UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARTINEZ-ALFONSO, OSLIANY **A#** [redacted] **Petitioner,** **v.** **Mary de Anda-Ybarra Acting/Director of El Paso Field Office, U.S. Immigration and Customs Enforcement; Warden, El Paso Processing Service Center; Markwayne Mullin, Secretary of the U.S. Department of Homeland Security; and Todd Blanche Attorney General of the U.S. in their official capacities,** **Respondents.**	**Case No. 3:26-cv-2246** **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner OSLIANY MARTINEZ-ALFONSO brings this petition for a writ of habeas corpus to seek enforcement of rights under U.S. Law.
2. Petitioner
    a. is in the physical custody of Respondents at the El Paso Processing Center,
    b. entered the United States on March 26, 2022, (See Exhibit A, NTA)
    c. Petitioner was apprehended, processed and released by DHS on or about March 30, 2022. (See Exhibit B, Release Documents)
    d. Petitioner was, for reasons of policy change, rearrested and detained

e. now detained under 8 U.S.C. § 1225(b),

f. Has no arrests or criminal history.

3. The Court should expeditiously grant this petition.

JURISDICTION

4. Petitioner is in the physical custody of Respondents. Petitioner is detained at the El Paso Processing Center in El Paso, Texas.

5. 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).

6. 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.

VENUE

7. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner currently is detained.

8. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2241 & 2243

9. A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

10. 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) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted). "[A]bsent suspension, the writ of habeas corpus remains available to every individual detained within the United States." Hamdi v Rumsfeld, 542 US 507, 525 (2004). "A district court may grant a writ of habeas corpus if a petitioner is in federal custody in violation of the Constitution or federal law." Buenrostro-Mendez v Bondi, 2025 WL 2886346, *1 (SD Tex), citing 8 USC §2241 (internal citations omitted).

PARTIES

11. Petitioner OSLIANY MARTINEZ-ALFONSO is a citizen of Cuba who is in immigration detention. After Petitioner was detained by ICE, no bond was set, and Petitioner is deemed detained under 8 U.S.C. § 1225 as an "applicant for admission."

12. Respondent Mary de Anda-Ybarra is the Director of the El Paso Field Office of ICE's Enforcement and Removal Operations division. As such, Mary de Anda-Ybarra is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in her official capacity.

13. Respondent Markwayne Mullin Director of the Department of Homeland Security is the Secretary of the Department of Homeland Security. They are responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. They have ultimate custodial authority over Petitioner and is sued in his official capacity. The Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

14. Respondent Todd Blanche is the acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is named in his official capacity.

15. Respondent WARDEN whose name is unknown is Warden of the El Paso Service Processing Center, where Petitioner is detained. He/he has immediate physical custody of Petitioner. He/she is sued in his/her official capacity.

CLAIM FOR RELIEF

Due Process

16. Petitioner is aware that in *Demore v. Kim*, 538 U.S. 510, 531 (2003), the Supreme Court held that detention during removal proceedings is a constitutionally permissible part of that process.
17. Permissible but not mandatory. Why? Because there must be a limit on what our Government can do to people when depriving them of life or liberty. At some point, this detention moves past permissible, not on a statutory ground, but under the Due Process clause of the Constitution of this great Country.
18. There have been numerous District Courts within the 5th Circuit post *Buenrostro*, whose Order was filed on February 6, 2026, that have found Petitioners entitled to a bond hearing on due process grounds.
19. These decisions demonstrate that both *Buenrostro* and due process protection can be followed.
20. The Due Process Clause of the Fifth Amendment provides Petitioner with important protections regarding their detention. As the Supreme Court has explained, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint— lies at the heart of the liberty" that the Due Process Clause protects. Zadvydas v. Davis, 533 U.S. 678, 690 (2001).
21. The Respondent's blanket detention policy under Yajure Hurtado and Buenrostro-Mendez v. Bondi creates an extreme risk of erroneous deprivation by denying Petitioner any opportunity to demonstrate eligibility for release; and the Government's

interest in ensuring appearance can be served by far less restrictive means. Accordingly, due process requires an individualized bond hearing under § 1226(a).

22. The INA envisions three basic forms of detention for noncitizens in removal proceedings. First is detention for noncitizens in regular, non-expedited removal proceedings. See 8 U.S.C. § 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. See id. § 1226(c).

23. The INA also provides for mandatory detention for noncitizens in expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose immigration cases are completed, id. § 1231(a)(6). See Banda v. McAleenan, 385 F. Supp. 3d 1099, 1111-13 (W.D. Wash. 2019) (providing overview of INA's detention authorities). 29. Since the Supreme Court's Jennings v. Rodriguez, 138 S. Ct. 830 (2018) decision, the Ninth Circuit has expressed "grave doubt" that "any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so."

24. To guarantee against such arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." Zadvydas, 533 U.S. at 690 (internal quotation marks omitted).

25. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight.

Id.; Demore, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other justification.

