

UNITED STATES DISTRICT COURT
Western District of Texas
El Paso Division

Juan Carlos Andres Gaspar,
Petitioner,

v.

No.: 3:26-CV-00014-LS

Field Office Director, El Paso Field Office
ICE ERO, et. al.
Respondents.

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS**

On January 30, 2026, the Court ordered Petitioner to provide supplemental briefing (Dkt. No. 4), to address “(1) whether he or she was arrested ‘on a warrant issued by the Attorney General’; (2) if not, how he or she is eligible for bond under 8 U.S.C. § 1226; and (3) if not eligible for a bond for want of an Attorney General-issued warrant, how habeas relief is available at all.”

On February 6, 2026, the Fifth Circuit decided *Buenrostro v. Bondi*,---F.4th---, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). Accordingly, Petitioner hereby provides their Supplemental Memorandum in Support of Petition for Writ of Habeas Corpus.

I. *BUENROSTRO* IS DISPOSITIVE ON THE FIRST CLAIM ON DETENTION AUTHORITY.

Petitioner Juan Carlos Andres Gaspar brought this action stating two claims: first, that his detention without access to a bond hearing violated the statute, 8 U.S.C. § 1226(a); and that his detention without access to a bond hearing violated due process. *See* Dkt. No. 1 at ¶¶ 51-53 (statutory claim); ¶¶ 54-57 (due process claim). Regarding the Court’s order, Petitioner does not allege that he was arrested pursuant to an administrative warrant under § 1226(a). Dkt. 5. On the

Court's second issue, the recent Fifth Circuit decision has resolved Petitioner's statutory claims, and holds in contra to the position advanced by Petitioner. *Buenrostro*, 2026 WL 323330, at *4-8. Unless *Buenrostro* is stayed or reversed on appeal, this Court is required to dismiss Petitioner's first claim.

II. *BUENROSTRO* IS NOT DISPOSITIVE ON THE SECOND CLAIM ON DUE PROCESS, AND HABEAS RELIEF REMAINS AVAILABLE.

The Court last asked that Petitioner address whether "if not eligible for a bond for want of an Attorney General-issued warrant, how habeas relief is available at all." Dkt. No. 4. Petitioner submits that his Due Process claim survives the *Buenrostro* decision, and viable relief remains on his habeas petition in the form of release. The *Buenrostro* decision does not decide or dispose of the due process claim: the decision contains no mention of due process, other than a passing mention that the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 701 (2001) does not apply to individuals in pending removal proceedings, but rather to individuals who already have a final order of removal. After *Buenrostro*, several judges in this District have granted habeas petitions strictly on a due process cause of action. As Judge Cardone explained:

The Court's conclusion is not changed by the Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi*. Marceau argues that her detention without an opportunity for a meaningful individualized custody determination is unlawful on both statutory grounds, as well as constitutional due process grounds. . . . [T]he *Buenrostro-Mendez* court did not reach the due process question, confining its analysis and holding to statutory interpretation. And the case was remanded to the district court, not for dismissal, but "for further proceedings consistent with this opinion." Presumably, those further proceedings will entail consideration of *Buenrostro-Mendez*'s due process claim, which the district court declined to reach in the first instance. Indeed, the Government's counsel stated it bluntly during oral argument: "We have one issue before the Court now: the statutory question. ... There's not, in other words, a due process claim here." In sum, *Buenrostro-Mendez* has no bearing on this Court's determination of whether Marceau is being detained in violation of her constitutional right to procedural due process.

Marceau v. Noem, No. EP-26-CV-237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026)

(internal citations omitted). Judge Cardone went on to grant the habeas petition on procedural due process grounds. *Id.* See also *Hassen v. Noem*, EP-26-CP-00048-DB, Dkt. No. 8 (W.D. Tex., filed Feb. 9, 2026), at *4 n.1 (“*Buenrostro-Mendez* does not change this case’s outcome on procedural due process grounds.”).

That noncitizens are entitled “to due process of law in the context of removal proceedings” is “well established.” *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (per curiam), quoting *Reno v. Flores*, 507 U.S. 292, 306, (1993). Here, Petitioner has lived in the United States for twenty-one years, is the father of two U.S.-citizen children, and has no criminal record whatsoever. See Dkt. No. 1 at ¶ 46. It is apparent why due process is violated when Respondents seek to detain him in jail-like conditions without the opportunity for review of his detention before a neutral magistrate.

The Court should apply the familiar three-prong balancing test to Petitioner’s due process claim. *Mathews v. Eldridge*, 424 U.S. 319, 96 (1976). On the first prong, private interest, “the Fifth Amendment entitles noncitizens to due process of law in the context of removal proceedings,” and “the interest in being free from physical detention by [the] government” is “the most elemental of liberty interests[.]” See *Lopez-Arevalo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, *10 (W.D. Tex. Sep. 12, 2025), quoting *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *2 (W.D. Tex. Oct. 21, 2025), and *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). “Those courts have found that because the petitioners established a life here—albeit without authorization—they possessed a strong liberty interest in their freedom from detention.” *Martinez v. Noem*, 2025 WL 2965859, at *4. See also *Cruz-Reyes v. Bondi*, No. 5:26-CV-60, 2026 WL 332315, at *7 (S.D. Tex. Feb. 3, 2026).

On the second prong, risk of erroneous deprivation, the only purpose of immigration detention is to reduce flight risk and danger to the community, see *Matter of Guerra*, 24 I. & N.

Dec. 37 (BIA 2006). “Without an individualized determination, it cannot be said that detention is warranted in his case.” *Martinez*, 2025 WL 2965859, at * 4. Therefore, the immigration court (and by extension the BIA) failed to provide the necessary individualized assessments that would afford due process and mitigate a risk of erroneous deprivation (as in a standard § 1226(a) bond hearing). *Lopez-Arevalo*, 2025 WL 2688541, at *12, citing *Espinoza v. Kaiser*, No. 25-cv-1101, 2025 WL 2581185, at *10 (E.D. Cal. Sept. 5, 2025). *See also Hyppolite v. Noem*, 2025 WL 2829511, at *13 (E.D.N.Y. Oct. 6, 2025); *Cruz-Reyes*, 2026 L 332315, at *7.

And on the third prong, government interest, the *Lopez Arevalo* court explained that the government’s core interest (ensuring that noncitizens appear for hearings and do not endanger others) is properly addressed in a custody determination hearing. *Lopez-Arevalo*, 2025 WL 2688541, at *11. Nor can the government claim excessive burden when it is merely being asked to provide a procedure that it routinely provided in cases of this nature for decades without complaint. *Lopez-Arevalo*, 2025 WL 2688541, at *12; *see also Cruz-Reyes*, 2026 WL 332315, at *7. Lastly, Petitioner’s “constitutional interest in his liberty exists above and apart from the INA.” *Martinez*, 2025 WL 2965859, at *4.

Accordingly, all three *Mathews* factors militate in favor of Petitioner, and this Court should grant judgment to Petitioner on the second cause of action, violation of due process.

DATED this 12th day of February 2026.

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Certificate of Service

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this Court's CM/ECF case management system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

DATED this 12th day of February 2026.

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