

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

**Ezequiel Tomas Perez,
Petitioner,**

v.

**Kristi Noem, Secretary, U.S. Department of
Homeland Security, Pamela Bondi, U.S.
Attorney General, Todd M. Lyons, Acting
Director of Immigration and Customs
Enforcement; Miguel Vergara, Field Office
Director at U.S. Immigration & Customs
Enforcement; Rose Thompson, Warden of
the Karnes City Immigration Processing
Center,
Respondents**

Case No. 5:26-CV-00650-FB

**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE
TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner respectfully replies to the government Respondents' February 17th Response to Petition for Writ of Habeas Corpus (hereafter "Response"), Docket No.5, as follows:

BACKGROUND

Immigration detention in the United States operates at the intersection of statutory authority and constitutional limits. While the Immigration and Nationality Act (INA) provides the government with broad detention powers, these powers are not unlimited, and habeas corpus remains a critical mechanism to challenge unlawful confinement.

Recent decisions, including *Buenrostro-Mendez v. Bondi*, have narrowed certain statutory avenues for release, but they do not eliminate constitutional protections. This is the case at hand now before this Court.

Procedural due process-ensuring that detainees receive individualized review and meaningful hearings-continues to provide a viable path for challenging detention under 8 U.S.C. § 1225. This is the case at hand before the Court.

Respondent's argue that Petitioner is an arriving alien subject to mandatory detention under §1225 as an applicant for admission and that this comports with due process. However, Petitioner will point out to the Court that detention without an opportunity for a meaningful individualized custody determination is unlawful on both statutory grounds and constitutional due process grounds. The *Buenrostro-Mendez* decision did not reach the due process question, confining its analysis and holding to statutory interpretation. See generally *Buenrostro-Mendez*, 2026 WL 323330, at *1-10. The case was remanded to the district court, not for dismissal, but "for further proceedings consistent with this opinion." *Id.* at *10. Likely those further proceedings will address Mr. *Buenrostro-Mendez's* due process claim, which the district court declined to reach in the first instance. [*Buenrostro-Mendez* was consolidated with another case on appeal. 2026 WL 323330, at *3. In that case, the district court also declined to reach the due process claim, granting the petition solely on statutory grounds. *Covarrubias v. Vergara*, No. 25-cv-112, 2025 WL 2950097, at *5 n.3 (S.D. Tex. Oct. 8, 2025)]. Respondents' counsel stated it as such during oral argument when he stated: "We have 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](https://www.ca5.uscourts.gov/OralArgRecordings/25/25-20496_2-3-2026.mp3).

Petitioner, Mr. Ezequiel Tomas Perez has been residing in Center Point, Texas for over twenty-two years (since December 2003). He is a father of three United States Citizens. He is a husband and provider to his family. He was recently released on personal recognizance by the Respondents after determining that he was neither a danger to the community or a flight risk. Petitioner is *prima facie* eligible for cancellation of removal pending his removal proceedings.

Buenrostro does not address, and therefore does not eliminate, the argument that an immigrant detained under 8 U.S.C. § 1225 is entitled to a bond hearing at the beginning of their case, or to release, as a matter of constitutional law. Nor does it diminish the long-standing role of habeas corpus as a foundational mechanism for challenging unlawful executive detention. ‘

LEGAL ANALYSIS PROCEDURAL DUE PROCESS

Petitioner argues that his detention is unlawful on three grounds: as a violation of the Fifth Amendment’s Due Process Clause, as a violation of the Immigration and Nationality Act, and as a violation of the Administrative Procedure Act.

Petitioner argues that Respondents violated his Fifth Amendment right to procedural due process when they re-detained him more than two years after releasing him on personal recognizance.

i. The fact that Petitioner is detained pursuant to § 1225(b)(2) does not bar his procedural due process claim.

