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6 UNITED STATES DISTRICT COURT  
7 FOR THE WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE  
9

10 Javier Martinez,  
11 Petitioner

vs.

12 Bruce Scott, Warden of the Northwest Detention  
Center; Drew Bostock, Seattle ICE Field Office  
13 Director; Kristi Noem, Secretary of Department of  
Homeland Security; Pamela Bondi, United States  
14 Attorney General,

Respondents

W.D. Wash. No. 25-1538



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

15  
16 INTRODUCTION

17 1. The Petitioner, Javier Martinez, is currently in detention at the Northwest Immigration  
18 Detention Center in Tacoma, Washington. He has been in immigration detention over 7 years,  
19 since April 2018.

20 2. On July 7, 2025, this Court found that Mr. Martinez' prolonged detention violates due  
21 process; the Court ordered that the Respondents provide a bond hearing at which the

1 Respondents have the burden of proving, by clear and convincing evidence, that Mr. Martinez  
2 continues to pose a flight risk or danger to the community. *Martinez v. Alfonso-Royals*, 2025  
3 U.S. Dist. LEXIS 128436, 2025 WL 1866085 (W.D. Wash. July 7, 2025).

4 3. The Respondents have not complied with this Court's order. On August 4, 2025, the  
5 Respondents provided a hearing that was grossly unfair and constitutes a violation of due  
6 process. The Department of Homeland Security (DHS) provided no evidence that Mr. Martinez  
7 is currently a danger to the community or a flight risk. The IJ refused to allow Mr. Martinez'  
8 witnesses to testify. The IJ concluded, without explanation, that Mr. Martinez is a danger to the  
9 community and a flight risk. The bond hearing provided does not comply with this Court's July 7  
10 Order.

11 4. Mr. Martinez requests this Court to schedule a prompt hearing pursuant to 28 U.S.C.  
12 §2243 at which he has a meaningful opportunity to establish that his continued detention violates  
13 Due Process. In the alternative, if this Court determines not to schedule a prompt hearing  
14 pursuant to §2243, Mr. Martinez requests that this Court issue a temporary restraining order  
15 allowing him to remain free from custody while the habeas proceeding is pending, and until a  
16 bond hearing is provided as required by this Court's July 7 Order. That is similar to what this  
17 Court ordered in 2013 when it allowed Mr. Martinez to be free on personal recognizance while  
18 the underlying criminal proceedings were pending.

#### 19 JURISDICTION

20 5. This court has jurisdiction over this lawsuit pursuant to 28 U.S.C. §2241 (habeas  
21 corpus jurisdiction); 28 U.S.C. §1331 (jurisdiction of civil actions arising under the Constitution  
22 and laws of the United States); 28 U.S.C. § 1361 (mandamus jurisdiction); and 28 U.S.C. §

1 2201(a) (declaratory judgments). The Administrative Procedure Act, 5 U.S.C. §701, et seq.  
2 applies to this lawsuit.

3 6. Venue in the Western District of Washington is appropriate because Petitioner is  
4 currently in the custody at the Northwest Detention Center in Tacoma, Washington.

5 PARTIES

6 7. Javier Martinez was brought to the United States in September 1987, when he was 7  
7 years old. He has lived in the United States ever since. He is currently being held in detention  
8 by the Immigration and Customs Enforcement at the Northwest Detention Center.

9 8. Respondent Bruce Scott is Warden of the Northwest Detention Center. He is sued in  
10 his official capacity.

11 9. Respondent Drew Bostock is Seattle ICE Field Office Director and is sued in his  
12 official capacity only. He is responsible for noncitizens detained at the Northwest ICE  
13 Processing Center in Tacoma, WA, where Mr. Martinez is currently detained.

14 10. Respondent Kristi Noem is the Secretary of the Department of Homeland Security  
15 (DHS). DHS is the agency responsible for implementing the Immigration and Nationality Act,  
16 and Kristi Noem, as Secretary of DHS, is the person ultimately responsible for custody  
17 determinations regarding Petitioner. Respondent Noem is sued in her official capacity.

18 11. Respondent Pamela Bondi, United States Attorney General, is the executive officer  
19 who has been given authority to manage and control the Executive Office of Immigration  
20 Review (EOIR), including the Immigration Judges and the Board of Immigration Appeals (BIA).  
21 In addition, the U.S. Attorney General has authority to establish legal and policy guidelines  
22 concerning which noncitizens are to be detained for immigration purposes.

1 FACTUAL BACKGROUND

2 12. Javier Martinez entered the United States as a permanent resident in September 1987,  
3 when he was 7 years old.

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11 14. On October 21, 1999, when he was 19 years old, Mr. Martinez was arrested for  
12 conspiracy to deliver cocaine. He was convicted and sentenced to serve 20 months in jail. After  
13 he was released, the Immigration and Naturalization Service (INS) commenced removal  
14 proceedings. Mr. Martinez was ordered removed by the immigration judge and on September  
15 11, 2002 he was granted withholding of removal pursuant to 8 U.S.C. §1231(b)(3).

