JUDGE KATHLEEN CARDONE

FILED
AUG 26 2026
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

BRAYAN ARTURO MARTINEZ,

A# [redacted]

Petitioner, pro se,

v.

EP26CV2214

WARDEN / FACILITY ADMINISTRATOR,

ERO EL PASO CAMP EAST MONTANA;

FIELD OFFICE DIRECTOR,

ICE ENFORCEMENT AND REMOVAL OPERATIONS,

EL PASO FIELD OFFICE;

DIRECTOR,

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;

SECRETARY,

U.S. DEPARTMENT OF HOMELAND SECURITY; AND

ATTORNEY GENERAL OF THE UNITED STATES,

Respondents.

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

I, Brayan Arturo Martinez, file this petition pro se because I am presently being held in immigration custody at ERO El Paso Camp East Montana in El Paso, Texas. I am asking this Court to protect my liberty and my right to due process before the Government removes me from the United States.

I am not asking this Court to decide my asylum application or to decide whether I ultimately may remain permanently in the United States. I am asking the Court to determine whether the Government may keep me in custody and, most urgently, whether it may physically remove me from the United States without first identifying a valid and executable removal order and without giving me the process required by law.

I have been told or led to understand while detained that immigration authorities intend to deport me without allowing me to appear before an Immigration Judge. I have tried to understand what order they are relying upon and what opportunity I have to challenge my removal. I have not been given a meaningful answer.

I respectfully ask this Court to require the Government to explain, on the record, the exact legal authority under which I am detained and the exact removal order, if any, that it claims authorizes my deportation.

I. JURISDICTION

1. This action arises under the Constitution and laws of the United States.
2. I am physically confined in the Western District of Texas and am in the custody of Respondents.
3. This Court has habeas jurisdiction under 28 U.S.C. § 2241(c)(3) because I contend that my present custody and the threatened execution of removal against me are occurring in violation of the Constitution and laws of the United States.
4. The Fifth Circuit has recognized federal habeas jurisdiction over constitutional challenges to immigration detention. See Demore v. Kim, 538 U.S. 510, 516-17 (2003); Buenrostro-Mendez v. Bondi, 166 F.4th 494 (5th Cir. 2026); Sosnava Rodriguez v. Ortega, consolidated with Villegas Angel and Gomez Alvarado, Nos. 26-50183, 26-50219 & 26-50221 (5th Cir. July 2, 2026).
5. My challenge to detention is separate from the ultimate merits of whether I am removable or entitled to asylum. I am also asking the Court to determine whether an executable removal order actually exists before the Government is permitted to rely on such an order to physically remove me.
6. Venue is proper in the El Paso Division because I am presently confined at ERO El Paso Camp East Montana in El Paso, Texas, and my immediate custodian is located within this District.

II. PARTIES

7. My name is Brayan Arturo Martinez. I am a citizen of Venezuela. My Alien Registration Number is A# [redacted]
8. I am presently detained at ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936.
9. The Facility Administrator of ERO El Paso Camp East Montana is my immediate physical custodian and is therefore a proper respondent.

10. The Field Office Director for ICE Enforcement and Removal Operations in El Paso is responsible for immigration custody administered within the El Paso Field Office.
11. The Director of U.S. Immigration and Customs Enforcement and the Secretary of the U.S. Department of Homeland Security are responsible for the administration and execution of federal immigration detention and removal laws. They are named only in their official capacities to the extent permitted by law.

III. FACTUAL BACKGROUND

12. I am a native and citizen of Venezuela.
13. I entered the United States in 2022 and was processed by immigration authorities. DHS did not simply return me across the border. I was released into the United States and was placed under immigration supervision.
14. My DHS paperwork from 2022 states that I had been "paroled into the United States" and required me to report to immigration authorities. I was also enrolled in an Alternatives to Detention program.
15. I complied with the Government's supervision requirements. I did not disappear from immigration authorities and did not attempt to conceal myself from the Government.
16. I established my life in the United States. I lived in Fort Myers, Florida, at [redacted]
17. I worked and supported myself. My employment and tax records document substantial community ties and a history of employment.
18. I also maintained utility service at my Florida residence through 2026.
19. I have no criminal convictions and, to the best of my knowledge, I have never been arrested for or convicted of a criminal offense in the United States.
20. I have never been a danger to the community.
21. I have complied with immigration requirements known to me and have had a fixed address and employment.
22. I previously pursued asylum protection. My earlier asylum matter was closed.
23. Earlier this year, I again submitted an application seeking asylum protection. To the best of my knowledge, that application remains pending. I have not abandoned my request for protection from return to Venezuela.
24. I also previously received Temporary Protected Status-related employment authorization under category A12 and have filed immigration applications and renewals with USCIS. I do not ask this Court in this petition to decide the ultimate validity or duration of TPS. I provide

these facts because they demonstrate my longstanding contact with DHS and USCIS and contradict any suggestion that I was hiding from immigration authorities.

