

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

YADIRA DE LOS ANGELS BALDODANO,

Petitioner

v.

Warden, Dilley Immigration Processing
Center, et al,

Respondents,

§
§
§
§
§
§
§
§
§
§
§

Civil Action No. 5:26-cv-551-OLG

**PETITIONER'S REPLY IN SUPPORT OF EMERGENCY HABEAS PETITION
AND OPPOSITION TO RESPONDENTS' MOTION TO DISMISS OR, IN THE
ALTERNATIVE, FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Respondents mischaracterize both this case and *Buenrostro-Mendez v. Bondi*, 2026 WL 323330 (5th Cir. Feb. 6, 2026). The Fifth Circuit explicitly held that constitutional challenges to prolonged detention under §1225(b)(2)(A) were "wholly speculative" in that case because the petitioners had been detained for only three and four months respectively. *Id.* at *10. The court noted it was "not confronted with" questions about "the outer bounds" of detention duration or circumstances where detention might become constitutionally problematic. *Id.*

Petitioner's case presents precisely what *Buenrostro* did not: concrete constitutional violations arising from the application of §1225(b)(2)(A) to a person who was previously released on recognizance, demonstrated perfect compliance with supervision for months, and now faces indefinite detention without any individualized determination of flight risk or danger.

This case does not challenge whether ICE has statutory authority under §1225(b)(2)(A) to detain certain categories of noncitizens. Rather, it challenges whether the Constitution permits

applying that statute to detain Petitioner indefinitely without any process whatsoever, despite overwhelming evidence that detention serves no legitimate government interest in her specific circumstances.

II. BUENROSTRO DID NOT FORECLOSE AS-APPLIED CONSTITUTIONAL CHALLENGES

The Fifth Circuit's decision in Buenrostro addressed facial statutory challenges and explicitly reserved judgment on as-applied constitutional claims. The court stated: "The petitioners claim the government has essentially detained them indefinitely. But any constitutional concerns about the prolonged detention of 'applicants for admission' under §1225(b)(2) are wholly speculative at this juncture given that the petitioners have only been detained for three and four months, respectively." *Id.* at *10 (emphasis added).

This language is critical. The Fifth Circuit did not hold that all constitutional challenges to detention under §1225(b)(2)(A) fail as a matter of law. It held only that the specific constitutional concerns raised by petitioners who had been detained for three to four months were "speculative" because those petitioners had not yet been detained long enough to present a concrete constitutional injury.

The court made clear it was addressing a narrow question: "whether mandatory detention under §1225(b)(2)(A) is facially unconstitutional when considered in the abstract." *Id.* at *10. It was not addressing what the Fifth Circuit called "empirical questions about the outer bounds of how the government should implement §1225(b)(2)." *Id.* Those questions, the court held, must "be tested through as-applied challenges." *Id.*

Petitioner brings precisely such an as-applied challenge. She does not contend that §1225(b)(2)(A) can never constitutionally be applied to anyone under any circumstances. She contends that applying mandatory indefinite detention to her specific circumstances violates the Fifth Amendment's guarantee of due process.

III. PETITIONER'S CIRCUMSTANCES PRESENT CONCRETE CONSTITUTIONAL VIOLATIONS

A. ICE's Own Prior Determination Demonstrates Petitioner Presents No Flight Risk or Danger

The most fundamental problem with Petitioner's detention is that the government itself previously determined she warranted release. On November 11, 2022, ICE exercised discretionary authority and released her from custody into the U.S.. This was not a ministerial act or clerical oversight. It reflected ICE's considered judgment, based on individualized assessment of Petitioner's circumstances, that she neither posed a flight risk nor presented a danger to the community.

Petitioner then proved ICE's initial judgment correct. For months, she complied perfectly with every condition ICE imposed. She appeared at 100% of scheduled check-ins. She appeared at 100% of immigration court hearings. She maintained continuous employment and stable residence. She had zero violations of any kind.

This record demolishes any conceivable claim that Petitioner's continued detention serves the only constitutionally permissible purposes of civil detention: preventing flight or protecting public safety. *United States v. Salerno*, 481 U.S. 739, 748 (1987). When the government's own

contemporaneous determination and the individual's subsequent conduct both establish that detention serves neither purpose, continued detention cannot satisfy constitutional scrutiny.

B. The Constitutional Violation Is Concrete, Not Speculative

Petitioner faces circumstances that make the constitutional violation immediate and concrete:

First, Petitioner has already been detained for nearly four months following her re-detention, with no end in sight to her removal proceedings.

Second, and more critically, Petitioner is being re-detained under a different statutory framework solely because of a policy change—not because of any change in her individual circumstances. She was released under §1226(a), proved through perfect compliance that she presented no risk, and is now being subjected to mandatory detention under §1225(b)(2)(A) despite her proven track record.

