until a change in the agency’s interpretation of the law.” *Id.*

43. For these reasons, Petitioner’s ongoing detention is unconstitutional. He should be immediately released.

PRAYER FOR RELIEF

Wherefore, Petitioner’s pray that this Court grant the following relief:

1. Assume jurisdiction over this matter:
2. Order Respondents to show cause within three (3) days why this Petition should not be granted;
3. Order that Petitioner shall not be transferred outside of the Western District of Texas while this habeas petition is pending;
4. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioners’ or, in the alternative, provide them with a bond hearing pursuant to 8 U.S.C. Section 1226(a) within five days;
5. Declare that Petitioners’ detention is unlawful;
6. Grant Petitioner’s any preliminary relief to which they show themselves to be entitled;
7. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

MONTY & RAMIREZ LLP

/s/ Veronica Franco Salazar

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Attorney for Petitioners

**Pro hac vice application pending*

28 U.S.C. Section 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner, and/or someone acting in his behalf, the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge.

/s/ Veronica Franco Salazar

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CERTIFICATE OF CONFERENCE

I hereby certify that our office (Veronica Franco Salazar) contacted the designated AUSA and discussed the intent to file this pleading.

/s/ Veronica Franco Salazar

01/28/2026

Veronica Franco Salazar

Date

Lead Attorney

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CERTIFICATE OF SERVICE

On January 28, 2026, Counsel for Petitioner served a copy of the attached Motion via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent Charlotte Collins Warden, in her Official Capacity as Warden of the T. Don Hutto Detention Center,** at (1) Office of the Warden, 1001 Welch St, Taylor, Texas 76574, and (2) to the United States at Civil Process Clerk, U.S. Attorney's Office, 601 NW Loop 410, Suite 600 San Antonio, Texas, 78216.

/s/ Veronica Franco Salazar

01/28/2026

Veronica Franco Salazar

Date

Lead Attorney

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/s/ Veronica Franco Salazar

01/28/2026

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/s/ Veronica Franco Salazar

01/28/2026

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CERTIFICATE OF SERVICE

On January 28, 2026, Counsel for Plaintiff served a copy of the attached Motion via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, Todd Lyons, in his Official Capacity as Acting Director of U.S. Immigration and Customs Enforcement**, at (1) Office of the Principal Legal Advisor, 500 12th St. SW, Mailstop 5900, Washington, D.C. 20536; and (2) to the United States at Civil Process Clerk, U.S. Attorney's Office, 601 NW Loop

410, Suite 600 San Antonio, Texas, 78216.

/s/ Veronica Franco Salazar

01/28/2026

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CERTIFICATE OF SERVICE

On January 28, 2026, Counsel for Petitioner served a copy of the attached Motion via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, Pam Bondi, in her Official Capacity as Attorney General of the United States**, at (1) U.S. Attorney General, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530-0001; and (2) to the Assistant Attorney General for Administration, U.S. Department of Justice, Justice Management Division, 950 Pennsylvania Avenue, NW, Room 1111, Washington, D.C. 20530; and (3) to the United States at Civil Process Clerk, U.S. Attorney's Office, 601 NW Loop 410, Suite 600 San Antonio, Texas, 78216.

/s/ Veronica Franco Salazar

01/28/2026

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Date

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General,	)	
<i>in their official capacities,</i>	)	
	)	
Respondents	)	

ORDER GRANTING WRIT OF HABEAS CORPUS

Having considered Petitioner's Petition for Writ of Habeas Corpus, and good cause appearing, IT IS
HEREBY ORDERED that:

1. The Court ORDERS the immediate release of Petitioner Melkis de Jesus Gomez Martinez from the Department of Homeland Security ("DHS") custody at the T. Don Hutto Detention Center.

2. Alternatively, the Court ORDERS Respondents to provide Petitioner with an individualized bond hearing pursuant to Section 1226(a).
3. Petitioner shall comply with all reporting and supervision requirements set by DHS/ICE while his removal proceedings remain pending before the Executive Office for Immigration Review (EOIR):
4. Respondents, their agents, employees, and successors are RESTRAINED AND ENJOINED from re-arresting or re-detaining Petitioners or from removing Petitioners from the United States during the pendency of their removal proceedings:
5. This Order may be served by facsimile, email, or other means reasonably calculated to provide immediate notice.

SIGNED this ____ day of _____, 2026

UNITED STATES DISTRICT JUDGE