25. On August 13, 2026, I was traveling through El Paso, Texas on my way to another construction project in Virginia.
26. I was a passenger. I was not driving the vehicle.
27. The vehicle went through an immigration checkpoint in the El Paso area.
28. At that checkpoint, immigration officers detained me.
29. I was not arrested because of a criminal warrant.
30. I was not arrested because I had committed a crime at the checkpoint.
31. I was not attempting to cross from Mexico into the United States on August 13, 2026. I was already inside the United States and was traveling from one location in the United States to another.
32. I had been living in this country for years before this arrest.
33. Since August 13, 2026, I have remained in immigration custody.
34. I am presently detained at ERO El Paso Camp East Montana.
35. I have asked about seeing an Immigration Judge.
36. I have not been provided a hearing before an Immigration Judge concerning the Government's present attempt to remove me.
37. I have been informed or have reasonably understood from what detention personnel have told me that the Government is attempting to deport me without first taking me before an Immigration Judge.
38. That has placed me in an extremely serious position. I cannot meaningfully defend myself from deportation when I do not even know what removal order the Government claims authorizes my removal.
39. As of August 25, 2026, a search of EOIR's Automated Case Information system using my A-Number, [redacted] and Venezuela as my nationality returned: "No case found for this A-Number."
40. I understand that the EOIR online system itself warns that it does not display every case or every piece of case information. I therefore do not claim that the website alone proves that no order could possibly exist.
41. But the result makes judicial review especially urgent. If the Government believes that an enforceable removal order exists against me, it should be required to produce that order,

identify when and how it was entered, identify the statutory procedure used, and establish that I received the process required by law.

42. I should not be put on an airplane and removed from the United States first and be forced to try to determine afterward what happened.

IV. THE GOVERNMENT MUST IDENTIFY THE LEGAL BASIS FOR MY DETENTION AND ANY REMOVAL ORDER IT INTENDS TO EXECUTE

43. Immigration detention is civil detention. It is not punishment for a crime.

44. The Fifth Amendment states that no "person" may be deprived of liberty without due process of law.

45. The Supreme Court has made clear that the Due Process Clause protects persons inside the United States, including noncitizens. Zadvydas v. Davis, 533 U.S. 678, 693-94 (2001).

46. In July 2026, the Fifth Circuit again applied that principle to immigration detainees in Texas. Sosnava Rodriguez v. Ortega, consolidated with Villegas Angel and Gomez Alvarado, Nos. 26-50183, 26-50219 & 26-50221 (5th Cir. July 2, 2026).

47. The Fifth Circuit explained that a person's interest in being free from physical imprisonment is a fundamental liberty interest and that immigration detention remains subject to constitutional limits.

48. I recognize that the immigration statutes give DHS substantial detention authority.

49. I also recognize the Fifth Circuit's decision in Buenrostro-Mendez v. Bondi, 166 F.4th 494 (5th Cir. 2026), holding that certain unadmitted noncitizens may be detained under 8 U.S.C. § 1225(b)(2)(A).

50. But Buenrostro-Mendez does not give the Executive Branch authority to deport a person without a legally valid removal order.

51. Section 1225(b)(2)(A) itself contemplates detention for a removal proceeding under 8 U.S.C. § 1229a when that provision applies.

52. Detention authority and removal authority are different questions.

53. Even if DHS has statutory authority to detain me temporarily, that does not establish that DHS presently possesses an executable order authorizing it to remove me to Venezuela.

54. The Government should therefore be required to state whether it contends that I am detained under 8 U.S.C. § 1225(b), § 1226, § 1231, or another statutory provision.

55. If the Government contends that I am detained under § 1231 because a final order of removal already exists, it should be required to file that order with this Court.

56. The Government should also identify the date of the order, the agency or Immigration Judge that entered it, the type of proceeding in which it was entered, the manner in which I was served, and whether the Government claims that the order is now administratively final.
57. Without that information, neither I nor this Court can determine whether the Government's present custody and threatened removal are lawful.

