

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

SILVANO LUNA VELASCO,	)	
Petitioner,	)	
	)	
v.	)	Civ. No. 3:26-cv-00192
	)	
PAMELA JO BONDI, United States	)	
Attorney General, <i>et al.</i>,	)	
Respondents.	)	

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

Petitioner Silvano Luna-Velasco, through undersigned counsel, files this his response brief to the Court's January 29, 2026 Order and to supplement his petition for a writ of habeas corpus. Petitioner urges this Court to grant his petition because his detention violates his due process rights. In support of this pleading, Petitioner states as follows:

1. Petitioner cannot state whether he was arrested “on a warrant issued by the Attorney General.” Respondents have not provided Petitioner any documents concerning his arrest.
2. As argued below, whether he is detained under 8 U.S.C. § 1225 or § 1226, Petitioner has a constitutional due process right to habeas relief.

Argument

3. Petitioner has lived in the United States for over 25 years. He does not stand at “the threshold of initial entry.” Petitioner has a constitutional right to an

individual assessment whether he is a flight or danger for Respondents to continue to detain him pending his removal proceedings.

4. The Due Process Clause guarantees all persons in the United States the right to “life, liberty, or property, without due process of law. . . .” U.S. Const. amend. V. Noncitizens living in the United States, even when their presence is temporary or unlawful, enjoy the protections of the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”). “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. at 695 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

5. If the Court concludes that the Due Process Clause applies, then it must employ the three-prong test in *Mathews v. Eldridge*, 424 U.S. 319 (1976) to determine whether a civil detention violates a detainee’s due process rights. *Addington v. Texas*, 441 U.S. 418, 426 (1979) The three factors courts must consider 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.” *Mathews v. Eldridge*, 424 U.S. at 333.

6. The private interest involved here is of the highest order: freedom from governmental detention. *Zadvydas v. Davis*, 533 U.S. at 695. “[L]iberty is the norm” in our society “and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Supreme Court has counseled courts to be “careful not to minimize the importance and fundamental nature” of a person’s liberty rights. *Foucha v. Louisiana*, 504 U.S. at 80.

7. Thus, notwithstanding his unlawful status in this country, Petitioner has a liberty interest in remaining free from detention. A noncitizen’s detention pending their removal proceedings is indistinguishable from criminal incarceration, whether pretrial or after adjudication of guilt. They are behind bars and not free to leave the facility. Their meals and sleeping times are fixed. They can only spend a few hours per day outside in the sun. Their ability to see their family is strictly limited. They are guarded by officers authorized to employ any amount of physical force necessary for the occasion. These are Petitioner’s conditions of confinement and thus, there can be no doubt that he is significantly deprived of his liberty.

8. The second *Mathews* factor, that is the risk of an erroneous deprivation of a person’s liberty interest under the present procedures and the probable value of additional or substitute procedures, weighs in favor of Petitioner. The instant proceedings are civil, not criminal. More than money is at stake; a person’s freedom hangs in the balance.

9. Under current procedures, Respondents have not made an individualized assessment that Petitioner is a flight risk or danger. Thus, the risk that Petitioner will wrongfully be deprived of his liberty is high. A hearing reduces such risk.

10. The last factor is the Government's interest and the administrative burdens of additional or substitute procedures. Petitioner does not dispute that Respondents have legitimate interests in ensuring that the immigration laws are enforced, that noncitizens appear for their removal proceedings, and in the execution of removal orders. But these interests do not support placing the burden solely on Petitioner.

11. Respondents already provide immigration custody hearings and so the cost is minimal. Such hearings do not delay the removal process. There is no legitimate governmental interest in detention for its own sake.

12. Federal district courts in Texas, and in the Western District, have concluded that the due process analysis outlined above applies when the DHS denies a bond hearing to noncitizens, even when detained under § 1225. *See, e.g., Santiago v. Noem*, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025) (concluding that mandatory detention without bond violated procedural due process); *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025) (same); *Parada-Hernandez v. Johnson*, 2025 WL 3465958 (N.D. Tex. Oct. 29, 2025), *report and recommendation adopted* 2025 WL 3462682 (N.D. Tex. Dec. 2, 2025) (same); *Rojas v. Noem*, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025) (same); *De Leon Hernandez v. Bondi*, 2025 WL

3217037 (W.D. La. Nov. 18, 2025) (same); *Lopez-Arevelo v. Ripa*, 2025 U.S. Dist. LEXIS 188232, 2025 WL 2691828 (W.D. Tex. Sept. 21, 2025).

13. The Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. Feb. 6, 2026) has limited impact on the due process analysis described above. This is so because *Buenrostro-Mendez* addressed the question whether noncitizens who entered without inspection and admission, like Petitioner, are subject to § 1225(b)(2) or § 1226(a). The Court concluded that persons who entered without inspection are applicants for admission and are subject to mandatory detention under § 1225(b)(2). The Court did not address the constitutional question whether the noncitizens who have made an entry into the United States, and have a significant presence in this country, have a due process right for a bond hearing pending their removal proceedings.

Conclusion

Petitioner urges this Court to grant his petition for writ of habeas corpus because his detention without an individual assessment of flight risk or dangerousness violates his due process rights.

Date: 2/12/2025

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion and all attachments were personally served on all counsel of record via CM/ECF on this 12th day of February, 2026, by

/s/ Javier N. Maldonado
Javier N. Maldonado