

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

ELICLESIO SOARES PEREIRA,

Petitioner,

v.

RAYMOND ADAMS, ET AL.

Respondents.

Civil Action No.: 3:26-CV-00114-LS

**PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS**

Petitioner Eliclesio Soares Pereira, through undersigned counsel, respectfully submits this Reply in support of his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241.

I. INTRODUCTION

Petitioner challenges the legality of detention itself, not a removal order or discretionary custody decision. Federal courts retain jurisdiction over constitutional challenges to immigration detention. See *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018); *Demore v. Kim*, 538 U.S. 510 (2003). Jurisdiction-stripping provisions do not bar review of unlawful custody.

The Government's response attempts to transform this case into a routine "applicant for admission" detention challenge foreclosed by *Buenrostro-Mendez v. Bondi*. It is not. This case concerns something far more constitutionally troubling:

DHS released Petitioner under INA § 236, allowed him to live at liberty for over four years in full compliance with all conditions, then abruptly re-detained him without new facts, without individualized findings, and without any meaningful opportunity to seek release.

That re-detention—following a formal custody determination and release under INA § 236—is the constitutional defect at the heart of this case. The Government never meaningfully confronts that threshold fact. Instead, it relies on boilerplate assertions regarding mandatory detention under § 1225(b)(2) and cites decisions involving individuals who were never released from custody or whose detention posture never changed. Those authorities are therefore inapposite.

Even assuming *arguendo* that § 1225 applies, the Due Process Clause does not permit the Government to revoke a previously granted liberty interest without constitutionally adequate process, to impose categorical detention without individualized review, or to incarcerate a compliant, long-term resident whose United States citizen spouse is actively undergoing cancer treatment and depends on him for care and support. Habeas relief is constitutionally compelled.

II. *BUENROSTRO-MENDEZ* DOES NOT CONTROL THIS CASE

The Government's argument rests almost entirely on *Buenrostro-Mendez v. Bondi*. That reliance is misplaced.

A. This Case Involves Re-Detention After a § 236 Release

Petitioner was arrested shortly after entry, processed by DHS, and formally released on Form I-220A pursuant to INA § 236. He was then permitted to reside freely in the community for more than four years, during which he fully complied with all ICE supervision requirements. He was later re-detained at a routine check-in without any new factual allegations, changed circumstances, or individualized justification.

Buenrostro-Mendez did not address post-release liberty interests, the revocation of recognizance without process, re-detention following a discretionary § 236 release, reliance interests analogous to parole, or the constitutional implications of revoking previously granted liberty. This case is therefore not a border-detention case. It is a revocation-of-liberty case, and courts treat those circumstances fundamentally differently.

B. The Government's Silence on Liberty Revocation Is Dispositive

Once DHS exercised its discretionary authority under § 236 and released Petitioner, a protected liberty interest attached and due process safeguards became mandatory. Any later re-detention required an individualized, reasoned justification. The Government cites no authority permitting DHS to grant release, induce reliance, allow years of lawful liberty, and then revoke that liberty categorically and without process. That omission is dispositive. The Constitution does not permit the Government to manufacture mandatory detention by undoing its own prior release decision without process.

III. EVEN IF § 1225 APPLIES, DUE PROCESS REQUIRES AN INDIVIDUALIZED HEARING

The Government mischaracterizes Petitioner's claim as statutory. It is constitutional. Petitioner seeks only a meaningful opportunity to pursue release through an individualized custody hearing, a request fully consistent with Supreme Court precedent.

A. This Case Is Governed by *Mathews*, Not Categorical Detention Doctrine

Procedural due process analysis is controlled by *Mathews v. Eldridge*.

1. Private Interest

Freedom from physical restraint is the most fundamental liberty interest. Petitioner lived freely in the United States for four years, established deep community ties, complied fully with ICE supervision, has no criminal history, and serves as the primary caregiver for his wife, who is actively undergoing cancer treatment. The liberty interest at stake is profound.

2. Risk of Erroneous Deprivation

Petitioner received no meaningful custody review. The Immigration Judge disclaimed jurisdiction, the BIA appeal is futile under current agency policy, and no individualized findings were made regarding flight risk or dangerousness. This is detention imposed by categorical label rather than adjudication, creating a substantial risk of erroneous deprivation.

