

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

Heriberto Salgado Flores,

Petitioner,

v.

Civil Action No. 25-cv-03244-JWL

Kristi NOEM, Secretary of Homeland Security;
Samuel OLSON, Chicago Field Office Director,
U.S. Immigration and Customs Enforcement;
U.S. DEPARTMENT OF HOMELAND
SECURITY;
Pamela BONDI, U.S. Attorney General;
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW; and
Jacob WELSH, Sheriff and Warden, Chase
County, Kansas Detention Center,

Respondents.

**PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS AS
MOOT AND REPLY IN SUPPORT OF EXTENSION OF STAY**

INTRODUCTION

This case was stayed to afford Respondents the opportunity to remedy the constitutional violations identified in the Petition. Petitioner has requested that this habeas action remain pending, but stayed until at least February 16, 2026, because his release from detention remains tenuous and subject to reversal at any time.

Respondents nonetheless seek dismissal, asserting that Petitioner's January 7 release on an immigration bond automatically divests this Court of jurisdiction. That contention is contrary to settled Supreme Court and Tenth Circuit precedent, and Petitioner therefore opposes dismissal.

As relevant here, release on bond does not automatically equate to a release from "custody" for habeas purposes, nor does it provide complete relief where Immigration and Customs

Enforcement (ICE) retains the authority to monitor and re-detain Petitioner. Furthermore, such release does not moot a petition under the voluntary-cessation doctrine unless Respondents demonstrate it is absolutely clear that the challenged conduct could not reasonably be expected to recur. Respondents have not met that heavy burden here.

In unprecedented circumstances, the current administration has directed immigration judges and Department of Homeland Security (DHS) personnel to deny bond hearings and disregard release orders in direct contravention of federal court rulings. Respondents have not shown—and cannot show—that it is absolutely clear that the conduct challenged in the Petition will not recur.

FACTS AND POSTURE OF THE CASE

Petitioner Heriberto Salgado Flores (hereinafter Mr. Salgado) was arrested by ICE – without a warrant – while he was shopping with his wife and baby on September 21, 2025. Doc. 1. On October 20, 2025, an IJ in Kansas City, citing *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), determined that the incorrect provision of law – 8 U.S.C. § 1225(b)(2) – governed Mr. Salgado’s detention instead of 8 U.S.C. § 1226, and thus found no jurisdiction to grant a bond. Doc. 1-3. Mr. Salgado then filed this habeas petition on November 10, 2025. Doc. 1. The IJ’s bond denial was not unique to the Kansas City Immigration Court; rather this decision was part of a nationwide effort by Respondents to reinterpret 30-year-old laws to subject the majority of noncitizens without legal status to indefinite immigration custody – even those with no criminal history. *Id.*

On November 20, 2025, the U.S. District Court for the Central District of California issued a declaratory judgment declaring that the plaintiffs – similarly situated to Mr. Salgado – were detained under 8 U.S.C. § 1226, not § 1225, and thus eligible for bond hearings. Doc 5-2. Five

days later, that Court extended the declaratory judgment to a nationwide class, which includes Mr. Salgado. Doc. 5-1.

Respondents, in their November 26, 2025 Response to the Petition and to the Order to Show Cause, opposed granting the Petition. Doc. 5. Although Respondents subsequently admitted that Mr. Salgado was a member of the *Maldonado Bautista* certified class, they simultaneously argued that the declaratory judgment in that case neither final nor class-wide. Doc. 6.

In light of the *Maldonado Bautista* decisions, Mr. Salgado again requested a bond hearing from the IJ, but on December 8, 2025, the IJ again claimed a lack of jurisdiction and denied bond. Doc. 7-2. He submitted his Traverse in the instant case on December 9. Doc. 7.

On December 18, 2025, the *Maldonado Bautista* Court certified its prior declaratory judgment as final under Rule 54(b), reaffirmed its declaration that all members of the nationwide Bond Eligible Class are detained under 8 U.S.C. § 1226(a), held that *Matter of Yajure Hurtado* “is no longer controlling” because “the legal conclusion underlying the decision is no longer tenable,” and clarified that it had, in fact, issued a class-wide vacatur of the DHS policy that set forth similar arguments to those in *Yajure Hurtado*. Doc 8; *see also* Doc. 8-2, 8-3, and 8-4.

For a few brief weeks, the Kansas City IJs began to comply with the *Maldonado Bautista* judgment, affording bond hearings to class members. For a third time, Mr. Salgado requested a bond hearing with the IJ, and then moved this Court to hold the case in abeyance to permit Respondent Executive Office for Immigration Review (EOIR) to hold a constitutionally compliant bond hearing. Doc. 10. The unopposed Motion to Stay was granted on December 31, 2025. Doc. 11.