Rather than engaging with the procedural due process test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), Respondents argue that because Petitioner is detained pursuant to § 1225(b)(2) and the statute does not provide for a bond hearing, “there can be no procedural due process violation.” Petitioner does not agree as even assuming that § 1225(b)(2) properly applies to Petitioner, the provision is unconstitutional as applied to Petitioner. To support their argument that Petitioner, as an

“applicant for admission,” cannot be entitled to any process beyond that which § 1225(b)(2) provides, Respondents rely on *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). However, Petitioner will point out to the Court that in that case, the habeas petitioner was a noncitizen who was apprehended twenty-five yards from the border and placed into expedited removal proceedings pursuant to § 1225(a)(1). *Thuraissigiam*, 591 U.S. at 108-114. After immigration officials found that the noncitizen did not to have a “credible fear of persecution,” he filed a habeas petition alleging that the “immigration officials deprived him of ‘a meaningful opportunity to establish his claims’ and violated credible-fear procedures by failing to probe past his denial of the facts necessary for asylum.” *Id.* at 114. The Supreme Court rejected the noncitizen’s argument that his expedited removal proceeding violated due process, holding that the noncitizen “ha[d] only those rights regarding admission that Congress has provided by statute.” *Id.* at 140 (emphasis added). Respondents appear to contend that this holding deprives all “applicants for admission” of any constitutional due process rights whatsoever, including the right to challenge prolonged mandatory detention. As other courts addressing similar arguments have noted, *Thuraissigiam* dealt with a due process challenge to the sufficiency of § 1225’s process for expedited removal—not with a challenge to prolonged mandatory detention. See, e.g., *Lopez-Arevelo*, 801 F. Supp. 3d at 682 (noting that “[a]lthough *Thuraissigiam* certainly limited the scope of due process claims available to ‘applicants for admission,’ the decision’s sweeping statements must be read in context.”); *Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526, at *3 (W.D. Tex. Nov. 20, 2025). Petitioner argues that *Thuraissigiam* is not preclusive on the facts of this case because . . . Petitioner is not challenging his removal, but rather his detention during

removal.”) Here, Respondents opted to place Petitioner in formal removal proceedings under 8 U.S.C. § 1229a, not expedited removal proceedings. Petitioner is not challenging the constitutional adequacy of his removal proceedings, nor is he subject to a final order of removal. Instead, Petitioner’s Writ of Habeas Corpus has nothing at all to do with gaining admission to the United States or with the adequacy of the “rights regarding admission that Congress has provided by statute.” *Thuraissigiam*, 591 U.S. at 140. Rather, Petitioner invokes the due process clause solely to challenge the constitutionality of his continued detention without any determination that presents a risk of flight or danger to the community. In the present case, Petitioner reminds the Court that Respondents released Petitioner on an “Order of Release on Recognizance” noting the specific terms that he must comply with to satisfy Respondent’s terms, these included, “you must report for any hearings or interviews as directed by Immigration and Customs Enforcement or the Executive Office for Immigration Review. You must report in writing or person to Duty Officer .. you must not change your place of residence without first securing written permission form the officer listed above. You must not violate any local, State, or Federal laws or ordinances.” Petitioner complied with all terms of his release on recognizance.

Since *Thuraissigiam* “did not address whether noncitizens mandatorily detained under § 1225(b) have a constitutional due process right to challenge the fact or length of their detention,” Petitioner pleads with the Court to find that *Thuraissigiam* does not foreclose Petitioner’s due process claim. *Lopez-Arevelo*, 801 F. Supp. 3d at 682. At least one post-*Thuraissigiam* decision, affirming that the due process clause applies to noncitizens, even those who, like Petitioner, entered unlawfully without inspection. See,

e.g., *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“[T]he Due Process Clause applies to all ‘persons’” within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”); *Jennings v. Rodriguez*, 583 U.S. 281, 312-315 (2018) (noting that “[d]ue process is flexible . . . [and] calls for such procedural protections as the particular situation demands” after instructing the Court of Appeals to consider on remand whether prolonged mandatory detention under § 1225(b) violates the Due Process Clause) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)); *Trump v. J. G. G.*, 604 U.S. 670, 673 (2025) (noting that “[i]t is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings” (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993))). Petitioner urges the Court that *Thuraissigiam* does not bar all due process challenges brought by noncitizens classified as “applicants for admission” and that finds that his arbitrary detention is violative of the Due Process clause of the United States Constitution.

ii. Petitioner’s re-detention violates due process under *Mathews v.*

***Eldridge*.**

Petitioner urges the Court that re-detention, without a showing of changed circumstances, violates due process under *Mathews v. Eldridge*. . “[T]o determine whether a civil detention violates a detainee’s due process rights, courts apply the three-part [balancing] test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).” *Lopez-Arevalo*, 801 F. Supp. 3d at 685 (quoting *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at*2 (W.D. Tex. Sept. 8, 2025)). Courts must consider the following factors:

First, the private interest that will be affected by the official action; second, 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 finally, 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. 319, 335 (1976).

