

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Bessy Liliana Milla Mejia,
Petitioner,

v.

No.: 26-CV-0442-XR

Field Office Director, et. al.,
Respondents.

REPLY TO RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS
CONSIDERING RECENT FIFTH CIRCUIT PRECEDENT

In response to the Court's Order to Show Cause, Respondents contend that the Fifth Circuit's decision in *Buenrostro v. Bondi*, ___ F.4th ___, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026), requires denial of this petition. ECF No. 4 at 1. To the extent Petitioner challenged detention authority under 8 U.S.C. § 1225(b)(2) as a statutory matter, *Buenrostro* controls, and those claims are preserved for appellate review. The remaining issue is constitutional.

Petitioner has resided in the United States since 2012. ECF No. 1 ¶ 42. She received deferred action following a Bona Fide Determination on her U-Visa application. *Id.* ¶ 45. She has no criminal convictions, and no neutral adjudicator has determined that she presents a risk of flight or danger to the community. *Id.* ¶ 48. Nevertheless, she remains detained without any individualized custody determination.

Respondents' response assumes that statutory authorization ends the inquiry. It does not. The Supreme Court has repeatedly recognized that "freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Even where Congress authorizes detention, the Constitution independently requires a meaningful opportunity to contest

the necessity of confinement. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *Buenrostro* did not address that question. The issue before this Court is whether detention without an individualized custody determination comports with procedural due process. It does not, because the Constitution requires a meaningful opportunity to contest the necessity of physical confinement.

I. This Court Retains Jurisdiction Over Petitioner's Habeas Petition

Respondents contend that this Court lacks jurisdiction under 8 U.S.C. §§ 1252(g), 1252(b)(9), and 1226(e). Binding precedent forecloses that argument.

Section 1252(g) bars review only of decisions to “commence proceedings, adjudicate cases, or execute removal orders.” The Supreme Court has repeatedly emphasized that the provision is narrowly limited to those three discrete actions and does not extend to challenges to detention. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). Petitioner does not challenge the initiation of removal proceedings or the execution of a removal order. She challenges only her continued detention without access to an individualized custody determination. Detention is analytically distinct from removal. See *id.*

Section 1252(b)(9) likewise does not eliminate habeas review of detention claims. *Jennings* held that § 1252(b)(9) does not “zip” detention challenges into removal proceedings. 583 U.S. at 292–93. Petitioner does not seek review of removability, any removal order, or any issue intertwined with the merits of removal. She seeks review of executive confinement. This Court has previously rejected similar jurisdictional arguments in detention cases. See *Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 WL 3296314, at *3 (W.D. Tex. Nov. 26, 2025).

Nor does § 1226(e) apply. That provision precludes review of discretionary bond determinations. Petitioner has received no custody hearing. She does not challenge the exercise of

discretion; she challenges the absence of process. Courts retain jurisdiction to review legal and constitutional questions concerning detention. See *Granados*, 2025 WL 3296314, at *6-7.

Finally, habeas corpus remains available to test the legality of executive detention. See *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). Respondents' position would effectively insulate detention under § 1225(b)(2) from judicial review even where no individualized custody determination is available. Neither the text of the INA nor binding precedent compels that result.

This Court retains jurisdiction under 28 U.S.C. § 2241.

II. Exhaustion Does Not Bar Review

Respondents argue that the petition should be dismissed for failure to exhaust administrative remedies. That argument fails because no administrative remedy is available and because this case presents a pure constitutional challenge to detention without process.

Exhaustion in the immigration habeas context is prudential, not jurisdictional. Courts may require exhaustion where administrative remedies are available and capable of providing relief. But exhaustion is not required where resort to administrative procedures would be futile or where the agency lacks authority to grant the requested relief.

Here, the immigration court lacks authority to provide a custody hearing. Under *Matter of Yajure Hurtado*, immigration judges do not have jurisdiction to conduct bond hearings for individuals detained under § 1225(b)(2). Because the agency is bound by that precedent, neither the immigration judge nor the Board of Immigration Appeals could grant the relief Petitioner seeks. Requiring Petitioner to request a bond hearing that the agency is legally barred from providing would serve no purpose.

Moreover, this case does not involve review of a discretionary bond determination. Petitioner received no custody hearing. She does not challenge the amount of bond or the exercise of

discretion. She challenges the complete absence of any individualized custody determination. That presents a legal and constitutional question, not a matter committed to agency discretion.

Habeas corpus exists to test the legality of executive detention. See *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). Requiring exhaustion where the agency lacks authority to provide relief would effectively insulate detention from judicial review and undermine the historic function of habeas corpus.

Because no adequate administrative remedy exists and this petition presents a pure constitutional challenge to detention without process, exhaustion does not bar review.