V. I CANNOT BE REMOVED THROUGH EXPEDITED REMOVAL MERELY AS IF I HAD JUST CROSSED THE BORDER

58. My August 13 arrest occurred inside the United States while I was traveling domestically. I was not entering the United States from Mexico.
59. By that date, I had been physically present in the United States for years.
60. Congress placed express limits on the expanded use of expedited removal against persons encountered inside the United States. See 8 U.S.C. § 1225(b)(1)(A)(iii).
61. I have substantial documentary evidence showing that I was physically present in the United States far longer than two years before my August 13, 2026 arrest.
62. My DHS documents go back to 2022.
63. My employment records, tax records, Florida residence, utility records, driver's license, and immigration records further document my continuing presence in the United States.
64. Therefore, if DHS is attempting to treat my August 13, 2026 detention as the basis for a new expedited-removal proceeding against a person who cannot establish the required period of prior physical presence, that factual premise is incorrect.
65. I can establish more than two years of physical presence through Government records and independent documentary evidence.
66. The fact that I happened to be stopped at an immigration checkpoint inside Texas does not erase the years that I had already lived inside the United States.
67. Nor does it transform domestic travel into an attempted entry at an international border.

VI. DUE PROCESS DOES NOT PERMIT REMOVAL BASED ON AN UNDISCLOSED OR NONEXISTENT ORDER

68. More than a century ago, the Supreme Court held that immigration officers exercising statutory authority involving a person's liberty cannot disregard the fundamental requirements of due process. Yamataya v. Fisher, 189 U.S. 86, 100-01 (1903).
69. I am not asking for an abstract right to remain in the United States without immigration proceedings.

70. I am asking for the most basic protection: before the Government physically expels me from this country, it must identify the legal order that authorizes that action and provide whatever opportunity to be heard the governing immigration statute and Constitution require.
71. The danger of an erroneous deprivation is unusually high here because the EOIR system presently shows no case for my A-Number, I have a history of parole and immigration supervision dating to 2022, I have pursued asylum protection, and I have not been shown an executable removal order.
72. Once removal occurs, the injury cannot realistically be undone simply by telling me later that I should have challenged an error while I was still in detention.
73. My liberty and my ability to pursue protection from removal are therefore in immediate danger.

VII. MY PENDING REQUEST FOR ASYLUM PROTECTION CANNOT SIMPLY BE IGNORED

74. I have sought protection from return to Venezuela.
75. Earlier this year I submitted another asylum application, which I understand remains pending.
76. I am prepared to provide the receipt notice and other USCIS records concerning that application as soon as they are available to me.
77. I do not ask this Court to adjudicate the merits of my asylum claim.
78. I do ask the Court to prevent my physical removal based on an unidentified order or procedure before the Government establishes what process applies to me and whether my pending protection request has been considered as required by law.
79. If DHS contends that my asylum application does not prevent removal, it should be required to explain the legal and factual basis for that position rather than physically removing me before the issue can be heard.

VIII. MY INDIVIDUAL CIRCUMSTANCES SHOW WHY AUTOMATIC DETENTION WITHOUT REVIEW PRESENTS A SERIOUS DUE PROCESS PROBLEM

80. I am not a criminal detainee.
81. I have no criminal record.
82. I have a fixed residence and extensive community ties.
83. I have worked in the United States and supported myself.
84. I have participated in immigration supervision in the past.

85. I have a sponsor willing to provide me housing, transportation, financial assistance if necessary, and assistance attending immigration hearings and ICE appointments.
86. My sponsor has stated under penalty of perjury that he has known me since 2023 and knows me to be peaceful, responsible, hardworking, and not a danger to the community.
87. These facts directly address the two traditional concerns relevant to immigration custody: danger to the community and risk of flight.
88. Nothing about my personal circumstances supports a conclusion that I must be imprisoned to protect the public.
89. Nothing about my history of immigration supervision supports a conclusion that I would disappear if released under reasonable conditions.
90. In Sosnava Rodriguez / Villegas Angel / Gomez Alvarado, the Fifth Circuit held in July 2026 that constitutional due process remains relevant even where § 1225(b)(2)(A) applies.
91. The Fifth Circuit recognized that dangerousness and flight risk are traditional justifications for immigration detention and that physical liberty remains protected by the Fifth Amendment.
92. I understand that the majority in that decision also discussed a period during which detention may be presumed reasonable.
93. Because my present detention began only on August 13, 2026, I am not pretending that I have already been detained for many months.
94. I preserve my constitutional challenge to continued detention without individualized review, particularly if my detention continues while the Government delays placing me into a lawful proceeding.
95. More immediately, however, I ask this Court to prevent detention from being used as the mechanism for removing me before the Government identifies a lawful and executable removal order.

