

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Yefri A Lemus Lopez,

Petitioner,

v.

Miguel Vergara, Field Office Director of

Enforcement and Removal Operations, San

Antonio Field Office, Immigration and Customs
Enforcement, Enforcement & Removal
Operations, San Antonio Field Office, *et al.*,

Respondents.

Civil Action No. 5:26-cv-00497-FB

PETITIONER'S REPLY TO RESPONDENTS' RETURN

I. INTRODUCTION

Respondent's Return entirely relies on the Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026), and attempts to conclude that this resolves our case and requires denial of the Petition. That assertion is incorrect. Without conceding, Respondents' statutory interpretation of 8 U.S.C. § 1225(b) is correct, *Buenrostro* does not foreclose Petitioner's procedural due process challenge to his continued civil detention without any individualized determination of flight risk or danger.

Following *Buenrostro*, courts in this District and elsewhere have continued to grant habeas relief on procedural due process grounds when DHS re-detains noncitizens who were previously released into the United States and allowed to develop substantial ties, without affording them constitutionally adequate process. Those decisions control here.

II. BUENROSTRO DOES NOT RESOLVE PETITIONER'S DUE PROCESS CLAIM

Respondents rely on *Buenrostro-Mendez v. Bondi*, No. 25-20496, (5th Cir. Feb. 6, 2026), to argue that detention under § 1225(b) is mandatory and immune from constitutional scrutiny. That reading overstates *Buenrostro* and ignores controlling due-process principles. *Buenrostro* resolved a question of statutory interpretation; it did not hold that detention following release into the United States is constitutionally immune from as-applied procedural due process challenges. In *Hassen v. De Anda-Ybarra*, No. 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026), the court expressly acknowledged *Buenrostro*'s statutory holding and nevertheless granted habeas relief, concluding that “*Buenrostro* does not change this case’s outcome on procedural due process grounds.” Accepting the government’s reading of § 1225(b) *arguendo*, the court held that due process independently required an individualized bond hearing where DHS had previously released the petitioner and allowed him to reside in the United States for a substantial period. Accordingly, Respondents’ reliance on *Buenrostro* as a complete answer to the Petition is misplaced.

III. PETITIONER IS ENTITLED TO THE FIFTH AMENDMENT'S DUE PROCESS CLAUSE PROTECTIONS.

As the court explained in *Hassen*, “[b]ecause the Government released Petitioner and permitted him to live in the United States for over a year, they cannot revoke that liberty without an individualized determination of the need to do so.” That principle applies with even greater force here, where Petitioner lived in the United States for an extended period in compliance with government supervision and under a congressionally protected classification.

The application of Section 1225(b) to individuals such as Petitioner is an unconstitutional violation of due process. *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025). Due process requires consideration of three distinct factors; (1) the private interest that will be affected by the official action; (2) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail; and (3) 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. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893.

The first *Mathews* factor weights in Petitioner's favor. Petitioner interest in freedom pending the conclusion of his removal proceedings deserves great "weight and gravity." *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880. Furthermore, the second factor also lies in favor of Petitioner. While the government has an interest in ensuring noncitizens appear for removal proceedings, and that they do not pose a risk to their communities, such interest can be addressed in a bond hearing. *Id.* Finally, the application of section 1225(b), as Respondent seek to apply it to Petitioner, creates a substantial risk of erroneous deprivation of his interest in being free from arbitrary confinement pending his removal proceedings. *Id.* Like the case at hand, the Court in *Viera*, addressed the constitutional concerns of a detained Special Immigrant Juvenile who was apprehended after having resided in the U.S. over a year. Ultimately, the Court determined that the Petitioner continued detention without a bond hearing violated his due process rights. *Id.*

The Department of Homeland Security affirmatively released Petitioner into the United States as an unaccompanied minor, permitted him to reside here lawfully under an approved Special Immigrant Juvenile Status (SIJS) determination, and granted him deferred action. This

combination of government actions; approval of SIJS, conferral of deferred action, and prolonged release into the community; creates a protected liberty interest.

As stated in *Rodriguez Cortina v. De Anda-Ybarra*, No. EP-25-CV-00523-DB, 2025 WL 3218682 (W.D. Tex. Nov. 18, 2025), “this Court agrees with the line of other courts that have found *Thuraissigiam* is not preclusive on the facts of this case because (1) Petitioner is not challenging his removal, but rather his detention during removal, and (2) he was not detained at the border on the threshold of initial entry, but rather after living in the United States for fifteen years.” Furthermore in *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025), the court has rejected the government’s contention that individuals who have been released and allowed to live in the United States remain constitutionally equivalent to individuals apprehended at the border and have obtained a protected liberty interest.