Third, Petitioner's detention is truly indefinite. Unlike criminal pre-trial detention, which is bounded by speedy trial requirements and trial dates, or post-removal detention, which is bounded by the 90-day removal period addressed in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), detention under §1225(b)(2)(A) continues for however long removal proceedings take. Those proceedings routinely extend 9-24 months or longer, particularly for cases involving applications for relief and appeals to the Board of Immigration Appeals.

Fourth, Petitioner cannot secure her release through any process whatsoever. There is no hearing she can request, no showing she can make, no evidence she can present that would allow a neutral decision-maker to order her release. The statute provides for purely categorical detention without any individualized process.

These circumstances make Petitioner's constitutional claim the opposite of speculative. The injury is occurring daily, and it will continue indefinitely absent this Court's intervention.

C. Prolonged Detention Without Individualized Determination Violates Substantive Due Process

The Supreme Court has consistently held that indefinite or prolonged civil detention raises "serious constitutional concerns." *Zadvydas*, 533 U.S. at 690. To avoid these concerns, the Court has "read an implicit limitation" into immigration detention statutes requiring individualized determinations and temporal limits. *Id.* at 689.

The Court in *Zadvydas* was addressing post-removal-order detention under §1231. But the constitutional principle it articulated applies with even greater force to pre-removal detention under §1225(b)(2)(A). If the Constitution imposes limits on detention after a noncitizen has received a final order of removal and exhausted all appeals, it surely imposes limits on detention during the pendency of removal proceedings when the noncitizen is actively pursuing relief.

The Supreme Court identified six months as a "presumptively reasonable period" for immigration detention. *Id.* at 701. Petitioner has been detained for four months and faces continued detention for an indeterminate additional period. More importantly, she faces indefinite detention without any opportunity to demonstrate that continued detention serves no legitimate purpose.

Respondents cannot identify any case in which the Supreme Court or Fifth Circuit has upheld indefinite civil detention, without any individualized hearing, of a person who has proven through months of perfect compliance that she presents no flight risk or danger. That is because no such case exists. The Constitution does not permit it.

D. Complete Deprivation of Process Violates Procedural Due Process

Even if some period of mandatory detention were constitutionally permissible, the complete absence of any process violates the Fifth Amendment. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), courts balance three factors: the private interest at stake, the risk of erroneous deprivation, and the government's interest.

Each factor weighs overwhelmingly in favor of providing process:

First, Petitioner's liberty interest is among the most fundamental protected by the Constitution. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.").

Second, the risk of erroneous deprivation here is not merely substantial, it is total. Respondents have made zero individualized determination about Petitioner. The detention is purely categorical, based solely on her legal classification, without any consideration of her individual circumstances, ties, compliance history, or lack of flight risk. A hearing before a neutral decision-maker would dramatically reduce this risk.

Third, the government's interests, preventing flight and protecting public safety, are not served by detaining someone who has proven through years of compliance that detention is unnecessary. Petitioner's perfect compliance history directly contradicts any claim that detention serves the government's interests.

At minimum, due process requires notice of the reasons for continued detention, an opportunity to present evidence that Petitioner is neither a flight risk nor a danger to the community, a hearing before a neutral decision-maker, and authority in that decision-maker to order release on bond or conditions if Petitioner meets her burden.

Respondents have provided none of these protections. This complete deprivation of process violates the Fifth Amendment.

E. Arbitrary Government Action Violates Due Process

The Due Process Clause prohibits arbitrary government action. *County of Sacramento v. Lewis*, 523 U.S. 833, 845-46 (1998). Respondents' decision to re-detain Petitioner under a different statutory authority, based solely on policy change rather than any change in her individual circumstances, constitutes arbitrary action.

ICE made a formal determination to release Petitioner under §1226(a). Petitioner reasonably relied on that determination by complying with every condition for months. ICE monitored her compliance and confirmed through her conduct that its initial decision was correct. Now, despite Petitioner's perfect compliance and despite no change in her individual circumstances, ICE has reversed course solely because of the government's reinterpretation of §1225(b)(2)(A) following *Buenrostro*.

Allowing agencies to switch legal theories mid-proceeding, after good-faith reliance and compliance, defeats reasonable expectations and punishes compliance. It makes supervised release meaningless if perfect compliance provides no protection against re-detention. This arbitrary reversal violates fundamental due process principles.

The Supreme Court has recognized that even where the government cannot ordinarily be estopped, an exception exists for "affirmative misconduct." *Heckler v. Community Health Servs.*, 467 U.S. 51, 60 (1984). All elements are met here: ICE made an affirmative representation through the Order of Release on Recognizance; Petitioner reasonably relied by maintaining perfect compliance for months; and allowing re-detention under a different statute despite perfect compliance works manifest injustice.

IV. RESPONDENTS' RELIANCE ON DISTRICT COURT DECISIONS IS MISPLACED

Respondents cite dozens of district court decisions from other circuits addressing statutory authority under §1225(b)(2)(A). These decisions are not binding on this Court and do not address the specific constitutional circumstances Petitioner presents.

