

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:26-cv-00106-PAB

HECTOR PORTILLO MARTINEZ,

Petitioner-Plaintiff

v.

JUAN BALTASAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado,
in his official capacity,

ROBERT HAGAN, Field Office Director, Denver Field Office, U.S. Immigration and
Customs Enforcement, in his official capacity,

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official
capacity,

TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official
capacity,

PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,
Defendants-Respondents

**EMERGENCY MOTION FOR IMMEDIATE RELEASE, RENEWING MOTION FOR
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

Petitioner-Plaintiff, Hector Portillo Martinez (“Mr. Portillo Martinez”) respectfully moves the Court on an emergency basis for an order requiring Immigration and Customs Enforcement (“ICE”) to immediately release him from all forms of custody. Mr. Portillo Martinez’s Verified Writ of Habeas Corpus (ECF 1) requested this relief and now moves the Court to grant it immediately due to ICE’s continued violation of Mr. Portillo Martinez’s right to liberty. Mr. Portillo Martinez remains in ICE custody four days after an immigration judge (“IJ”) ordered his release on bond solely because ICE refuses to accept payment of that bond.

Relevant Procedural History

Mr. Portillo Martinez filed a Verified Petition for Writ of Habeas Corpus, ECF 1, and a Motion for Temporary Restraining Order and/or Preliminary Injunction on January 9, 2026, ECF 2. Mr. Portillo Martinez argued that ICE’s was jailing him pursuant to its erroneous interpretation of 8 U.S.C. § 1225(b)(2) and 8 U.S.C. § 1226(a). *Id.* This Court agreed, granting his Verified Writ of Habeas Corpus and denying his Motion for Temporary Restraining Order and/or Preliminary Injunction as Moot. EFC 14. The Court ordered that Respondents “shall provide [Mr. Portillo Martinez] a bond hearing under 8 U.S.C. § 1226(a) within **seven days** of” the Court’s order. ECF 14 at 11 (emphasis in original).

Mr. Portillo Martinez had a bond hearing pursuant to 8 U.S.C. § 1226(a) on February 2, 2026. The Immigration Judge (“IJ”) found that Mr. Portillo Martinez met his burden to establish that he was neither a flight risk nor a danger to the community, ordering his release on payment of \$10,000 bond. Exh. 1. Mr. Portillo Martinez’s family

has been diligently trying to pay that bond since that date. Exh. 2. Nevertheless, ICE is refusing to let him pay it and he remains incarcerated. *Id.*

Argument

I. ICE is Jailing Mr. Portillo Martinez in Violation of Substantive Due Process; Immediate Release is the Only Adequate Remedy.

ICE has no lawful basis to keep Mr. Portillo Martinez incarcerated. Government detention violates substantive due process unless it occurs in a criminal proceeding with adequate procedural safeguards or in narrow, nonpunitive circumstances where a special justification outweighs the individual's liberty interest. *Zadvydas v. Davis*, 533 U.S. 378, 690 (2001). Those limited circumstances include risk of flight and danger to the community. *Id.* at 690–91; *see also Demore v. Kim*, 538 U.S. 510, 516–17 (2003). This fundamental protection applies to all persons present in the United States, including both removable and inadmissible noncitizens. *See Clark v. Martinez*, 543 U.S. 371 (2005) (applying *Zadvydas* to inadmissible noncitizens). ICE is currently jailing Mr. Portillo Martinez without a valid basis.

ICE continues to incarcerate Mr. Portillo Martinez despite the IJ ordering ICE to release Mr. Portillo Martinez upon payment of \$10,000 bond four days ago. Exh. 1. The IJ found that Mr. Portillo Martinez met his burden to establish that the two permissible nonpunitive circumstances to keep him in ICE custody were ameliorated by paying \$10,000 bond. *Id.* In other words, the IJ found that Mr. Portillo was neither a risk of flight nor a danger to the community. *Id.* ICE keeps Mr. Portillo Martinez jailed anyways.

ICE's initial rationale for refusing Mr. Portillo Martinez's bond payment was that it was waiting for twenty-four hours to see whether ICE would file an automatic stay of the IJ's bond grant under 8 C.F.R. § 1003.19(i)(2). Exh. 3. That regulation does not permit

ICE to delay the receipt of bond payment, *see generally id.*, and even if it did, there is a “near unanimity” in the district courts across the country that ICE’s use of the regulation is unlawful, *M.P.L. v. Arteta*, 25-cv-5307, 2025 WL 3288534, at *7 (S.D.N.Y. Nov. 25, 2025). Indeed, the automatic stay “renders the Immigration Judge’s bail determination an empty gesture” and “creates a patently unfair situation” by shifting adjudicatory power to the prosecutor. *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1188 (D. Minn. 2025). This District recently agreed, finding that the automatic stay regulation violates procedural due process. *Merchan-Pacheo v. Noem, et al.*, 1:25-cv-03860-SBP, 2026 WL 88526, at *16 (D. Colo. Jan. 12, 2026).

Twenty-four hours have since come and gone; ICE continues to jail Mr. Portillo Martinez. Exh. 2. ICE has no nonpunitive reason for keeping Mr. Portillo Martinez incarcerated. Mr. Portillo Martinez requests this Court’s expeditious intervention and that it orders his immediate release without conditions.

II. Immediate Release is the Appropriate Remedy.

While Mr. Portillo Martinez, through counsel, respectfully recognizes that this Court already ruled that a § 1226(a) bond hearing is the appropriate remedy to address ICE’s unlawful use of § 1225(b)(2), he moves again for immediate release due to the unique circumstances here. ICE’s violation of IJ and federal court orders cannot be understated. “ICE has likely violated more court orders in January 2026 than some federal agencies have violated in their entire existence.” *Juan T.R. v. Noem*, 26-cv-0107 (PJS/DLM), 2026 WL 232015, at *1 (D. Minn. Jan. 28, 2026). In other words, “ICE is not a law unto itself.” *Id.* Mr. Portillo Martinez respectfully asks that this Court remind ICE of that fact and order Mr. Portillo Martinez’s immediate release.

Dated: Feb. 6, 2026

/s/ Conor T. Gleason
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CERTIFICATE OF CONFERRAL

I hereby certify, consistent with D. Colo. Local Rule 7.1, that I conferred via email with counsel for Respondents, Kevin Traskos, Andrew Soler, and Gage Schlagaugh of the US Attorney's Office for the District of Colorado regarding the relief requested herein. Defendants-Respondents have not provided their position on this motion.

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CERTIFICATE OF SERVICE

I, Conor T. Gleason, hereby certify that on February 6, 2026, I filed the foregoing with the Clerk of the Court using the CM/ECF system.

/s/ Conor T. Gleason
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