A. Petitioner Entered as an Unaccompanied Alien Child Protected by the TVPRA

Petitioner’s protected liberty interest is further strengthened by the undisputed fact that he entered the United States as an Unaccompanied Alien Child (UAC) and was therefore afforded special statutory protections under the Trafficking Victims Protection Reauthorization Act (TVPRA), 8 U.S.C. § 1232. Congress enacted the TVPRA to ensure that unaccompanied children are treated differently from adults in immigration enforcement, emphasizing protection, placement in the least restrictive setting, and access to humanitarian relief.

Under the TVPRA, DHS is required to promptly transfer unaccompanied children to the care of the Office of Refugee Resettlement and to prioritize their release to suitable custodians, reflecting Congress’s determination that prolonged or unnecessary detention of children is

disfavored. See 8 U.S.C. § 1232(b)(2) (3). These statutory safeguards recognize that UACs possess heightened vulnerability and correspondingly heightened liberty interests.

Petitioner was subsequently granted Special Immigrant Juvenile Status in which a state court made the requisite findings that reunification with one or both parents was not viable due to abuse, neglect, or abandonment, and DHS approved SIJS pursuant to 8 U.S.C. § 1101(a)(27)(J). DHS then exercised its discretion to grant deferred action. Re-detaining a designated UAC who has since obtained SIJS and deferred action; without any individualized findings directly undermines the TVPRA's protective purpose and heightens the due process violation presented here. Hence, the TVPRA protections, SIJS approval, and deferred action establish that the Government affirmatively chose protection and release over detention.

B. Approved SIJS Confirms Congressional Recognition of Protected Liberty Interests

Special Immigrant Juvenile Status ("SIJS") is a congressionally created protection for vulnerable youth whom a state court has found cannot safely reunify with one or both parents and for whom return to their country of origin is not viable. 8 U.S.C. § 1101(a)(27)(J). Congress established SIJS in 1990 specifically "to protect abused, neglected or abandoned children who . . . illegally entered the United States." *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 163 (3d Cir. 2018) (internal quotation marks and citations omitted).

In creating SIJS, Congress deliberately carved out statutory protections against removal for this class of noncitizens. Most notably, Congress exempted SIJS recipients from multiple grounds of removability that would otherwise apply, including removability based on unlawful entry. See 8 U.S.C. § 1227(c). As courts have recognized, although an individual with SIJS may be removed

on limited grounds—such as certain serious criminal convictions—he “cannot be removed for having entered the country illegally.” *Rodriguez v. Perry*, 747 F. Supp. 3d 911, 917 (E.D. Va. 2024) (emphasis added); see also *Osorio-Martinez*, 893 F.3d at 170 (describing SIJS as a humanitarian protection designed to provide stability and permanence).

SIJS recipients are also statutorily eligible to adjust status to lawful permanent residence once a visa becomes available. 8 U.S.C. §§ 1255(h), 1153(b)(4). While adjustment of status is often adjudicated by USCIS, Immigration Judges retain jurisdiction to adjust a noncitizen’s status during removal proceedings. 8 C.F.R. § 1245.2(a)(1)(i). Accordingly, SIJS reflects not a temporary tolerance of unlawful presence, but a congressionally created pathway toward lawful permanent residence for a discrete class of vulnerable youth.

Following approval of SIJS, DHS granted Petitioner deferred action, an affirmative exercise of prosecutorial discretion reflecting a determination that removal is not appropriate and that the individual should remain while pursuing permanent relief. The Eastern District of Virginia recently underscored that Congress embedded SIJS within the INA precisely to shield this class of noncitizens from removal based on their manner of entry. *Rodriguez*, 747 F. Supp. 3d at 917, 923. That statutory protection reinforces the constitutional significance of the liberty interest at stake when DHS releases an SIJS recipient into the community and later re-detains him without any individualized determination of necessity.

Where, as here, the Government has affirmatively granted SIJS, exercised prosecutorial discretion through deferred action, and permitted the individual to reside freely in the United States. Congress created SIJS to promote protection and stability for vulnerable youth and the Government’s own decisions therefore reinforce, rather than diminish, the constitutional requirement of individualized process before liberty is withdrawn.