On January 6, 2026, the IJ granted Mr. Salgado a \$5000 bond. Doc. 13-2. DHS expressly reserved appeal. *Id.* Mr. Salgado paid the bond and was released from detention on January 7,

2026, though ICE added conditions to his release, including mandatory weekly check-ins with ICE via a GPS-tracking phone application called SmartLINK, as well as sporadic in-person check-ins. **See Exhibits I - K.** Mr. Salgado's SmartLINK app check-ins occur every Wednesday. He must wait to receive a random notification from the app between 9:00am and 11:00am before he can complete the check-in, at which point he only has 20 seconds to use the app to scan his face. **Exhibit J.** If Mr. Salgado misses one of those check-ins, he is likely to be re-detained. **See Exhibit L** (CBS News article describing DHS's use of the SmartLINK application as an alternative to detention). He has to be very careful to ensure that his phone remains charged and on his person at all times.

Meanwhile, DHS has until February 6, 2026 to appeal the bond grant. *See Doc. 13-2* (confirming DHS reserved appeal and the appeal deadline). Additionally, just one week after Mr. Salgado's bond was granted, the EOIR Chief Immigration Judge issued nationwide guidance instructing all IJs that, "*Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay or enjoin [*Matter of*] *Yajure Hurtado*," and *Yajure Hurtado* "remains binding precedent on agency adjudicators." *See* <https://perma.cc/BU84-9BDR>; *see also* Nate Raymond, *US judge 'worried' about immigration courts not complying with rulings requiring bond hearings*, REUTERS, Jan. 20, 2026.¹ Since the issuance of this directive, the IJs in Kansas City have recommenced denying bond hearings to *Maldonado Bautista* Bond Eligible Class members, as have IJs nationwide. *See, e.g.,* AILA, *Practice Alert: EOIR Issues Nationwide Guidance on Maldonado Bautista*, updated Jan. 16, 2026² ("AILA members are reporting widespread denial of bond hearings based on this new guidance."). Indeed, the administration has even been defying

¹ Available at <https://www.reuters.com/legal/government/us-judge-worried-about-immigration-courts-not-complying-with-rulings-requiring-2026-01-20/> (last visited 01/29/2026).

² Available at <https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista> (last visited 01/29/2026).

habeas grants by federal judges in recent weeks, failing to release those ordered to be freed. *See, e.g.,* Jeremy Roebuck, *U.S. judge orders ICE chief to appear in court, threatens contempt ruling*, THE WASHINGTON POST, updated Jan. 27, 2026³ (discussing, inter alia, the administration’s refusal to comply with their release orders in habeas cases).

On January 16, 2026, Mr. Salgado therefore filed a Motion to Maintain Stay Pending Completion of DHS Bond Appeal Period, requesting an extension of the stay until at least February 16, 2026. Doc. 14. Respondents have opposed the Motion and moved for dismissal of the instant proceedings. Docs. 16 and 18.

LEGAL STANDARD

A case is moot only when it is “impossible for a court to grant any effectual relief whatever to the prevailing party.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (internal quotation marks omitted). The party asserting mootness bears the burden of proof. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189 (2000).

Where mootness is asserted based on the government’s voluntary cessation of challenged conduct, that burden is a heavy one. A case becomes moot only if it is “absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Id.*

ARGUMENT

This case remains ripe in part because Petitioner’s release from an ICE-contracted detention facility did not resolve the challenged custody. Although an IJ granted bond, DHS expressly reserved appeal of that decision, leaving Petitioner’s release subject to reversal. The deadline to file that appeal is February 6. Doc. 13-2. Moreover, Petitioner remains subject to ongoing restraints on liberty in the form of mandated weekly check-ins with Respondent ICE via

³ Available at <https://www.washingtonpost.com/national-security/2026/01/27/ice-federal-judge-contempt/> (last visited 01/29/2026).

the SmartLINK application, in addition to sporadic in-person check-ins. *See Exhibits I - K.* Finally, EOIR has recently ordered all IJs to violate the binding decision of a federal court in order to deny bond to those similarly situated to Petitioner, removing any assurance that the challenged detention without a bond hearing will not recur. *See Doc. 14.*

Consequently, the relief Petitioner received from the IJ during the stay is conditional and readily reversible, demonstrating that effective relief remains available only if this Court retains jurisdiction until the basis for detention is no longer subject to reinstatement.

Dismissing this matter now would prematurely treat an interim, reversible agency action as a final resolution of the controversy. Petitioner does not ask the Court to supervise immigration proceedings or to retain jurisdiction indefinitely. Petitioner asks only that the Court maintain the stay until the Petitioner's release from detention is no longer subject to reversal through appeal. Since effective relief remains available and Respondents have not met their burden to establish mootness, dismissal is unwarranted.