Petitioner argues that here, the first Mathews factors weigh heavily in his favor as,

“‘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, 533 U.S. at 690; see also *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 from arbitrary governmental action”). During the more than twenty-two years in which Petitioner has resided in the United States, he has built a life here. He is employed and has immediate relatives who are United States Citizens, his children. Petitioner argues that he has a strong liberty interest in his freedom from detention. See *Lopez Miranda v. Flores*, No. EP-25- CV-584-KC, 2025 WL 3901908, at *3 (W.D. Tex. Dec. 10, 2025) (holding that “noncitizens acquire a protectable liberty interest when they spend years establishing a life in the interior of the United States, regardless of their citizenship status.”).

Petitioner’s liberty interest argument is further strengthened by the fact that, in September 2024, Respondents decided to release him from immigration detention on his own recognizance. “[T]he govern-ment’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). In the present case, Petitioner has complied with all the conditions of release on recognizance. Even assuming, arguendo, that Petitioner’s more twenty-two years of living and working in the United States were insufficient to create a cognizable liberty interest, Respondent’s provided Petitioner with a liberty interest when they released him from custody on his own recognizance in September 2024. It is well-established that once the government opts to

provide a liberty interest or property interest, it cannot arbitrarily revoke this benefit without due process of law. See *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974) (holding in the context of “good-time credits” for a prisoners that “a person’s liberty is equally protected [by the due process clause], even when the liberty itself is a... creation of the State.”); *Morrissey*, 408 U.S. at 482 (noting “that the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a ‘grievous loss’ on the parolee and often on others”); *Graham v. Richardson*, 403 U.S. 365, 374 (1971) (rejecting the concept that constitutional rights turn upon whether a governmental benefit is characterized as a “right” or as a “privilege”). Petitioner argues that like many other Petitioners in other courts, that a noncitizen who was previously released on a set of conditions has a strong liberty interest in avoiding re-detention. E.g., *Pinchi*, 792 F. Supp. 3d at 1032; *Lopez-Arevelo*, 801 F. Supp. 3d at 685-86.

Petitioner also argues that the second Mathews factor, the risk of erroneous deprivation, should also weigh in his favor. “The regulations authorizing ICE to release a noncitizen from custody require that the noncitizen ‘demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons’ and that the noncitizen is ‘likely to appear for any future proceeding.’” *Pinchi*, 792 F. Supp. 3d at 1032 (quoting 8 C.F.R. § 1236.1(c)(8)). Release on recognizance, bond or parole thus “reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). Absent some sort of pre-detention hearing to determine whether his circumstances have changed such that he now presents a danger or a flight risk when the government previously determined that he presented neither, the risk of erroneous deprivation of Petitioner’s liberty interest is obvious and detrimental. In the present case, Respondents do not

contend that Petitioner violated his conditions of release or otherwise presents a danger or a flight risk. Instead, Respondents rely solely on the government's change in policy to justify his re-detention, as Respondents rely on the recent Fifth Circuit Court of Appeals findings in *Buenrostro v. Bondi* and the application of §1225 applying to noncitizens present in the United States. This does not diminish the Petitioners positioning considering the Mathews factors.

Under the third Mathews factor, even a weighty private interest must be balanced against the government's interest, "including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Mathews, 424 U.S. at 335. Respondents, "of course, have a generalized interest in ensuring noncitizens appear for their removal hearings and do not pose a risk to the communities in which they live." Zafra, 2025 WL 3239526, at *4. But this interest is not served by summarily re-detaining noncitizen "applicants for admission" whom the government previously determined were not flight risks or dangers to the community without a showing of changed circumstances. Indeed, given the high costs of detention, the fiscal and administrative burdens of providing noncitizens in these circumstances with some form of hearing pales in comparison with the burdens of re-detaining thousands of noncitizens who were previously released on parole or recognizance. The administrative burdens of providing a pre-detention hearing are not substantially greater than those associated with providing a post-detention hearing at which the IJ denies bond for lack of jurisdiction. In other words, the post-detention process Respondents actually provided Petitioner presents roughly the same administrative burden as would a pre-detention hearing, while creating a significantly higher risk of erroneous deprivation. Thus, the Petitioner pleads with the Court that again this factor favors his position.

