

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

**Mario Alberto Bautista Cervantes v. Misty Mackey, Warden,
Midwest Regional Reception Center; Todd M. Lyons, ICE Acting
Director; United States Department of Homeland Security;
Markwayne Mullin, DHS Secretary; and Todd Blanche, Acting
Attorney General**

Bautista Cervantes v. Mackey · No. 26-3089-JWL · Decided April 27, 2026

SUMMARY

The United States District Court for the District of Kansas partially grants Mario Alberto Bautista Cervantes’s petition for habeas corpus under 28 U.S.C. § 2241. The court holds that, because petitioner was not a newly arriving alien, the Government may not detain him under 8 U.S.C. § 1225(b)(2)(A) without bond consideration and must either release him or provide a bond hearing under 8 U.S.C. § 1226(a) by May 8, 2026. The court denies the petitioner’s requests for additional relief and reserves any attorney-fee request for a future motion.

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	John W. Lungstrum
JURISDICTION	United States District Court for the District of Kansas
DECIDED	April 27, 2026
DOCKET	26-3089-JWL
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner sought habeas corpus relief under 28 U.S.C. § 2241 challenging immigration detention without a bond hearing. The district court granted the petition in part and ordered respondents either to release petitioner or provide a bond hearing under 8 U.S.C. § 1226(a).
STANDARD OF REVIEW	To obtain habeas relief under 28 U.S.C. § 2241, petitioner had to demonstrate that he was in custody in violation of the Constitution or laws or treaties of the United States.
PRECEDENTIAL VALUE	Nonprecedential district court memorandum and order

PARTIES

Mario Alberto Bautista Cervantes v. Misty Mackey, Warden, Midwest Regional Reception Center, Todd M. Lyons, ICE Acting Director, United States Department of Homeland Security, Markwayne Mullin, DHS Secretary, Todd Blanche, Acting Attorney General

TOPICS

immigration detention

federal habeas corpus

removal proceedings

statutory interpretation

remedies

PRACTICE AREAS

immigration law

federal habeas corpus

immigration detention

statutory interpretation

QUESTIONS PRESENTED

1. Whether the court had jurisdiction under 28 U.S.C. § 2241 to consider statutory and constitutional challenges to petitioner's immigration detention unrelated to a final order of removal.
2. Whether 8 U.S.C. § 1225(b)(2)(A), which mandates detention of certain newly arriving aliens, authorized detention of petitioner, who had been present in the United States for years before his detention.
3. Whether petitioner was entitled to consideration for release on bond under 8 U.S.C. § 1226(a).
4. What relief was appropriate for the statutory violation.

HOLDINGS

1. The district court had habeas corpus jurisdiction under 28 U.S.C. § 2241 to consider petitioner's statutory and constitutional challenges to immigration detention that were unrelated to a final order of removal.
2. The Government could not detain petitioner under 8 U.S.C. § 1225(b)(2)(A) because petitioner was not an alien newly arriving in the United States; his detention pending a final removal decision was instead governed by 8 U.S.C. § 1226(a).
3. By refusing to allow consideration of petitioner's release on bond under 8 U.S.C. § 1226(a), the Government violated the governing detention statutes.
4. The appropriate remedy was to require respondents either to release petitioner or ensure that he received a bond hearing under § 1226(a) on the merits by May 8, 2026; the court denied additional requested relief.

KEY QUOTATIONS

“The Court grants the petition in part. Respondents are ordered either to release petitioner or to ensure that petitioner receives a bond hearing pursuant to 8 U.S.C. § 1226(a) on or before May 8, 2026, and they are further ordered to provide notice to this Court when such relief has been given.”

*“Thus, for the same reasons set forth in the Court’s opinion in Galdamez Orellana, see id. at *1- 3, the Court concludes in this case that the Government may not detain petitioner under Section 1225(b)(2)(A), and that it may therefore detain petitioner pending a final removal decision only under Section 1226(a), which allows for release on bond;”*

FACTUAL BACKGROUND

Petitioner, a native of Mexico, entered the United States with authorization in 2005 and resided there for many years. Immigration officials detained him on April 3, 2026, after which removal proceedings were initiated, and he remained detained in the District of Kansas. The Government detained him without allowing consideration of release on bond under 8 U.S.C. § 1226(a), relying instead on 8 U.S.C. § 1225(b)(2)(A).

PROCEDURAL HISTORY

Immigration officials detained petitioner on April 3, 2026, and removal proceedings were initiated. Petitioner filed this § 2241 habeas action on April 14, 2026; after an expedited response, respondents filed an answer and petitioner filed a traverse. The court ruled that the matter was ripe and granted relief in part.

DISPOSITION

other

REMAND INSTRUCTIONS

Respondents must either release petitioner or ensure that he receives a bond hearing pursuant to 8 U.S.C. § 1226(a), with his suitability for release considered on the merits, on or before May 8, 2026. Respondents must notify the court when the relief has been provided.