A. Petitioner Remains "In Custody" for Habeas Purposes

Habeas custody extends beyond physical confinement. The Supreme Court has held that individuals subject to conditions that "significantly restrain [their] liberty" remain "in custody" within the meaning of the habeas statutes. *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

The Tenth Circuit has applied this principle in the immigration context, explaining that release from physical detention does not necessarily moot a habeas petition where the petitioner remains subject to ongoing restraints on liberty imposed by the government. *Galaviz-Medina v. Wooten*, 27 F.3d 487, 493 (10th Cir. 1994). Although *Galaviz-Medina* did not arise from a bond proceeding, its mootness analysis confirms that habeas custody extends beyond physical confinement where the government retains authority affecting the petitioner's liberty.

Here, Petitioner remains subject to immigration supervision including by GPS, mandatory reporting requirements, and the continuing authority of DHS to track and re-detain him. These restraints satisfy the custody requirement and foreclose Respondents' mootness argument.

B. Conditional and Reversible Release Does Not Provide Complete Relief

Respondents' mootness argument also fails because Petitioner has not received complete or final relief. DHS expressly reserved appeal of the January 6 bond decision. As long as that appeal remains available, Petitioner's liberty interest remains unresolved.

A case is not moot where the respondent retains the authority to undo the relief it claims moots the action. *See Nielsen v. Preap*, 586 U.S. 392, 403 (2019) (plaintiffs' release on bond did not moot the habeas petition because they still "faced the threat of re-arrest and mandatory detention"); *see also Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (holding, in a habeas corpus case, that "once . . . federal jurisdiction has attached in the district court, it is not defeated by the release of the petitioner prior to completion of proceedings on such application"). Given that DHS may appeal the bond decision—and the Board of Immigration Appeals, part of EOIR, would likely reverse the IJ's bond grant and declare Petitioner ineligible for a bond hearing—Petitioner faces the continued "threat of re-arrest and [indefinite] detention." Thus, effective relief remains available, and a live controversy persists.

C. Respondents' Reliance on Prior Dismissal Orders Is Misplaced

Respondents cite several dismissal orders from this District where petitioners sought only release from detention and where release fully resolved the relief requested. Those cases did not involve conditional or appealable bond grants, ongoing restraints on liberty, or circumstances indicating that the challenged detention could reasonably recur. Those decisions are inapposite to the issue here.

By contrast, Petitioner's release here is conditional and subject to reversal. DHS has expressly reserved appeal of the bond decision, and EOIR has ordered all IJs to stop following *Maldonado Bautista* in bond proceedings. Under these circumstances, Respondents cannot meet their heavy burden to show that the challenged detention cannot reasonably be expected to recur. *Friends of the Earth*, 528 U.S. at 189–90.

D. The Case Is Capable of Repetition Yet Evading Review

As an independent basis to deny dismissal, this case is also not moot as it fits within the exception for disputes that are “capable of repetition, yet evading review.” For this doctrine to apply, two elements must be present: “(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.” *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) (citing *Sosna v. Iowa*, 419 U.S. 393 (1975)). As in this case, immigration detention disputes may resolve temporarily before full habeas review can occur. However, there is a reasonable expectation that Petitioner could face the same actions again, especially since the bond order is subject to appeal or reversal, and considering EOIR's recent directive to IJs to apply *Yajure Hurtado* instead of *Maldonado Bautista* in bond proceedings.

E. The Stay Should Be Extended

The stay was entered to permit EOIR proceedings that would meaningfully resolve Petitioner's detention. That purpose has not yet been fulfilled. DHS's reservation of appeal, coupled with EOIR's January 13 order concerning the future application of *Maldonado Bautista*, exposes Petitioner to possible immediate re-detention in violation of his constitutional and statutory rights.

Extending the stay preserves the status quo, imposes no prejudice on Respondents—Petitioner is already released—and promotes judicial economy by avoiding piecemeal or emergency litigation. The Court has inherent authority to manage its docket and to ensure that jurisdiction properly invoked is not undermined by interim, reversible agency action. Otherwise, Respondents could continuously evade judicial review by temporary compliance. *See, e.g., Friends of the Earth*, 528 U.S. at 189.

CONCLUSION

Under settled Supreme Court and Tenth Circuit precedent, Respondents have not met their heavy burden to demonstrate mootness. Petitioner remains in custody for habeas purposes and also faces a concrete risk of re-detention. The Court should therefore deny the motion to dismiss and extend the stay to preserve the status quo until the bond appeal process has concluded or until further order of the Court. Petitioner Heriberto Salgado Flores therefore respectfully requests an extension of the current stay of proceedings until at least February 16, 2026. This extension is crucial to determine whether the administrative custody decision regarding Petitioner's bond has achieved finality, especially considering the recent guidance issued by EOIR.

Respectfully submitted this 29th day of January 2026,

/s/ Genevra Alberti

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2026, the foregoing document was electronically filed by using the CM/ECF System, which will send notification of such filing to the following ECF registrant:

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