All persons within the United States possess a cognizable, protectable liberty interest in freedom from physical restraint in the most basic constitutional sense, and habeas corpus remains the fundamental instrument for safeguarding that liberty by ensuring immigration detention is not arbitrary, unlawful, or inconsistent with due process. In line with this principle, multiple federal courts in the Fifth Circuit have granted habeas relief on procedural due process grounds notwithstanding the statutory limitations addressed in *Buenrostro*. Individuals who have been released from custody gain a protected liberty interest in remaining free from custody, and ICE must show materially changed circumstances to justify redetention. See e.g. *Matter of Sugay*, 17 I&N at 640, *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal 2019), *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025) (“[Once] released from immigration custody, noncitizens acquire ‘a protectable liberty interest in remaining out of custody on bond,’”); *Singh*, 2025 WL 1918679, at *6 (“Furthermore, the Supreme Court has held that, even when a statute authorizes revocation of an individual’s freedom, the individual may retain a protected liberty interest under the Due Process Clause.”). These factors all favor a determination that the Petitioner is being held without due process of law. The Respondents re-detention of Petitioner after Respondent’s released him on his recognizance in September 2024 violate his liberty interest. Respondent’s did not provide any type of prior notice, any showing of changed circumstances, or a meaningful opportunity to contest his re-detention and simply arbitrarily detained Petitioner on January 20, 2026 thereby violating the Fifth Amendment’s Due Process Clause of the United States Constitution.

Violation of the Accardi Doctrine

Government agencies are required to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *United States v. Heffner*, 420 F. 2d 809, 811

(4th Cir. 1969) (“An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its actions cannot stand and courts will strike it down.”). A violation of the Accardi doctrine may itself constitute a violation of the Fifth Amendment Due Process Clause, particularly when liberty is at stake. See e.g. *Sering Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160 (W.D. N.Y. 2025) (citing *Rombot v. Souza*, 296 F. Supp 3d 383, 388 (D. Mass. 2017))

Private Interest

“‘The interest in being free from physical detention’ is ‘the most elemental of liberty interests.’” *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Federal courts in Texas have found that noncitizens have a protected liberty interest in their freedom, regardless of citizenship status, when they 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.”). This is the case for this Petitioner as well, as he has lived and worked in the interior of the United States (in Center Point, Texas) for more than twenty-two years since he entered the United States.

Government's Interest

Regardless of the government's purported interest in enforcing its interpretation of the immigration detention statutes, a habeas petitioner's "constitutional interest in his liberty exists above and apart from the INA." *Rojas*, 2025 WL 3038262 at *4 (citing *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) ("[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.")). Further, while the government "has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community," such interest "would be squarely addressed through a bond hearing." *Id.* (citing *Martinez v. Noem*, 2025 WL 2598379 at *4 (W.D. Tex. Sep. 8, 2025)). These are the same consideration that Respondents make when deciding whether to allow a noncitizen to be release from custody on personal recognizance. In the instant case, Respondent's made this assessment in September 2024 and granted Petitioner release on recognizance.