16 15. From 2002 to 2009 Mr. Martinez lived in Seattle, working to support his U.S. citizen  
17 daughter and helping to support his U.S. citizen partner and her U.S. citizen son. During this  
18 time Mr. Martinez was able to stay away from drugs and alcohol.

19 16. In or about 2009 Mr. Martinez relapsed and he again began using drugs. Mr.  
20 Martinez was arrested on February 7, 2013 and charged with conspiracy to deliver cocaine. On  
21 February 12, 2013 Magistrate Judge Theiler determined that Mr. Martinez is not a danger to the  
22 community or a flight risk, and issued an order allowing Mr. Martinez to be released on personal

1 recognizance pending trial. *U.S. v. Martinez*, Magistrate Case No. MJ13-69, CR 13-50 RSL  
2 (W.D. Wash.), Docket No. 63. *See* 18 U.S.C. §3142 (defendant cannot be released pending trial  
3 if he is a flight risk or will endanger the safety of the community).

4 17. On July 12, 2013, Mr. Martinez pled guilty to conspiracy to deliver cocaine. He was  
5 allowed to remain free from custody while awaiting the date for his sentencing hearing.

6 18. On October 10, 2013, Mr. Martinez was sentenced to serve 60 months in prison.  
7 Judge Lasnik determined that Mr. Martinez is not a danger to the community and not a flight  
8 risk. *U.S. v. Martinez*, Case No. 13-0050-RSL (W.D. Wash.), Docket No. 272. *See* 18 U.S.C.  
9 §3143 (defendant can be allowed to remain at liberty after sentencing only if there is clear and  
10 convincing evidence that he is not likely to flee and does not pose a danger to the community).  
11 Judge Lasnik allowed Mr. Martinez to remain free until he was required to report to the Federal  
12 Detention Center in Victorville, California to begin serving his sentence.

13 19. During the time from February 12, 2013, when he was released on personal  
14 recognizance, until November 11, 2013, when he self-reported to begin serving his sentence, Mr.  
15 Martinez successfully complied with all requirements of his release. He enrolled in a mental  
16 health treatment program, and he did everything he possibly could do to prove that he is  
17 responsible, not a flight risk and not a danger to the community.

18 20. On or about November 11, 2013, Mr. Martinez drove to Victorville, California,  
19 where he surrendered to begin serving his sentence, as he was required to do.

20 21. On or about April 26, 2108, Mr. Martinez completed serving his sentence and he was  
21 turned over to the Immigration and Customs Enforcement. ICE took custody of Mr. Martinez

1 and he has been in the custody of ICE ever since. Mr. Martinez is currently being held at the  
2 Northwest Detention Center in Tacoma, Washington.

3 22. While in custody Mr. Martinez took steps to establish his rehabilitation. He obtained  
4 his G.E.D. In addition, and beyond the work needed to graduate with a G.E.D., Mr. Martinez  
5 took several additional classes, including a literature classes, a course on Black History,  
6 parenting classes, and an anger management class. He attended Bible studies. Although drugs  
7 were readily available in prison, he did not touch any drugs. He participated in the Residential  
8 Drug Abuse Program and further sought out individual counseling to control his drug addiction.

9 23. In removal proceedings, Mr. Martinez applied for protection under the Convention  
10 Against Torture. This relief was denied by the Immigration Judge, and on March 13, 2019, the  
11 immigration judge ordered removal to Nicaragua or in the alternative to Costa Rica; this decision  
12 was affirmed by the Board of Immigration Appeals on August 27, 2019.

13 24. The removal case against Mr. Martinez has been pending ever since. Mr. Martinez  
14 filed an appeal to the Ninth Circuit Court of Appeals on September 24, 2019. After Mr.  
15 Martinez filed his Opening Brief, the Government requested that the case be remanded to the  
16 Board of Immigration Appeals for a new decision, and on October 2, 2020, the Ninth Circuit  
17 remanded the case to the BIA. On remand, on March 1, 2021, the BIA again ordered removal.  
18 Mr. Martinez again appealed to the Ninth Circuit, and on August 5, 2022, the Ninth Circuit  
19 reversed the Board's decision. *Martinez v. Garland*, 2022 U.S. App. LEXIS 22267, 2022 WL  
20 3137612 (9th Cir. 2022). On May 22, 2023, the BIA remanded the case to the immigration  
21 judge for a new decision. On August 15, 2023, the immigration judge ordered removal. Mr.  
22 Martinez appealed to the BIA, and on April 18, 2024, the BIA reversed the immigration judge's

1 decision and remanded for further proceedings. After further proceedings, on November 15,  
2 2024, the immigration judge denied all relief and ordered removal to Nicaragua or in the  
3 alternative to Costa Rica. Mr. Martinez has appealed to the Board of Immigration Appeals,  
4 where the case remains pending.

