

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

MOHAMMED OSMAN MOHAMMED,

Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of
Homeland Security,

Todd M. Lyons, Acting Director of
Immigration and Customs Enforcement,

Marisa Flores, Director, El Paso Field Office
Immigration and Customs Enforcement, and

Curtis Taylor, Major General, U.S. Army at
Camp Bliss,

Respondents.

Case No. 3:26-CV-00167 (LS)

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

REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Mr. Mohammed Osman Mohammed, by and through the undersigned attorneys, submits this Reply in support of his Petition for a Writ of Habeas Corpus. On January 26, 2026, Petitioner submitted a habeas petition seeking release from his unlawful detention. (Pet., Doc. No. 1.) On February 19, 2026, Respondents responded. (Doc. No. 7.) Respondents' Brief, although inclusive of some facts regarding Mr. Mohammed Osman Mohammed, does little to address the specifics of his Petition. (*See id.*) For reasons stated below, Mr. Mohammed remains entitled to relief due to the Respondents' violation of his procedural due process rights guaranteed under the United States Constitution.

I. The Fifth Circuit's *Buenrostro-Mendez* Decision

On February 6, 2026, the Fifth Circuit issued a decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 32330 (5th Cir. Feb. 6, 2026). This decision overrules a substantial body of judicial analysis and authority by holding that §1225(b)'s mandatory detention provisions may be applied to noncitizens who entered without inspection, whether they were apprehended at the border or after a period of living in the country. *Id.* at *1. While the Fifth Circuit's decision presently removes statutory avenues for release, it does not extinguish Petitioner's remaining constitutional claims.

The *Buenrostro-Mendez* court did not reach the due process question. *See generally Buenrostro-Mendez*, 2026 WL 323330, at *1–10. The case was remanded to the district court “for further proceedings consistent with this opinion,” presumably including consideration of *Buenrostro-Mendez*'s due process claim, which the district court declined to reach in the first instance. *See Buenrostro-Mendez v. Bondi*, No. 25-CV-3726, 2025 WL 2886346, at *3 n.4, *10 (S.D. Tex. Oct. 7, 2025). Indeed, counsel for the Government stated plainly during the oral argument that there was only “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.

This has been affirmed since the Fifth Circuit's decision. Numerous Courts in the Western District of Texas have reviewed similar due process issues in the light of the *Buenrostro-Mendez* ruling and concluded that “*Buenrostro-Mendez* has no bearing on [a petitioner's claims as to their] constitutional right to procedural due process.” *Clemente Ceballos v. Garite*, 3:26-cv-00312-DB (W.D. Tex. Feb 10, 2026); *see also Marceau v. Noem*, No. 3:26-cv-237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026) (“The *Buenrostro-Mendez* court did not reach the due process

question, confining its analysis and holding to statutory interpretation.”); *Hassen v. Noem*, No. 3:26-cv-48-DB, at *4 n.1 (W.D. Tex. Feb. 9, 2026), ECF No. 8 (“*Buenrostro-Mendez* does not change this case’s outcome on procedural due process grounds.”); *Lema Lema v. Bondi*, No. 3:26-cv-00353 (KC) Order, Doc. No. 8 at 2 (W.D. Tex. Feb. 18, 2026) (same) .

Moreover, the *Buenrostro-Mendez* ruling will almost certainly generate a circuit split on this issue and reach the Supreme Court, given the broad consensus among courts across multiple circuits that §1225(b) cannot be read so broadly. *Barco Mercado v. Francis*, -- F. Supp. 3d --, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (citing “350 cases decided by over 160 different judges sitting in about fifty different courts spread across the United States” who have rejected Respondents’ position). Indeed, in December 2025, the Seventh Circuit, in ruling on the government’s emergency motion to stay a district court’s decision to order release of detainees, found that Respondents were “not likely to succeed on the merits of their argument that [similarly situated] individuals . . . are subject to mandatory detention under § 1225(b)(2)(A).” *Castanon-Nava v. U.S. Dep’t Homeland Security*, 161 F.4th 1048, 1601 (7th Cir. 2025).