26. As a result, where the government detains a noncitizen for a prolonged period or where the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an individualized hearing before a neutral decisionmaker to determine whether detention remains reasonably related to its purpose. Demore, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); cf. Jackson v. Indiana, 406 U.S. 715, 733 (1972) (detention beyond the "initial commitment" requires additional safeguards); McNeil v. Dir., Patuxent Inst., 407 U.S. 245, 249- 50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement"); Hutto v. Finney, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").

27. Evidence about immigration detention and the adjudication of removal cases provide further support for the due process right to a bond hearing in cases of prolonged detention.

28. Immigration detainees face severe hardships while incarcerated. Immigration detainees are held in lock-down facilities, with limited freedom of movement and access to their families: "the circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails." Jennings, 138 S. Ct. at 861 (Breyer, J., dissenting); accord Chavez-Alvarez, 783 F.3d at 478; Ngo v. INS, 192 F.3d 390, 397-98 (3d Cir. 1999);

Sopo, 825 F.3d at 1218, 1221. "And in some cases[,] the conditions of their confinement are inappropriately poor." Jennings, 138 S. Ct. at 861 (Breyer, J., dissenting).

29. These conditions and obstacles only further underscore the serious due process concerns that prolonged immigration detention poses for noncitizens like the Petitioner and reflect the need for a decision before a neutral decisionmaker regarding continued detention.

30. Here, the Respondents can neither show that the continued detention of petitioner following her detention is reasonably related to the original purpose and the Mathews tests are satisfied. Similarly, no procedural safeguards are offered to those who remain in custody pending adjudication of their Court proceedings.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

31. The allegations in the above paragraphs are realleged and incorporated herein.

32. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the] Clause protects." Zadvydas v. Davis, 533 U.S. 678, 690 (2001). 55. Civil immigration detention is only permissible where it bears a "reasonable relation to the purpose for which the individual was committed." Jackson v. Indiana, 406 U.S. 715, 738 (1972); Zadvydas, 533 U.S. at 690. Those purposes are limited: preventing flight and protecting the community. Demore v. Kim, 538 U.S. 510, 528 (2003).

33. Neither community protection nor flight risk applies to the Petitioner, and therefore, the detention no longer bears a reasonable relation to the purpose for which it was committed. See Jackson v. Indiana, 406 U.S. 715, 738 (1972); Zadvydas, 533 U.S. at 690.

34. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

35. We do not live in a country where one can be detained without the right to be released, no matter the color of their skin, without being convicted of a crime or even accused of committing a crime.[1]

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;

c. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing finding jurisdiction under 8 U.S.C. § 1226(a) within seven days or order Petitioner's immediate release; and

d. Grant any other and further relief that this Court deems just and proper.

DATED 31 of August, 2026.

Respectfully submitted,

/S/ John Dutton

John Dutton, Esq.
Attorney for Petitioner
Attorney in Charge
Texas Bar No. 24124545
SDOT ID No. 3948530
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[1] One may argue Petitioner is accused of committing the crime of entering the U.S. illegally, but remember, Petitioner was already arrested and released for this crime and there has been no allegation of an additional crime.

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PROPOSED ORDER

Upon consideration of Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, the Court finds that Petitioner has raised substantial questions regarding the legality of continued detention without an individualized custody determination.

Accordingly, it is ORDERED that:

1. Respondents shall SHOW CAUSE, in writing, within ___ days of the entry of this Order, why the Petition should not be granted.
2. In the alternative, Respondents are ORDERED to provide Petitioner with an individualized bond hearing before an Immigration Judge who must find jurisdiction under 8 U.S.C. § 1226 within ___ days of the entry of this Order.
3. At the bond hearing, the Immigration Judge shall conduct an individualized custody determination, considering whether Petitioner presents a danger to the community or a risk of flight, and shall have the authority to set a reasonable bond or order release on appropriate conditions, consistent with due process.
4. Respondents shall file a notice with the Court confirming compliance with this Order and the outcome of the bond hearing within ___ days after the hearing.
5. Petitioner may file a reply within ___ days after Respondents' response or notice of compliance.
6. Pending further order of the Court, the Court retains jurisdiction over this matter.
7. The Court may resolve this matter without a hearing or may set the matter for hearing if it determines that additional proceedings are necessary.

IT IS SO ORDERED.

SIGNED this ___ day of _____, *2026*.

_____

UNITED STATES DISTRICT JUDGE

VERIFICATION BY PERSON ACTING ON PETITIONER'S BEHALF

PURSUANT TO 28 U.S.C. § 2242

I, John Dutton, declare under penalty of perjury that I am counsel for Petitioner and am acting on Petitioner's behalf pursuant to 28 U.S.C. § 2242. I have reviewed the foregoing Petition for Writ of Habeas Corpus and state that the facts contained therein are true and correct to the best of my knowledge, information, and belief.

Executed on August 31, 2026.

Respectfully submitted,

/S/ John Dutton

Attorney for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system.

/S/ John Dutton, Attorney for Petitioner

Executed on August 31, 2026