IV. PROCEDURAL DUE PROCESS VIOLATED

Procedural due process requires, at minimum, an individualized determination by a neutral decisionmaker when the government seeks to deprive a person of liberty. Here, Respondents re-detained Petitioner pursuant to a categorical policy interpretation of § 1225(b), without any assessment of flight risk, dangerousness, or necessity of continued detention.

Courts in this District have consistently held that such detention violates due process. See *Vieira*, 2025 WL 2937880; *Lopez-Arevelo v. Ripa*, *2025 WL 2691828, at 7 (W.D. Tex. Sept. 22, 2025). These courts have emphasized that even where detention is authorized by statute, the Constitution independently requires process before liberty is withdrawn. Therefore, this case does not ask the Court to invalidate § 1225(b); it asks only that the Constitution constrain how that statute is applied after the Government has already conferred liberty.

Therefore, when a liberty interest is at stake, due process requires a prompt bond hearing at which the government bears the burden of justifying continued detention by clear and convincing evidence. *Hassen* ordered precisely that relief, directing either a bond hearing with a heightened burden or release. Petitioner seeks the same constitutionally required remedy here.

V. EXHAUSTION DOES NOT BAR HABEAS RELIEF

Exhaustion is excused because requiring further administrative review would exacerbate the ongoing due process violation. As the court held in *Lopez-Arevelo v. Ripa*, exhaustion is not required where the petitioner challenges ongoing detention as a constitutional due process violation and further delay would only compound the injury. See 2025 WL 2691828, at 6–7. There, the petitioner requested a bond hearing, the IJ concluded it lacked jurisdiction, and petitioner appealed. Requiring him to wait months if not longer for a BIA ruling would “exacerbate

his alleged constitutional injury detention without a bond hearing.” Id. (citing *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 672 n.14 (S.D. Tex. 2021)). Especially where the BIA would be bound to deny relief under *Matter of Yajure Hurtado*, and bond jurisdiction appeals routinely take six months or more to resolve. *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *3 (E.D. Mich. Sept. 9, 2025) (collecting authority). Preventing months of potentially unconstitutional detention outweighs any institutional interest the BIA may have in first resolving the appeal. See *Lopez-Arevelo*, 2025 WL 2691828, at *7. Immigration Judges lack authority to grant bond hearings under Respondents’ interpretation of § 1225(b) and *Matter of Yajure Hurtado*. Thus, there is no administrative forum capable of providing the relief Petitioner seeks. Courts in this District have repeatedly rejected exhaustion arguments in materially identical detention challenges. See *Vieira*, 2025 WL 2937880; *Zafra*, 2025 WL 3239526. Accordingly, exhaustion should be excused.

VI. RELIEF REMAINS AVAILABLE IN HABEAS

Petitioner properly brings this action in habeas to challenge the legality of his custody in violation of his due process. The relief available respects statutory detention authority while ensuring compliance with the Fifth Amendment. The appropriate remedy is an order requiring Respondents to either: Provide Petitioner a prompt bond hearing before an Immigration Judge at which the government bears the burden of proving dangerousness or flight risk by clear and convincing evidence; or Release Petitioner under reasonable conditions of supervision.

VII. CONCLUSION

Even accepting Respondents’ statutory interpretation of § 1225(b), Petitioner’s continued detention without any individualized determination of flight risk or danger violates the

Due Process Clause. Post-*Buenrostro* decisions from this District confirm that such as-applied procedural due process challenges remain valid and warrant habeas relief. Petitioner respectfully requests that the Court grant the Petition and order Respondents to either (1) provide Petitioner with a prompt bond hearing at which the government bears the burden of proof by clear and convincing evidence, or (2) release Petitioner under appropriate conditions during the pendency of removal proceedings. Respondents' Return asks this Court to accept that once DHS invokes § 1225(b), constitutional limits disappear. Courts in this District, including in decisions issued after *Buenrostro*, have rejected that position. Since, Petitioner was released into the United States and developed substantial ties before being re-detained without individualized process, his continued detention violates procedural due process.

The Petition should be granted, and Respondents ordered to provide a constitutionally adequate bond hearing or release Petitioner.

Respectfully submitted,

Dated: February 16, 2026

/s/ Daniela Fletes

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