For reasons set forth in his Petition, Mr. Mohammed continues to believe that the great majority of federal district courts around the country have correctly interpreted the INA. *See Buenrostro-Mendez*, 2026 WL 323330, at *12–16 (Douglas, J. dissenting). Additionally, while Respondents argue that an APA claim is not cognizable in habeas proceedings, the Western District of Texas has previously “assum[ed] without finding that APA claims are cognizable under habeas.” *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *5 (W.D. Tex. Oct. 2, 2025). Accordingly, Petitioner preserves his claims for relief under the INA and APA pending further appellate review. However, Petitioner argues that, even under *Buenrostro-Mendez*, he is presently entitled to habeas relief as to his remaining constitutional claims.

II. Petitioner's Detention Absent a Warrant or Change in Circumstances Violates Petitioner's Due Process Rights

As alleged in his Petition, Respondents are presently detaining Petitioner in violation of his due process rights. (Pet. ¶¶ 70–77.) The existence or nonexistence of a warrant is not dispositive in these claims. However, the nonexistence of a valid warrant further illustrates the due process violations inherent in Petitioner's present detention. In their Response, Respondents assert "Petitioner was arrested on January 6, 2026 pursuant to a warrant." (Doc. No. 7 at 13.) In support of this contention, Respondents submit an administrative I-200 form warrant dated October 4, 2023, nearly two and a half years prior to Mr. Mohammed's present arrest. (Doc. No. 7-2.) Plainly, this was the warrant originally issued to Mr. Mohammed pursuant to his initial detention upon entering the United States in 2023. This is confirmed by the date of service of the warrant listed as San Diego, California on October 4, 2023. (Doc. No. 7-2.)

To state the obvious, the existence of a discharged 2023 warrant served in California does not establish the legality of Mr. Mohammed's present detention. In order to serve its safeguarding functions, a warrant must be issued upon consideration of a duly qualified official regarding the relevant evidence at the time of the arrest so as to establish the requisite probable cause based on the individualized circumstances of the subject. *See Castanon Nava v. Dep't of Homeland Sec.*, 806 F. Supp. 3d 823, 851 (N.D. Ill. 2025) *stay denied in part on other grounds*, 161 F.4th 1048 (7th Cir. 2025). That Respondents are unable to submit a valid warrant in this case only illustrates that Mr. Mohammed's detention has not been properly carried out pursuant to an individualized assessment, notice, or an opportunity to be heard.

The due process clause prohibits Respondents from summarily revoking a noncitizen's release on bond without a showing of changed circumstances. This is because "the government's decision to release an individual from custody creates an implicit promise, upon which that

individual may rely, that their liberty will be revoked only if they fail to live up to the conditions of release.” *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)); *see also Iza v. Arnott*, No. 6:25-CV-3392-MDH, 2026 WL 67152, at *3 (W.D. Mo. Jan. 8, 2026) (noting that “DHS may change the conditions of an alien’s parole only when there is a sufficient change of circumstances to justify that change”); *Luna Sanchez v. Bondi*, Civ. No. 25-cv-018888 (MSN/IDD) , 2025 WL 3191922 (E.D. Va. Nov. 14, 2025) (“[T]he BIA has held that, where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change of circumstance.”) (quotation omitted); *Saravia for A.H. v. Sessions*, 905 F.3d 1137, 1145 (9th Cir. 2018) (noting that “In *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981), the BIA recognized that ‘where a previous bond determination has been made by an immigration judge, no change should be made ... absent a change of circumstance.’”).

Respondents have pointed to no change in circumstances to justify a change in their original custody determination that Mr. Mohammed was fit for release. Nor could they. In October 2023, Mr. Mohammed was determined eligible for release on recognizance. (Pet. ¶ 21.) Mr. Mohammed has remained a law-abiding, compliant asylum seeker since his release in the United States. Indeed, his eligibility for release pending the resolution of his immigration proceedings has only grown since the initial custody determination. Mr. Mohammed has established a large network of family and friends, strengthening his ties to the local area. (Pet. ¶ 27.) Mr. Mohammed has complied with all aspects of his immigration process, developing a steady record of faithful court appearances. (*Id.* ¶ 25.) Mr. Mohammed has remained peaceful and law-abiding throughout his residency in the United States. (*Id.* ¶ 28.) Respondents have supplied no contrary argument, and thus they concede that there has been no change in circumstances to warrant Mr. Mohammed’s re-detention.