Fifth Circuit Precedent on Procedural Due Process

Federal courts in the Fifth Circuit have repeatedly granted release on procedural due process grounds. Even after the recent Fifth Circuit precedent in *Buenrostro-Mendez v. Bondi*, Judges in this circuit have granted Writ of Habeas Corpus Petitions in recognizing the noncitizen's procedural due process rights. *Hassen v. Noem*, 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026) and *Clemente Ceballos v. Garite*, 3:26-cv-00312-DB (W.D. Tex. Feb 10, 2026); *Gomez Molina v. Noem*, 26-cv-00476 (W.D. Tex. Feb 24, 2026); and *Alvarez-Rico v. Noem*, 4:26-CV-00729 (S.D. Tex. Feb 24, 2026). These cases are also in the fifth circuit and are post-Buenrostro case and applicable to the present case.. Petitioner is currently urging this Court to make similar determinations, findings, and orders: that of weighing his more than twenty-two years in the

United States, as he lived and worked in Texas, carrying out his day-to-day affairs clearly establishing a protected liberty interest of freedom and complying with Respondent's conditions of release such that the arbitrary re-detention on January 20, 2026 was violative of his due process rights as well as entailed racial profiling as he was informed by the ICE officers that he was stopped "because he looked like an immigrant." Due to a change in government policy and an interim memo issued by Respondents, the government actors detained Petitioner on January 20, 2026.

Many other cases in the various Districts of Texas also recognize noncitizen's due process rights in granting release to Petitioners' Writ of Habeas Corpus Petitions. See *Santiago v. Noem*, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025), *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025), *Parada-Hernandez v. Johnson*, 2025 WL 3465958 (N.D. Tex. Oct. 29, 2025), *report and recommendation adopted*, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025) *Rojas v. ; Noem*, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025); *De Leon Hernandez v. Bondi*, 2025 WL 3217037 (W.D. La. Nov. 18, 2025); *Chinchilla v. De Anda-Ybarra*, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025); *Vieira v. De Anda-Ybarra*, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *Cruz-Reyes v. Bondi*, (S.D. Tex. Feb. 3, 2026); *Singh v. Taylor*, 2026 WL 360913 (W.D. Tex. Feb. 9, 2026); *Aguila v. Warden, ERO El Paso Camp East Montana*, (W.D. Tex. Feb. 9, 2026); *Gomez Molina v. Noem*, (W.D. Tex. Feb. 24, 2026); *Alvarez-Rico v. Noem*, (S.D. Tex. Feb. 24, 2026).

Petitioner notes that this Court can still grant relief, even after acknowledging the Fifth Circuit's precedential decision in *Buenrostro-Mendez v. Bondi* as this case "does not change the case's outcome on procedural due process grounds." The El Paso Division previously stated,

“Buenrostro-Mendez has no bearing on this Court’s determination of whether [a habeas petitioner] is being detained in violation of her constitutional right to procedural due process.” *Marceau v. Noem*, No. 3:26-cv-237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026). At least one other court in the El Paso Division has held the same, granting an immigration detainee’s habeas claim days after the decision in *Buenrostro-Mendez*. *Hassen v. Noem*, No. 3:26-cv-48-DB, ECF No. 8 at *4 n.1 (W.D. Tex. Feb. 9, 2026), (“*Buenrostro-Mendez* does not change this case’s outcome on procedural due process grounds.”). In a very recent decision in the Southern District of Texas, Houston Division, the Court granted the Habeas Corpus and ordered Respondents to release Petitioner within forty-eight hours due to the violations of due process in almost identical circumstances wherein the Petitioner was arbitrarily detained on December 1, 2025 after having been previously (four years prior) released by Respondent’s on personal recognizance. *Alvarez-Rico v. Noem*, (S.D. Tex. Feb. 24, 2026). The present case before the Court is almost identical to the facts of the *Alvarez-Rico v. Noem* case as both Petitioner were released by Respondent’s on personal recognizance, only that Petitioner has been in the United States for twenty-two years, not four like the *Alvarez-Rico* Petitioner. Petitioner urges the Court to follow the determinations made by the Court in the Southern District of Texas on case that was decided on February 25, 2026, the same day that this reply is being submitted.

Additionally, numerous immigration decisions finding due process violations in this District have been based on the *Mathews v. Eldridge* test and principles of procedural due process, not on *Zadvydas*. See, e.g., *Martinez v. Noem*, No. 3:25-cv-430-KC, 2025 WL 2965859, at *3-5 (W.D. Tex. Oct. 21, 2025); *Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 WL 2792588, at *10-13 (W.D. Tex. Oct. 2, 2025); *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 685-87 (W.D.

Tex. 2025). As such, Petitioners argue that Buenrostro-Mendez does not preclude Petitioner's procedural due process claim.