III. *Buenrostro* Does Not Resolve the Constitutional Question

Buenrostro resolves the statutory question concerning detention authority under 8 U.S.C. § 1225(b)(2), and Petitioner preserves those claims for further review. Petitioner preserves her statutory claims for further review. The remaining issue is whether detention without an individualized custody determination comports with the Fifth Amendment.

Respondents' response assumes that statutory authorization ends the inquiry. That assumption conflates statutory authority with constitutional sufficiency. The Supreme Court has repeatedly recognized that even where Congress authorizes detention, the Constitution independently constrains executive confinement. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Due Process Clause applies to all "persons" within the United States and protects against arbitrary physical restraint.

Buenrostro addressed only the interpretation of § 1225(b)(2). It did not apply the balancing framework set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Nor did it hold that detention without any individualized custody determination satisfies procedural due process in every case. The absence of a statutory right to bond does not eliminate constitutional protections. This Court

has previously recognized that a noncitizen's liberty interest in freedom from detention exists "above and apart from the INA." See *Martinez v. Noem*, 2025 WL 2965859, at *4 (W.D. Tex. Oct. 21, 2025). That principle remains true after *Buenrostro*. Furthermore, 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.").

The question is not whether Congress authorized detention. The question is whether the Constitution permits detention without any individualized determination of necessity. That inquiry is governed by *Mathews*.

IV. Detention Without an Individualized Custody Determination Violates Procedural Due Process

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)). The Fifth Amendment protects all “persons” within the United States from arbitrary physical restraint, including noncitizens in removal proceedings. The issue before the Court is therefore whether Respondents may detain Petitioner—who has lived in this country for over a decade—without any opportunity to seek review of the necessity of that detention before a neutral decisionmaker.

Petitioner has resided in the United States since 2012. She received deferred action following a Bona Fide Determination on her pending U-Visa application. She has no criminal convictions and no history of violence. No immigration judge has determined that she poses a flight risk or a danger to the community. Yet she remains confined without access to a custody hearing of any kind. The constitutional violation arises not from the mere fact of detention, but from the absence of any individualized determination of necessity.

The familiar balancing framework set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), governs this inquiry. Under the first factor—the private interest at stake—Petitioner’s interest in freedom from physical confinement is substantial. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Supreme Court has described the interest in being free from government detention as “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Courts in this District have recognized that noncitizens who have established a life in this country—even without formal admission—possess a strong liberty interest in freedom from detention. See *Martinez v. Noem*, 2025 WL 2965859, at *4 (W.D. Tex. Oct. 21, 2025); *Lopez-Arevalo v. Ripa*, 2025 WL 2691828, at

*10 (W.D. Tex. Sept. 12, 2025). Petitioner’s decade-plus residence, lawful presence through deferred action, and lack of criminal history underscore the weight of her liberty interest.

Under the second factor—the risk of erroneous deprivation—the absence of any custody hearing creates a substantial risk that detention is unnecessary in this case. The legitimate purposes of civil immigration detention are limited to ensuring appearance at proceedings and protecting the community. See *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006). Without an individualized determination, there is no constitutional assurance that detention serves those purposes in this case. See *Martinez*, 2025 WL 2965859, at *4 (“Without an individualized determination, it cannot be said that detention is warranted in his case.”). Petitioner has received no opportunity to present evidence, no evaluation of flight risk, and no assessment of dangerousness. The categorical detention framework applied here therefore creates a meaningful risk of erroneous deprivation of liberty.

Under the third factor—the Government’s interest—the Government’s objectives are ensuring appearance and protecting public safety. Those interests are adequately addressed through a custody determination hearing. See *Lopez-Arevalo*, 2025 WL 2691828, at *11. Requiring an individualized assessment does not invalidate § 1225(b)(2); it ensures that detention is justified in the individual case. Nor can Respondents plausibly claim undue administrative burden where individualized custody hearings were routinely provided in comparable cases for decades. See *id.* at *12. As this Court has explained, a noncitizen’s “constitutional interest in [her] liberty exists above and apart from the INA.” *Martinez*, 2025 WL 2965859, at *4.

Balancing these factors, detention without any individualized custody determination does not satisfy procedural due process. The Fifth Amendment requires more than categorical

confinement. Because Petitioner has been denied any meaningful opportunity to contest the necessity of her detention, her continued confinement violates the Constitution.

V. CONCLUSION

Because Petitioner has been detained without any individualized custody determination, her continued confinement violates procedural due process. The appropriate remedy for that constitutional defect is immediate release from unlawful detention. In the alternative, the Court should order that Petitioner be afforded a prompt custody hearing before a neutral decisionmaker at which the Government bears the burden of demonstrating that continued detention is necessary to mitigate any risk of flight or danger to the community. The Petition should be granted.

DATED this 16th 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 16th day of February 2026.

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