III. Respondents' Detention of Petitioner Violates Petitioner's Procedural Due Process Rights Under the *Mathews* Test

Petitioner's present detention violates his procedural due process rights under the *Mathews* test. All persons within the United States possess a protectable liberty interest in freedom from physical restraint without due process of law. *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025). Habeas corpus remains the fundamental instrument for safeguarding that liberty by ensuring immigration detention is not arbitrary, unlawful, or inconsistent with due process. Setting aside DHS's interpretation of the INA, Mr. Mohammed's present detention is nevertheless unlawful because it violates his rights to procedural due process.

To determine whether a civil detention violates a detainee's procedural due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). These factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335; *see also Hernandez-Fernandez v. Lyons*, 2025 WL 2976923 at *8 (W.D. Tex. Oct. 21, 2025).

As set forth in his Petition, all three factors favor Petitioner. As to the first factor, "'The interest in being free from physical detention' is 'the most elemental of liberty interests.'" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Courts in this district have found that noncitizens have a strong liberty interest in their freedom, regardless of citizenship status, when they—like Mr. Mohammed—have spent time living, working, or supporting a family in the interior of the United States. *See, e.g., Lopez Miranda v. Flores*, No. EP-25-CV-584-KC, 2025 WL 3901908, at *3 (W.D. Tex. Dec. 10, 2025); *Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL

3645178 (W.D. Tex. Dec. 16, 2025) (finding noncitizen has protectable liberty interest because he was “living in the United States for over four years and attends his local church”); *Hernandez-Fernandez*, 2025 WL 2976923 at *9 (“Because he spent nearly three years at liberty in the United States, [petitioner] possesses a cognizable interest in his freedom from detention.”); *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025) (finding that conditions of confinement indistinguishable from criminal incarceration weigh this factor in favor of the petitioner).

As to the second factor, the Government’s refusal to provide bond hearings creates a high risk of erroneous deprivation. Courts in this district have found a “substantial risk” of erroneous deprivation under the Government’s present policy for petitioners like Mr. Mohammed, wherein the “noncitizen who has already been determined to not be a flight risk nor a danger to the community, and has lived in the United States for a prolonged period of time, especially where there are no facts in the record to reflect material changes in Petitioner’s dangerousness or flight risk.” *Vieira v. De Anda-Ybarra*, 806 F. Supp. 3d 690, 701 (W.D. Tex. 2025). The value of additional procedural safeguards such as a bond hearing is significant, wherein such processes will facilitate an immigration judge in conducting an individualized bond hearing to “make a determination on specific facts whether continued detention is necessary to ensure presence at removal hearings and safety for the community.” *Id.*

Last, the third factor also favors Petitioner. The Government’s interest will be well served by holding a bond hearing to determine whether Petitioner’s ongoing detention is necessary. The requirement of providing a bond hearing is not an onerous one, as evidenced by the fact that this has been Respondents’ policy for the last several decades. Indeed, the provision of a bond hearing would in fact *save* Respondents the expense of a lengthy and unnecessary detention.

When evaluating similar circumstances, Courts in this district have repeatedly granted habeas relief on procedural due process grounds, both before and after the Fifth Circuit’s decision in *Buenrostro-Mendez*. See *Babaev v. Lyons*, No. 3:26-CV-356 (KC), Order, Doc. No. 4 at 4 (W.D. Tex. Feb. 18, 2026); *Clemente Ceballos v. Garite*, 3:26-cv-00312-DB Order, Doc. No. 6 at 3 (W.D. Tex. Feb 10, 2026); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *10 (W.D. Tex. Oct. 21, 2025); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *13 (W.D. Tex. Oct. 2, 2025). Courts examining mandatory detention for petitioners like Mr. Mohammed, who have peaceably lived in the United States for years without any change in circumstances, have routinely found that mandatory detention is unconstitutional as applied to these individuals, because “non-punitive detention in the immigration context violates the Due Process Clause, absent adequate procedural protections or a special justification outweighing a petitioner’s liberty interest.” *Gonzalez-Albornoz v. Olson*, No. 25-CV-208-DLB, 2026 WL 251955, at *3 (E.D. Ky. Jan. 30, 2026) (quotation omitted); see also *Cruz-Reyes v. Bondi*, No. 5:26-CV-60, 2026 WL 332315, at *7 (S.D. Tex. Feb. 3, 2026) (“Government’s interest in continuing to detain Petitioner is further diminished where, as here, the Petitioner has no criminal record and has significant ties.”).