CASES CITED

- Demore v. Kim, 538 U.S. 510, 517–18 (2003)
- Galdamez Orellana v. Welsh, 2026 WL 710121 (D. Kan. Mar. 13, 2026)
- Chen v. Dorneker, 2021 WL 5769354, at *2 (D. Kan. Dec. 6, 2021)
- Yajure Hurtado decision by the Board of Immigration Appeals

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS MARIO ALBERTO BAUTISTA CERVANTES,)) Petitioner,)) v.) Case No. 26-3089-JWL) MISTY MACKEY, Warden,) Midwest Regional Reception Center;) TODD M. LYONS, ICE Acting Director;) UNITED STATES DEPARTMENT OF) HOMELAND SECURITY;) MARKWAYNE MULLIN, DHS Secretary; and) TODD BLANCHE, Acting Attorney General,)) Respondents.))
_____) MEMORANDUM AND ORDER
Petitioner, through counsel, filed a petition for habeas corpus under 28 U.S.C. § 2241, by which he challenges his detention by immigration officials without a bond hearing.

For the reasons set forth below, the Court grants the petition in part. Respondents are ordered either to release petitioner or to ensure that petitioner receives a bond hearing pursuant to 8 U.S.C. § 1226(a) on or before May 8, 2026, and they are further ordered to provide notice to this Court when such relief has been given.

The Court denies petitioner's requests for other relief. Petitioner, a native of Mexico, entered the United States in 2005 with authorization, and he has resided in the United States since that time. Petitioner was detained by immigration officials on April 3, 2026, removal proceedings were initiated, and petitioner remains in custody in this judicial district.

On April 14, 2026, petitioner filed the instant habeas action, and the Court ordered an expedited response; respondents have now filed an answer, petitioner has filed a traverse, and the matter is therefore ripe for ruling.

To obtain habeas corpus relief, petitioner must demonstrate that he is "in custody in violation of the Constitution or laws or treaties of the United States." See 28 U.S.C. § 2241(c)(3). This Court has habeas corpus jurisdiction to consider the statutory and constitutional grounds for immigration detention that are unrelated to a final order of removal. See *Demore v. Kim*, 538 U.S. 510, 517–18 (2003).

Respondents have not argued that this Court lacks jurisdiction to consider petitioner's claim. Petitioner was not recently detained as an alien newly arriving in the United States; rather, he had been present in the United States for a period of years when he was detained. Petitioner argues that, for that reason, his detention does not fall within the scope of 8 U.S.C. § 1225(b)(2)(A), which mandates detention pending removal proceedings, and under which the Government purports to detain petitioner; but instead is governed by 8 U.S.C. § 1226(a), which provides for discretionary release on bond.

Petitioner thus claims that his detention without any consideration of his release on bond violates these statutes.¹ In a recent case involving the same issue, this Court rejected the Government's interpretation of these statutes in favor of the interpretation adopted by the overwhelming 1 Petitioner also claims that his detention without consideration of release on bond violates due process.

In light of the Court's conclusion that petitioner is entitled to bond consideration under the statutes, it need not reach that issue. majority of courts that have addressed the issue, and the Court ordered relief in the form of a bond hearing under Section 1226(a). See *Galdamez Orellana v. Welsh*, 2026 WL 710121 (D. Kan. Mar. 13, 2026) (Lungstrum, J.). Respondents concede that the relevant facts of the present case are not materially distinguishable from those in *Galdamez Orellana*, and they therefore acknowledge that the Court's prior reasoning would also apply here.

Thus, for the same reasons set forth in the Court's opinion in *Galdamez Orellana*, see *id.* at *1- 3, the Court concludes in this case that the Government may not detain petitioner under Section 1225(b)(2)(A), and that it may therefore detain petitioner pending a final removal decision only under Section 1226(a), which allows for release on bond; and that the Government has therefore violated these statutes by refusing to allow for consideration of petitioner's release on bond under Section 1226(a).

Petitioner has not addressed this Court's discussion in *Galdamez Orellana* of the appropriate relief to be granted in this case; rather, he has merely argued that this Court should follow its ruling from that case. Thus, for the reasons stated in that case, see *id.* at *3-4, the Court concludes that the most appropriate remedy for this violation is to require that petitioner be granted a bond hearing as if detained under Section 1226(a), and the Court declines to grant any additional relief requested by petitioner.

Accordingly, the Court orders respondents either to release petitioner or to ensure that petitioner receives a bond hearing pursuant to 8 U.S.C. § 1226(a), at which petitioner's suitability for release on bond is considered on its merits, on or before May 8, 2026.² Finally, the Court notes that petitioner has requested an award of attorney fees. Any such request should be made by future motion, after consultation with Government counsel, in accordance with applicable rules.

IT IS THEREFORE ORDERED BY THE COURT THAT the petition for habeas corpus pursuant to 28 U.S.C. § 2241 is hereby granted in part. Respondents are ordered either to release petitioner or to ensure that petitioner receives a bond hearing pursuant to 8 U.S.C. § 1226(a) on or before May 8, 2026, and they are further ordered to provide notice to this Court when such relief has been given.

The Court denies petitioner's requests for other relief. IT IS SO ORDERED. Dated this 27th day of April, 2026, in Kansas City, Kansas. /s/ John W. Lungstrum Hon. John W. Lungstrum United States District Judge 2 Respondents have not argued or provided evidence that a hearing could not be conducted within this timeframe requested by petitioner. Nor have respondents argued that an immigration judge could not conduct a bond hearing for petitioner on the merits.

Although this Court lacks jurisdiction to review an immigration judge's denial of release on bond, see *Chen v. Dorneker*, 2021 WL 5769354, at *2 (D. Kan. Dec. 6, 2021) (Lungstrum, J.) (citing 8 U.S.C. § 1226(e)), it would not be precluded from reviewing an immigration judge's refusal to conduct a hearing based the *Yajure Hurtado* decision by the Board of Immigration Appeals.