5 25. The detention of Mr. Martinez has also been the subject of lengthy litigation. On  
6 November 13, 2019, Judge Richard Jones found that the mandatory detention of Mr. Martinez  
7 violates due process, and ordered that Mr. Martinez must be released unless DHS can establish  
8 by clear and convincing evidence that Mr. Martinez is a danger to the community or a flight risk.  
9 *Martinez v. Clark*, 2019 U.S. Dist. LEXIS 196836, 2019 WL 5962685 (W.D. Wash. 2019).

10 26. On November 26, 2019, Mr. Martinez appeared before an immigration judge and  
11 requested that the IJ establish a bond amount. Mr. Martinez provided evidence of his  
12 rehabilitation, strong support in the community, and good conduct. The IJ denied bond,  
13 concluding, in light of the recency of the conviction, that Mr. Martinez is a danger to the  
14 community and a flight risk and denied bond. Mr. Martinez appealed the IJ's decision to the  
15 BIA. On May 14, 2020, the BIA issued a decision finding that Mr. Martinez is a danger to the  
16 community.

17 27. Mr. Martinez then filed a habeas petition arguing that the Board's decision was not  
18 supported by clear and convincing evidence. On December 14, 2020, Judge Thomas Zilly  
19 affirmed the decision of the immigration judge. *Martinez v. Clark*, 2020 U.S. Dist. LEXIS  
20 234689, 2020 WL 7343020 (W.D. Wash. 2020). Mr. Martinez then appealed to the Ninth  
21 Circuit Court of Appeals. On June 15, 2022, the Ninth Circuit issued a decision holding that the  
22 district court has no jurisdiction to review bond decisions of the immigration court. *Martinez v.*

1 *Clark*, 36 F.4th 1219 (9th Cir. 2022). After a petition for rehearing en banc was denied, 68 F.4th  
2 1195, the Ninth Circuit's decision was appealed to the United States Supreme Court. The  
3 Supreme Court granted certiorari, reversed the Ninth Circuit's decision, and remanded for  
4 reconsideration in light of *Wilkinson v. Garland*, 602 U.S. 209 (2014). *Martinez v. Clark*, 144  
5 S.Ct. 1339 (2024). On December 27, 2024, the Ninth Circuit issued a decision holding that the  
6 district court has jurisdiction to review bond decisions made by an immigration judge, and  
7 reviews the decision for abuse of discretion. *Martinez v. Clark*, 124 F.4th 775 (9th Cir. 2024).

8 28. On November 27, 2024, Mr. Martinez filed a petition for habeas corpus arguing that  
9 his prolonged immigration detention violates due process. *Martinez v. Jaddou*, Case No. 24-  
10 1960 (W.D. Wash.). On June 5, 2025 the Magistrate Judge issued a Report and  
11 Recommendation finding that Mr. Martinez' continued detention violates due process, unless the  
12 Government can prove by clear and convincing evidence that he continues to be a danger to the  
13 community or a flight risk. *Martinez v. Jaddou*, 2025 U.S. Dist. LEXIS 129632, 2025 WL  
14 1870828 (W.D. Wash. 2025). On July 7, 2025, this Court adopted the R&R in part, granted Mr.  
15 Martinez' due process claim, and ordered that Mr. Martinez be provided with a bond hearing  
16 within 60 days. The Court instructed that the Government bears the burden of proving by clear  
17 and convincing evidence that Mr. Martinez continues to pose a risk of flight or a danger to the  
18 community. *Martinez v. Alfonso-Royals*, 2025 U.S. Dist. LEXIS 128436, 2025 WL 1866085  
(W.D. Wash. 2025).

19 29. On August 4, 2025 a bond hearing was held before the immigration judge at the  
20 Tacoma Northwest Detention Facility. The only evidence submitted by DHS to meet the  
21 Government's burden of proof was the following: (1) Forms I-213 (Record of Deportable Alien)

1 (dated April 26, 2018 and November 7, 2017); (2) Mr. Martinez' conviction records (relating to  
2 conviction for conspiracy to deliver cocaine, October 10, 2013); (3) Custody Order of the  
3 Immigration Judge dated October 30, 2018; and (4) Decision of the Immigration Judge dated  
4 November 15, 2024. The Government failed to submit any evidence to establish that Mr.  
5 Martinez is currently a danger to the community or a flight risk.

6 30. At the bond hearing on August 4, 2025, Mr. Martinez submitted credible, un rebutted  
7 letters of support establishing that the Government has not met its burden of proving by clear and  
8 convincing evidence that he is a danger to the community or a flight risk. The Immigration  
9 Judge failed to take this evidence into account and instead relied solely on the fact of the prior  
10 convictions, now 12 years old, to conclude that the Government met its burden of proof.

