

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

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OPINION

Mackey

PER CURIAM.

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.<sup>1</sup> 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 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.<sup>2</sup> 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.