IX. THE GOVERNMENT CANNOT AVOID REVIEW BY REMOVING ME WHILE THIS PETITION IS PENDING

96. My concern is immediate because I have been told or led to understand that deportation may occur without my first seeing an Immigration Judge.
97. If I am removed while this Court is determining whether an executable removal order exists, meaningful review of my present detention and threatened removal could be defeated by the very government action I am challenging.

98. I therefore respectfully ask the Court to act promptly and require Respondents to disclose my current immigration posture before any physical removal occurs.

99. I am filing, or intend to file separately, an emergency request asking the Court to preserve the status quo while this petition is reviewed.

100. I understand that a motion for temporary relief must be filed separately from this § 2241 petition under the procedures of this Court.

X. EXHAUSTION

101. I have attempted while detained to obtain information about my case and my opportunity to appear before an Immigration Judge.

102. I have not been provided a meaningful administrative procedure through which I can obtain immediate review of the Government's threatened removal based on an order that has not been identified to me.

103. Requiring further exhaustion would be futile to the extent the Government's position is that I have no right to appear before an Immigration Judge before removal.

104. Exhaustion should also be excused because physical removal could occur before ordinary administrative review could provide meaningful relief.

105. My constitutional challenge to detention and my request that the Government establish the existence of the legal authority it seeks to execute are appropriate for habeas review.

XI. CLAIM ONE

CUSTODY IN VIOLATION OF THE FIFTH AMENDMENT

106. I incorporate paragraphs 1 through 105.

107. I have a protected liberty interest in freedom from physical detention.

108. Respondents have deprived me of that liberty.

109. I have not been provided an individualized hearing addressing the factual and legal basis for my present detention.

110. I have no criminal record and no history demonstrating dangerousness.

111. I have substantial evidence of residence, employment, sponsorship, community ties, and prior compliance with immigration supervision.

112. Continued detention without constitutionally adequate process violates the Fifth Amendment when the Government cannot establish a sufficient justification for that detention.

113. I preserve this claim under Zadvydas, Demore, Mathews v. Eldridge, 424 U.S. 319 (1976), and the Fifth Circuit's July 2, 2026 decision in Sosnava Rodriguez / Villegas Angel / Gomez Alvarado.

XII. CLAIM TWO

THREATENED REMOVAL WITHOUT IDENTIFICATION OF A VALID EXECUTABLE REMOVAL ORDER VIOLATES DUE PROCESS

114. I incorporate paragraphs 1 through 113.

115. Respondents have threatened or are preparing to remove me from the United States.

116. I have not been provided a copy of a final executable removal order authorizing that action.

117. The EOIR automated system presently reports that no case is found for my A-Number.

118. Respondents cannot lawfully use executive detention to accomplish physical deportation without first possessing the statutory authority and legally effective order necessary to remove me.

119. Fundamental due process requires, at minimum, that I be informed of the legal basis for the Government's action and given the procedure required by the governing immigration statute before an irreversible deprivation occurs.

120. Removal under an unidentified, invalid, or nonexistent order would violate the Constitution and laws of the United States.

XIII. CLAIM THREE

REMOVAL WITHOUT THE PROCEEDING REQUIRED BY THE INA WOULD BE UNLAWFUL

121. I incorporate paragraphs 1 through 120.

122. If Respondents are holding me under 8 U.S.C. § 1225(b)(2)(A), that provision contemplates detention for proceedings under 8 U.S.C. § 1229a.

123. Respondents cannot rely on § 1225(b)(2)(A) as authority for my detention while simultaneously denying me the proceeding contemplated by that statutory provision and simply removing me without identifying some separate lawful basis for doing so.

124. If Respondents instead contend that a previous order places me under 8 U.S.C. § 1231, they should be required to produce that order and establish its finality and applicability.

125. Until Respondents identify which legal framework actually applies, my detention and threatened removal cannot receive meaningful judicial review.

