

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

JOSE PEREZ ROSA,	)	
	)	
Petitioner,	)	C/A No. 3:26-cv-00062-LS
v.	)	
	)	
	)	
PAM BONDI,	)	
United States Attorney General;	)	
	)	
KRISTI NOEM,	)	
Secretary of the United States Department	)	
of Homeland Security;	)	
TODD M. LYONS,		
Director of United States Immigration and		
Customs Enforcement;		
SYLVESTER ORTEGA,		
Field Office Director for Detention and		
Removal, U.S. Immigration and Customs		
Enforcement;		
BOBBY THOMPSON,		
Warden, South Texas Detention Complex		
<i>Respondents.</i>		

**PETITIONER’S REPLY TO RESPONDENTS’ SUPPLEMENTAL
BRIEFING (ECF NO. 8)**

Petitioner respectfully submits this Reply.

I. This Case Is About Constitutional Limits on Civil Detention

Respondents attempt to reduce this case to a statutory label. The issue is constitutional.

The question before this Court is whether the Fifth Amendment permits prolonged civil detention without any individualized hearing to determine whether continued confinement is justified.

The Due Process Clause protects “persons,” not US citizens alone. Freedom from physical restraint is the core liberty interest safeguarded by the Constitution. Civil detention is permissible only so long as it remains reasonably related to its regulatory purpose and is accompanied by constitutionally adequate safeguards.

II. Mandatory Statutory Language Does Not Eliminate Constitutional Review

Respondents argue that detention is “mandatory” under statute and therefore individualized findings are “immaterial.”

That reasoning elevates statute over Constitution.

Even when Congress authorizes mandatory detention, courts retain the duty to ensure that detention does not become arbitrary or excessive in relation to its purpose. The Supreme Court has repeatedly imposed constitutional limits on immigration detention, most notably in *Zadvydas v. Davis*.

Statutory authority does not displace constitutional protections.

III. Demore Does Not Authorize Prolonged Detention Without Process

Respondents rely on *Demore v. Kim*. Their reliance is incomplete.

Demore upheld detention under the understanding that such detention would be brief and finite. The Court repeatedly emphasized the limited duration of custody in reaching its conclusion.

When detention extends beyond a brief administrative period and becomes prolonged, the constitutional balance changes. What may be reasonable for weeks or a short number of months becomes constitutionally suspect as time lengthens.

Civil detention cannot transform into extended incarceration without procedural safeguards.

IV. Classification Under § 1231 Does Not End the Inquiry

Respondents assert detention under 8 U.S.C. § 1231(a)(6) based on a reinstated removal order.

If Petitioner is pursuing withholding or related protection claims, removal is not presently executable. When removal cannot occur until further proceedings conclude, detention does not operate as a simple post-removal-period case in functional terms. In addition, the petitioner can still file an appeal with the BIA, and after that, file a Petition for Review with the Fifth Circuit. However, a writ of habeas corpus would address and protect those liberty interests..

More importantly, even if § 1231 applies, the Constitution still governs. Zadvydas confirms that detention authority under § 1231 is subject to constitutional limits and cannot become indefinite or unreasonable.

The Court must examine the real duration and practical posture of detention, not simply the statutory citation.

V. Connecticut Department of Public Safety Does Not Control

Respondents rely on Connecticut Department of Public Safety v. Doe to argue that facts such as flight risk are legally irrelevant.

That case addressed a statutory scheme where the legislature made a particular fact irrelevant to a registry requirement. *It did not involve prolonged physical detention.*

Physical confinement implicates the highest liberty interest recognized in constitutional law. When a person is incarcerated, the Constitution independently requires that continued detention remain justified.

The issue is not whether Congress required a hearing. The issue is whether due process requires one once detention becomes prolonged.

VI. Procedural Due Process Requires Neutral Review

Under *Mathews v. Eldridge*, courts weigh:

1. The private interest at stake
2. The risk of erroneous deprivation
3. The government's interest

The private interest here is freedom from imprisonment. No interest carries greater constitutional weight.

The risk of erroneous deprivation is substantial where detention is automatic and no neutral decision-maker evaluates whether continued confinement is necessary.

The government's interests in ensuring appearance and protecting the community can be fully protected through an individualized bond hearing. Such hearings are routine and allow the government to present evidence of flight risk or danger.

Requiring a hearing does not eliminate detention authority. It ensures detention remains justified.

VII. Unilateral Executive Paperwork Cannot Substitute for Due Process

Respondents rely on internal documents such as the I-213 and 180-Day POCR to justify detention.

Those documents reflect unilateral executive determinations made without adversarial testing or neutral review.

Due process does not permit prolonged imprisonment based solely on internal paperwork.

When the government acts as investigator, fact-finder, and jailer without neutral oversight, the risk of constitutional error is at its peak.

VIII. The Relief Requested Is Narrow and Appropriate

Petitioner does not ask this Court to invalidate immigration detention statutes.

He seeks limited relief consistent with constitutional principles: a prompt individualized bond hearing before a neutral decision-maker at which the government bears the burden of justifying continued detention. However, immigration judges may retaliate, as they have previously responded nationwide to habeas grants for bond hearings by denying bond on the

grounds that the petitioner is a flight risk. We respectfully request that the Court take immediate action on behalf of the Petitioner. That remedy respects congressional authority while safeguarding fundamental liberty.

IX. Conclusion

Prolonged civil detention without individualized review crosses a constitutional line.

The Fifth Amendment requires that continued confinement remain justified through meaningful process. Where detention extends beyond a brief administrative period, due process demands neutral review.

For these reasons, the Court should reject the Respondents' supplemental briefing and grant habeas relief by ordering a prompt bond hearing or, in the alternative, ordering the immediate release of an individual who has been detained for approximately eight months or longer..

Date: February 24, 2026

Respectfully Submitted,

/s/Gracilene Brooks

Gracilene Brooks

Attorney for the Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2241

I represent Petitioner Jose Perez Rosa and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Supplemental Brief Regarding Arrest Warrant, Bond Eligibility, and Habeas Jurisdiction are true and correct to the best of my knowledge.

Dated this 24th day of February 2026.

/s/Gracilene Brooks
Gracilene Brooks

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February 2026, a copy of the foregoing was filed electronically with the Court. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Dated this 24th day of February 2026.

/s/Gracilene Brooks

Gracilene Brooks