11 31. At the bond hearing on August 4, 2025, Mr. Martinez attempted to present additional  
12 testimony establishing that the evidence the Government submitted does establish by clear and  
13 convincing evidence that he is a danger to the community or a flight risk. The Immigration  
14 Judge refused to allow Mr. Martinez' witnesses to testify. The Immigration Judge aggressively  
15 questioned Elizabeth Lindley, one of Mr. Martinez' witnesses, while she was in the court gallery.  
16 The Immigration Judge did not allow Ms. Lindley to testify on the witness stand.

17 32. The hearing before the Immigration Judge was not a fundamentally fair proceeding.  
18 The Immigration Judge was hostile, took on the role of a prosecuting attorney, and refused to  
19 consider the evidence that Mr. Martinez wanted to submit.

20 33. The Respondents have failed to comply with this Court's order that Mr. Martinez  
21 must be provided a bond hearing at which the Government has the burden of proving that Mr.  
22 Martinez is either a danger to the community or a flight risk. The Respondents and the

1 Immigration Judge disregarded this Court's order requiring a bond hearing at which the  
2 Government has the burden of proving by clear and convincing evidence that Mr. Martinez is  
3 either a danger to the community or a flight risk.

4 34. Every passing day of Mr. Martinez' continued, prolonged detention further violates  
5 his constitutional rights. Because his continued detention is unconstitutional, immediate, court-  
6 ordered release is appropriate.

7 **IRREPARABLE INJURY**

8 35. Mr. Martinez has suffered and will continue to suffer irreparable injury because of  
9 his continued unconstitutional detention.

10 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

11 36. Petitioner has exhausted all administrative remedies that are available to remedy his  
12 continuing unconstitutional detention.

13 **CLAIMS**

14 **FIRST CLAIM**

15 37. Petitioner repeats and re-alleges the allegations contained in the preceding  
16 paragraphs of this Petition as if fully set forth herein.

17 38. The Respondents have failed to comply with this Court's order issued on July  
18 7, 2025. The Respondents continue to hold Mr. Martinez in detention even though they  
19 have not provided clear and convincing evidence that Mr. Martinez is a danger to the  
20 community or a flight risk. The continued detention of Javier Martinez constitutes a  
21 violation of this Court's order.

1 SECOND CLAIM

2 39. Petitioner repeats and re-alleges the allegations contained in the preceding  
3 paragraphs of this Petition as if fully set forth herein.

4 40. The bond hearing provided on August 4, 2025 was not fundamentally fair.  
5 Mr. Martinez did not have a meaningful opportunity to respond to the Government's  
6 evidence that purported to show he is a danger to the community or a flight risk. The  
7 bond hearing on August 4, 2025 constitutes a violation of Due Process.

8 THIRD CLAIM

9 41. Petitioner repeats and re-alleges the allegations contained in the preceding  
10 paragraphs of this Petition as if fully set forth herein.

11 42. The Due Process Clause of the Fifth Amendment forbids the government from  
12 depriving any "person" of liberty "without due process of law." U.S. Const., Amend. V. To  
13 justify Mr. Martinez's continued prolonged detention, Due Process requires that the government  
14 establish that his detention is justified by clear and convincing evidence that he is a danger to the  
15 community or a flight risk. There is no clear and convincing evidence that Mr. Martinez is either  
16 a flight risk or a danger to the community. Accordingly, the continued detention of Mr. Martinez  
17 is not reasonably related to a legitimate government purpose. The continued detention of Javier  
18 Martinez violates Due Process.

19 PRAYER FOR RELIEF

20 Petitioner requests the following relief:

1 (A) Declare that the continued detention of Petitioner Javier Martinez violates this  
2 Court's Order of July 7, 2025;

3 (B) Declare that the bond hearing before the Immigration Judge on August 4, 2025, was  
4 fundamentally unfair and constitutes a violation of Due Process;

5 (C) Declare that the continued detention of Petitioner Javier Martinez violates the Due  
6 Process Clause of the Fifth Amendment to the United States Constitution;

7 (D) Issue an order that Petitioner be released immediately from ICE custody;

8 (E) Grant such other relief as may be just and appropriate, including costs, expenses and  
9 reasonable attorney fees.

10  
11 Dated this 13th day of August, 2024.

12  
13 /s/ Robert Pauw  
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**VERIFICATION**

Robert Pauw, being duly sworn upon oath, hereby states: I represent the Petitioner in these habeas corpus proceedings. I have discussed with the Petitioner the matters alleged in the foregoing Petition. I verify that the information contained in the foregoing Petition is true and correct to the best of my knowledge and belief.

Dated: August 13, 2013

/s/ Robert Pauw  
Robert Pauw