XIV. CLAIM FOUR

APPLICATION OF EXPEDITED REMOVAL WITHOUT REGARD TO MY YEARS OF PHYSICAL PRESENCE WOULD EXCEED STATUTORY AUTHORITY

126. I incorporate paragraphs 1 through 125.

127. I had been physically present in the United States for substantially more than two years before August 13, 2026.

128. Government and private records establish that physical presence.

129. If Respondents are attempting to place me in expedited removal based on my August 13, 2026 checkpoint encounter without recognizing my prior years of physical presence, I challenge that application of expedited-removal authority as contrary to 8 U.S.C. § 1225(b)(1)(A)(iii).

130. I respectfully request that Respondents be required to disclose whether expedited removal is being used against me and, if so, the factual and statutory basis for doing so.

XV. REQUEST FOR RELIEF

For these reasons, I respectfully ask this Court to:

A. Issue the writ of habeas corpus or an order to show cause requiring Respondents to promptly answer this petition;

B. Require Respondents to identify the exact statutory authority under which I am presently detained;

C. Require Respondents to state whether they contend that a final removal order exists against me;

D. If Respondents contend that such an order exists, require them to produce a complete copy of that order and the documents showing the proceeding in which it was entered, its date, its service upon me, and its claimed administrative finality;

E. Require Respondents to state whether they are attempting to remove me through expedited removal under 8 U.S.C. § 1225(b)(1);

F. Determine that Respondents may not physically remove me pursuant to an unidentified, invalid, or nonexistent removal order;

G. Determine that Respondents may not subject me to expedited removal contrary to the statutory limitations applicable to a person able to establish more than two years of physical presence in the United States;

H. If the Government cannot establish lawful authority for my present detention, order my release under reasonable conditions of supervision;

I. Alternatively, if continued detention becomes constitutionally unreasonable, order an individualized custody hearing consistent with the Fifth Amendment and controlling Fifth Circuit precedent;

J. Grant such additional habeas relief as is necessary to remedy custody in violation of the Constitution or laws of the United States; and

K. Grant any other relief this Court determines to be just and lawful.

VERIFICATION

I, Brayan Arturo Martinez, declare under penalty of perjury under the laws of the United States of America that I am the Petitioner in this case, that I have read this Petition for Writ of Habeas Corpus, and that the factual statements contained in it are true and correct to the best of my personal knowledge, information, and belief.

Executed on: August 25, 2026
At ERO El Paso Camp East Montana
El Paso, Texas

Brayan A. Martinez

BRAYAN ARTURO MARTINEZ
A# [redacted]
Petitioner, Pro Se

ERO El Paso Camp East Montana
6920 Digital Road
El Paso, Texas 79936

CERTIFICATE OF SERVICE

I certify that on August 25, 2026, I placed true and correct copies of the Emergency Motion for Temporary Restraining Order and Limited Stay of Removal, my supporting Declaration, the Proposed Order, and all available attachments in the detention facility's legal-mail system, addressed to the following:

CIVIL PROCESS CLERK
UNITED STATES ATTORNEY'S OFFICE
WESTERN DISTRICT OF TEXAS EL PASO DIVISION
700 E. San Antonio Avenue, Suite 200
El Paso, Texas 79901

WARDEN / FACILITY ADMINISTRATOR
ERO EL PASO CAMP EAST MONTANA
6920 Digital Road
El Paso, Texas 79936

FIELD OFFICE DIRECTOR
ICE ENFORCEMENT AND REMOVAL OPERATIONS
EL PASO FIELD OFFICE
11541 Montana Avenue, Suite E
El Paso, Texas 79936

DIRECTOR
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
500 12th Street, S.W.
Washington, D.C. 20536

SECRETARY
U.S. DEPARTMENT OF HOMELAND SECURITY
ATTN: OFFICE OF THE GENERAL COUNSEL
245 Murray Lane, S.W.
Mail Stop 0485
Washington, D.C. 20528-0485

ATTORNEY GENERAL OF THE UNITED STATES
U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Because I am detained and proceeding without an attorney, I respectfully request that the Clerk of Court complete, order, or direct any additional service required by 28 U.S.C. § 2243, Federal Rule of Civil Procedure 4(i), the Rules Governing Section 2254 Cases as applicable under Rule 1(b), or any order of this Court.

Executed on August 25, 2026, in El Paso, Texas.

Brayan A. Martinez

BRAYAN ARTURO MARTINEZ
A# [redacted]
Petitioner, Pro Se

ERO El Paso Camp East Montana
6920 Digital Road
El Paso, Texas 79936