Respondents attempt to argue that Mr. Mohammed’s due process rights should be analyzed under *Zadvydas v. Davis*, 533 U.S. 678 (2001) rather than *Mathews*. This is incorrect. First, *Zadvydas* does not apply to petitioners such as Mr. Mohammed, who have no final order of removal entered against them. In *Zadvydas*, the Supreme Court considered a challenge to the statute that permits the Government to detain aliens who are subject to final orders of removal. 533 U.S. at 682. The Court held that such detention becomes unlawful once removal is no longer reasonably foreseeable because “[a] statute permitting indefinite detention of an alien would raise

a serious constitutional problem.” *Id.* at 699. *Zadvydas* bears only on post-removal-period detention. It “has no direct application” to people who are detained pending removal proceedings. *See Buenrostro-Mendez*, 2026 WL 323330, at *9. A case concerning post-removal order detention simply does not bear on an as-applied procedural due process claim about pre-final order of removal detentions. This is illustrated by the numerous cases in this district that have universally assessed such claims according to the *Mathews v. Eldridge* test, not *Zadvydas*. *See, e.g., Hassen v. Noem*, 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026) (analyzing habeas petitioner’s due process claims under the *Mathews v. Eldridge* test); *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *3 (W.D. Tex. Oct. 21, 2025) (same); *Lopez-Arevelo*, 801 F. Supp. 3d at 685–87 (same.) In conclusion, the *Mathews* test is the proper assessment to evaluate civil detentions such as Petitioner’s, and a *Mathews* analysis yields the conclusion that Petitioner’s continued detention without a bond hearing under a blanket mandatory detention policy violates his procedural due process rights. *Id.*

IV. Petitioner’s Claims are Not Barred by Administrative Exhaustion Requirements

Respondents briefly attempt to assert that Mr. Mohammed’s petition is barred by administrative exhaustion requirements. They cite no relevant and binding caselaw for this assertion. (*See generally* Doc. No. 7 at 12–13.) Nor could they. Hundreds of federal courts at every level have found habeas petitioners such as Mr. Mohammed are not required to exhaust their administrative remedies in such petitions where, as here, there is no final order of removal, seeking BIA review would be plainly futile, and the BIA lacks jurisdiction to consider Petitioner’s constitutional claims. *See, e.g., Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 680 (W.D. Tex. 2025) (“Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.”) (quoting *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D.

Tex. 2007)); *Shi v. Lyons*, No. 1:25-CV-274, --- F. Supp. 3d--- 2025 WL 3637288, at *4 (S.D. Tex. Dec. 12, 2025) (finding that administrative exhaustion not required because “in light of *Matter of Yajure Hurtado*, such an appeal would have been patently futile”); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331, at *3 (S.D. Tex. Nov. 13, 2025) (finding no administrative exhaustion requirement for habeas petitioner’s constitutional claims, because such claims “fall[] outside the jurisdiction of the BIA”). Under such circumstances, the Fifth Circuit is clear that no exhaustion requirements apply. *See Falek v. Gonzales*, 475 F.3d 285, 291 n.4 (5th Cir. 2007) (explaining “there is no dispute that the BIA has no power to adjudicate constitutional claims”); *Garner v. U.S. Dep’t of Lab.*, 221 F.3d 822, 825 (5th Cir. 2000) (recognizing exceptions to the exhaustion requirement “when the claimant advances a constitutional challenge unsuitable for determination in an administrative proceeding”); *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (recognizing exception to the exhaustion requirement wherein seeking administrative remedies would be “patently futile”). Therefore, Respondents’ arguments as to administrative exhaustion also fail.

Mr. Mohammed’s liberty interest remains unconstitutionally impaired “unless and until the government carries its burden to show that a change in circumstances supported its decision to revoke the previous custody determination at a hearing before an Immigration Judge.” *Chogllo Chafila v. Scott*, 804 F. Supp. 3d 247, 263 (D. Me. 2025) (quotation omitted). For the reasons laid out in his Petition and reiterated above, Respondents have not met their burden here. Respondents’ arbitrary detention of Mr. Mohammed violates his due process rights under the Fifth Amendment.

Date: February 26, 2026

Respectfully submitted,
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**Plaintiff is represented by a clinic operated by Texas A&M University School of Law, but this document does not purport to present the school's institutional views, if any.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on all known parties to this litigation through their counsel of record by filing the same with the Court's electronic case filing system on February 26, 2026.

/s/ Emily Esposito Heger