More critically, none of these decisions addresses the scenario presented here: re-detention of a person previously released on recognizance who demonstrated perfect compliance with supervision. The constitutional concerns raised by categorical detention of someone who has already proven they present no risk are fundamentally different from concerns about initial detention at the border.

V. EXHAUSTION IS NOT REQUIRED FOR CONSTITUTIONAL CHALLENGES TO CUSTODY

Respondents contend Petitioner must exhaust administrative remedies by seeking review before the Board of Immigration Appeals. This argument fails for multiple reasons.

First, Petitioner challenges the constitutional application of §1225(b)(2)(A) to her circumstances. Such constitutional challenges to the fact of custody are cognizable in habeas corpus and do not require administrative exhaustion. The Supreme Court has never required exhaustion of constitutional challenges to unlawful detention. To the contrary, the writ of habeas corpus exists precisely to provide a judicial forum for challenges to unlawful custody.

Second, exhaustion would be futile. The BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), already holds that immigration judges lack authority to conduct bond hearings for persons detained under §1225(b)(2)(A). Requiring Petitioner to seek relief from the BIA that the BIA has already declared unavailable would serve no purpose.

Third, exhaustion would cause irreparable harm. Each day of unlawful detention causes constitutional injury that cannot be remedied through money damages. Requiring Petitioner to pursue months of administrative appeals while suffering ongoing constitutional violations would defeat the purpose of habeas corpus.

The cases Respondents cite are inapposite. Those cases address exhaustion of administrative remedies for discretionary bond determinations or other forms of administrative relief. They do not stand for the proposition that constitutional challenges to unlawful custody must be exhausted before federal courts may address them.

VI. DUE PROCESS PROTECTIONS EXTEND TO ALL PERSONS WITHIN THE UNITED STATES

Respondents suggest that Petitioner is entitled only to whatever process Congress chose to provide by statute, citing *Department of Homeland Security v. Thuraissigiam*, 140 S. Ct. 1959 (2020). This misreads both *Thuraissigiam* and established Fifth Circuit precedent.

Thuraissigiam addressed the Suspension Clause and whether an asylum seeker apprehended 25 yards from the border could challenge expedited removal through habeas corpus. The Court held that the limited statutory review Congress provided satisfied the Suspension Clause for noncitizens in that specific context. *Id.* at 1982.

But *Thuraissigiam* expressly reaffirmed that the Due Process Clause "applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 1980 (quoting *Zadvydas*, 533 U.S. at 693). The Court made clear that due process protections are not limited to whatever process Congress chooses to provide.

Moreover, even under Thuraissigiam's framework, Petitioner's case is readily distinguishable. She is not challenging expedited removal within 25 yards of the border with minimal U.S. contacts. She has been in the United States for nearly four years, has established substantial ties to this country, was previously released on recognizance by ICE itself, and demonstrated perfect compliance with supervision. These circumstances trigger full due process protections, not the attenuated protections applicable at the border.

The Fifth Circuit has consistently recognized that noncitizens in the interior of the United States are entitled to due process protections. The question is not whether due process applies, but what process is due. Under *Mathews v. Eldridge*, the answer is clear: at minimum, Petitioner is entitled to a hearing before a neutral decision-maker with authority to order release if she demonstrates she is neither a flight risk nor a danger.

VII. CONCLUSION

Buenrostro-Mendez addressed whether §1225(b)(2)(A)'s mandatory detention provision is facially unconstitutional in the abstract. It did not address, and explicitly reserved, questions about applying that statute to specific circumstances where detention becomes constitutionally problematic.

Petitioner's circumstances present precisely the as-applied challenge the Fifth Circuit anticipated. She is not "speculatively" detained—she has been detained for four months following her re-detention, with indefinite additional detention ahead. She is not someone whose flight risk or danger is unknown, she was released by ICE itself and proved through perfect compliance that she presents neither risk. She is not someone seeking a discretionary benefit. She

is seeking the fundamental constitutional protection against arbitrary, indefinite detention without any process.

The Constitution does not permit this. For all the reasons stated in Petitioner's original petition and this reply, the Court should grant the writ of habeas corpus.

Respectfully submitted,

/s/ Matthew R. Mendez

Matthew Mendez
Attorney for Petitioner
State Bar No. 24098092
6300 Gulfton Street
Houston, Texas 77081
Tel. (346) 205-4343
matt@mendezlawoffice.com

CERTIFICATE OF SERVICE

On February 12, 2026 Counsel for Plaintiff served a copy of the attached document via email, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Pam Bondi, in her Official Capacity as Attorney General of the United States, at usatxw.civil.immigration.notices@usdoj.gov.

/S/ Matthew Mendez
Matthew Mendez

02/12/2026
Date