

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

Marco JEREZ-LOPEZ

Petitioner,

v.

Kristi NOEM, et al.,

Respondents.

Case No. CIV-26-0041-SLP

**PETITIONER'S OBJECTION TO THE REPORT AND RECOMMENDATION**  
**AND REPLY TO RESPONDENTS' OBJECTIONS**

Petitioner, by and through his undersigned counsel, respectfully submits this Partial Objection to the Report and Recommendation and Reply to Respondents' Objections but does not adopt the Magistrate's full findings rendering moot his pending motion for temporary restraining order or preliminary injunction. Despite efforts, counsel has still not been able to schedule an appointment with Petitioner contrary to Due Process rights of access to counsel.

### **I. 8 USC § 1225 vs. §1226(a) and Bars to Detention Jurisdiction**

Petitioner does not object to the Magistrate's finding that the Court has jurisdiction and that Petitioner is entitled under § 1226(a) to a prompt individualized bond hearing before a "neutral IJ,"<sup>1</sup>. Petitioner first candidly informs the Court that on February 6, 2026, the Fifth Circuit Court of Appeals decided the matter to the contrary in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496, 25-40701, (5th Cir. Feb. 6, 2026). Respondents have also submitted the new case in their objection and reiterated their arguments previously briefed on the matter. Petitioner rests on the arguments already presented, respectfully reminds this Court that it is not bound by the Fifth Circuit, and requests this Court adopt the Magistrate's finding that Petitioner is entitled to a bond hearing under § 1226(a), if not outright release based on the pending Motion for TRO or Injunctive Relief or pursuant to the Due Process argument . *See infra*.<sup>2</sup>

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<sup>1</sup> Doc. 11 p. 24

<sup>2</sup> Note that Petitioner requestes outright release upon consideration of the Due Process Arugement and pending Motion ECF Doc. 6.

Next, Petitioner is perplexed about the Tenth Circuit cases Respondents cite in their Objections regarding jurisdiction over detention. Specifically, Respondents cite *Valdez Sanchez v. Gonzalez*, 485 F.3d 1084, 1087-88 (10th Cir. 2007)<sup>3</sup> and *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004).<sup>4</sup>

Respondents' reliance on *Valdez-Sanchez* is misplaced. That decision addresses the retroactive application of INA § 241(a)(5) concerning reinstatement of prior removal orders. The case is therefore inapposite. Secondly, Petitioner argues Respondents' reliance on *Soberanes v. Comfort*, 388 F.3d 1305, (10th Cir. 2004) is also misplaced because it also involves a post order of removal, unlike here.

## II. DUE PROCESS

Petitioner objects, and preserves for the record, the Magistrate's recommendation to decline to decide Petitioner's constitutional due process claims. Petitioner would rather address them now. Mandatory, no-bond detention under Respondents' theory raises serious Fifth Amendment concerns -- especially in current days where thousands of noncitizens are being detained without opportunity of custody review and being limited to access to counsel<sup>5</sup>. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that the Due Process Clause prohibits prolonged detention absent a reasonable relation to removal. Additionally, Petitioner has been made aware that there are serious nationwide concerns regarding the authenticity of bond proceedings after habeas grants, and is concerned about

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<sup>3</sup> Doc. 12 p. 3

<sup>4</sup> *Id.*

<sup>5</sup> Doc. 6 - Emergency TRO - Note that Counsel is still experiencing roadblocks to contact.

the actual due process afforded in said hearings, according to a statement by a recently released a former Immigration Judge, Hon. Lawrence O. Burman<sup>6</sup> and current experience with bonds being denied on "flight risk" or unrealistic bond amounts.

Importantly, the recent Fifth Circuit case decided the *statutory* claim in favor of mandatory detention, but the panel did not decidedly reach the due process question and remanded in part. *Buenrostro-Mendez v. Bondi*, No. 25-20496, Doc 213-1, p. 21 (5th Cir. Feb. 6, 2026). Three days later, the U.S. District Court for the Western District of Texas determined that redetention is a due process violation and granted a habeas petition finding that the Petitioner "is being detained in violation of his *constitutional right to procedural due process*." See *Duran Aguila*, 26-cv-0241-KC (W.D.TX February 9, 2026)(emphasis added). Citing *Buenrostro-Mendez v. Bondi*, the *Duran Aguila* Court found:

[T]he *Buenrostro-Mendez* court did not reach the due process question, confining its analysis and holding to statutory interpretation. See generally *Buenrostro-Mendez*, 2026 WL 323330, at \*1–10. And the case was remanded to the district court, not for dismissal, but “for further proceedings consistent with this opinion.” *Id.* at \*10. 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. *Buenrostro-Mendez v. Bondi*, No. 25-cv-3726, 2025 WL 2886346, at \*3 n.4 (S.D. Tex. Oct. 7, 2025). 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.” Oral Argument, *Buenrostro-Mendez v. Bondi*, No. 25-20496, at 44:56–45:11 (5th Cir. Feb. 3, 2026), available at [https://www.ca5.uscourts.gov/OralArgRecordings/25/25-20496\\_2-3-2026.mp3](https://www.ca5.uscourts.gov/OralArgRecordings/25/25-20496_2-3-2026.mp3).

In sum, *Buenrostro-Mendez* has no bearing on this Court’s determination of whether *Duran Aguila* is being detained in violation of his constitutional right to procedural due process.

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<sup>6</sup> Exh. 1. Hon. Burman Affidavit. Note that this affidavit was not provided directly to counsel but is circulating amongst similiarly situated attorneys.

Thus, after careful consideration of the entire record,<sup>1</sup> and for reasons explained at length in *Lopez-Arevelo*, *Santiago*, *Martinez*, *Erazo Rojas*, *Lala Barros*, and this Court's many other decisions involving habeas claims brought by petitioners subject to mandatory detention under the Government's new interpretation of 8 U.S.C. § 1225(b), Duran Aguila's Petition is **GRANTED IN PART** on *procedural due process* grounds.

*Duran Aguila*, 26-cv-0241-KC, 3-4 (W.D.TX February 9, 2026)(Emphasis added).

Finally, while Petitioner requests the Court issue immediate release on Due Process concerns, Petitioner does not object to the recommendation that should this Court order a bond hearing, the Court to require the Immigration Judge comply with due process requirements on ability to pay and that bonds cannot be constructively denied due to "flight risk" or exorbitant amount. Due Process rights are guarded in all aspects of proceedings. Immigration Judges are not Article III Judges and do not have the same Constitutional independence as judges in the federal judiciary.

## VI. CONCLUSION

In sum, for purposes of not rendering moot his pending motion for temporary restraining order or preliminary injunction, Petitioner does not adopt the Magistrate's Report and Recommendation. While Petitioner does not object to the Magistrate's finding that the Court has jurisdiction and that Petitioner is entitled under § 1226(a) to a prompt individualized bond hearing before a neutral IJ with Due Process procedural safeguards, Petitioner objects to the Magistrate's declination to decide the Due Process aspects of the case and requests immediate release under the TRO given his upcoming court date.

DATED this 17th of February 2026.

Respectfully submitted,

s/Kelli J. Stump

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**CERTIFICATE OF SERVICE**

This is to certify that on February 17, 2026, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a notice of electronic filing to counsel of record:

Paul.N.Jones@ice.dhs.gov

*/s/ Kelli J. Stump* \_\_\_\_\_

Kelli J. Stump