Preserving the Statutory Claim

Petitioner preserves his position of continuing to stand by the position that his immigration case is governed by 8 U.S.C. § 1226. Thereby Petitioner respectfully rejects the Fifth Circuit Courts determination that mandatory detention applies in his case. Petitioner raises this statutory argument rejected by *Buenrostro* in order to preserve that argument should future litigation in that case have an impact on the statutory issue in his case. Given that the issue is pending before various courts of appeals, there is a possibility that either the en banc Fifth Circuit or the Supreme Court may address the issue and stay or reject the panel's conclusion. Accordingly, Petitioner raises this statutory issue to preserve the statutory argument as the government has misinterpreted the statute, but Petitioner expressly acknowledge that *Buenrostro* adversely decided the issue, and Petitioner only raises this argument solely to preserve further review.

Conclusion

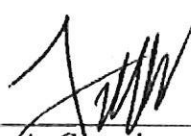
Petitioner argues that Respondents' action of re-detention of Petitioner without a pre-detention showing (or even allegation) of a change in his circumstances violated Petitioner's procedural due process rights, and that the Court must now determine the appropriate remedy. Courts addressing similar circumstances have ordered various remedies, including a § 1226(a) bond hearing before an IJ, a bond hearing at which the government bears the burden of proof, and immediate release from custody. E.g., *Zafra*, 2025 WL 3239526, at *5 (ordering a prompt bond hearing at which "the government shall bear the burden of justifying Petitioner's continued

detention during the pendency of his removal proceedings by clear and convincing evidence”); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 499 (S.D.N.Y. 2025) (ordering immediate release from custody after determining that the petitioner’s continued detention violated procedural due process).

Under the facts of the present case, the Petitioner requests that the Court find that the proper remedy for the violation of Petitioner’s due process rights is immediate release from custody under the conditions of his previous release on recognizance. Respondents previously determined that Petitioner was neither a flight risk nor a danger to the community pursuant to 8 C.F.R. § 1236.1(c)(8). There is no indication that the circumstances that led to this conclusion have changed in the years since Respondents released Petitioner from custody in September 2024, and Petitioner has complied with all the conditions of his release. Despite this compliance Petitioner has been unlawfully detained without bond for nearly thirty-five days. These circumstances are similar to cases in which courts have found a due process violation where ICE failed to follow its own procedures prior to re-detaining a noncitizen who was previously released on an Order of Supervision pursuant to 8 C.F.R. § 241.13. In those cases, courts in Texas, have ordered immediate release from custody. See *Ahmed v. Tate*, No. 4:25-CV-05639 (S.D. Tex. Dec. 15, 2025) (Ellison, J.); *Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692 (S.D. Tex. Oct. 16, 2025). Given the weight of the liberty interests at stake and the fact that a custody determination already occurred, the Petitioner pleads that the Court concludes that the same remedy is appropriate here. See *J.U. v. Maldonado*, 805 F. Supp. 3d 482, 498 (E.D.N.Y. 2025) (ordering immediate release where the petitioner was re-detained “with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond”) *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 497 (S.D.N.Y. 2025) (“Indeed, given

the nature of the constitutional violation [petitioner] sustained here—i.e., Respondents’ failure to conduct any kind of individualized assessment before [re-]detaining him—any post-deprivation review by an immigration judge would be inadequate.”). As such, Petitioner respectfully requests that this Court grants his writ of habeas corpus by ordering Respondent’s to release Petitioner within 48 hours pursuant to the terms of his release on recognizance, and order that Respondents may not re-detain Petitioner during the pendency of his removal proceedings absent a pre-detention hearing before an IJ at which the government demonstrates, by clear and convincing evidence, that he is a flight risk or a danger to the community or has violated the conditions of his release.

Respectfully Submitted,



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02/25/2026

Date

Attorney for Petitioner

CERIFICATE OF SERVICE

I certify that on today’s date, February 25, 2026, I filed the above of Petitioner’s Reply to Respondents’ Response to Petition for Writ of Habeas Corpus by using the Courts CM/ECF system, which will automatically send a notice of electronic filing to Defendant’s counsel.

/s/ Leticia Gonzalez
Leticia Gonzalez