3. Government Interest

The Government previously determined that Petitioner did not pose a flight risk or danger and was appropriate for release on recognizance. Petitioner then complied with all conditions for years. If the Government now believes circumstances have changed, a bond hearing directly addresses that concern. Such hearings are routine and impose minimal administrative burden.

This conclusion aligns with the Supreme Court's recognition that civil immigration detention becomes unconstitutional when it is arbitrary or divorced from its regulatory purpose. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention that is not reasonably tied to ensuring appearance or protecting the community exceeds the permissible bounds of civil custody. Re-detention after years of compliant liberty—without individualized findings—serves no legitimate regulatory purpose and instead functions as impermissible punitive confinement.

B. The Entry Fiction Doctrine Does Not Bar Relief

The Government relies on *Department of Homeland Security v. Thuraissigiam*, but that decision is readily distinguishable. The petitioner in *Thuraissigiam* was stopped at the border, never released into the country, and challenged the asylum screening process itself. Here, Petitioner lived freely in the United States for more than four years after a formal § 236 release and challenges only the legality of his detention. Unlike *Thuraissigiam*, this case involves an established liberty interest and a post-release revocation of freedom. Courts consistently hold that *Thuraissigiam* does not bar detention-related due process claims.

C. *Demore* Does Not Authorize the Revocation of Previously Granted Liberty

Respondents may invoke *Demore v. Kim* to suggest that mandatory immigration detention is categorically constitutional. That reliance is misplaced.

Demore involved the brief detention of certain criminal noncitizens under 8 U.S.C. § 1226(c) during the pendency of removal proceedings. The Supreme Court emphasized the limited duration of detention and Congress's specific findings regarding flight risk and dangerousness in that narrow context. Critically, *Demore* did not involve the revocation of previously granted liberty, prolonged detention following years of lawful presence in the community, or reliance interests created by a formal discretionary release.

Here, DHS affirmatively exercised discretionary custody authority under § 236 and released Petitioner on recognizance. Petitioner lived freely for more than four years in full compliance with all supervision requirements. The Government now seeks to rescind that liberty categorically and without process. Nothing in *Demore* authorizes the Executive to undo its own release determination and re-impose detention without an individualized hearing.

This case therefore concerns the constitutional limits on revoking established liberty, not the permissibility of initial detention pending proceedings.

IV. THE SAN ANTONIO DECISION CONFIRMS HABEAS RELIEF IS PROPER

A federal court in this District recently addressed materially indistinguishable facts and granted habeas relief in *Hernandez-Fernandez v. Ripa*. The court held that re-detention after release on recognizance creates a protected liberty interest, that *Mathews* balancing applies, that mandatory detention cannot extinguish due process protections, and that an individualized bond hearing is constitutionally required. That reasoning applies squarely here. Respondents offer no meaningful basis to distinguish this case.

V. EXHAUSTION DOES NOT APPLY

Petitioner challenges the constitutionality of his detention. Immigration Judges lack authority to adjudicate constitutional claims and, in this case, expressly disclaimed custody jurisdiction. Exhaustion is therefore futile and excused.

VI. APA CLAIMS ARE PROPERLY BEFORE THE COURT

Habeas courts routinely consider whether detention exceeds statutory authority, constitutes ultra vires executive action, or violates constitutional protections. Detention without lawful authority is fully cognizable under 28 U.S.C. § 2241.

VII. HUMANITARIAN EQUITIES CONFIRM RELIEF IS WARRANTED

Petitioner's detention is not an abstract legal matter. His wife is undergoing active cancer treatment and depends on him for daily care, emotional support, and financial stability. Civil

immigration detention cannot be divorced from human reality, and equitable considerations remain central to habeas review.

VIII. RELIEF REQUESTED

Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus and order Respondents to provide a constitutionally compliant bond hearing within seven days at which the Government bears the burden of justifying continued detention by clear and convincing evidence, or, in the alternative, to immediately release Petitioner under reasonable conditions of supervision.

Dated: March 11, 2026

Respectfully Submitted,

Eliclesio Soares Pereira
through counsel

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CERTIFICATE OF SERVICE

I hereby certify that on this date, March 11, 2026, I electronically filed the foregoing **PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**, with the Clerk of the Court using the CM/ECF system. Notice of this filing was served on all counsel of record, including the Office of the United States Attorney, via the Court's CM/ECF system.

Respectfully Submitted,

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