

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

FILED

FEB 24 2026

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY *Pen*
DEPUTY CLERK

DIEGO ALEJANDRO FREITES
VILLALOBOS,
Petitioner,

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security, et al.;
TODD LYONS, in his official capacity as
Acting Director of U.S. Immigration and
Customs Enforcement;
Jose Rodriguez, Jr., Field Office Director, San
Antonio Field Office, United States
Immigration and Customs Enforcement;
FACILITY ADMINISTRATOR, SOUTH
TEXAS ICE PROCESSING CENTER
Respondents.

Civil Action No. 5:26-cv-00638-JKP

Immigration No. A



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

1. Petitioner Diego Alejandro Freites Villalobos respectfully submits this Reply to Respondents' Response to his Petition for Writ of Habeas Corpus under 28 U.S.C. §2241.
2. Respondents contend that Petitioner is subject to mandatory detention under 8 U.S.C. §1225(b), relying principally on the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, ___ F.4th ___ (5th Cir. 2026). Petitioner does not dispute that *Buenrostro* is binding precedent where §1225(b) properly applies. The question presented here, however, is whether §1225(b) governs this case at all.

3. For the reasons below, Petitioner respectfully submits that his detention is governed by 8 U.S.C. §1226(a), not §1225(b). In the alternative, if the Court concludes that Buenrostro controls, constitutional considerations require at minimum an individualized bond hearing.

I. PETITIONER'S STATUTORY POSTURE DIFFERS FROM THAT IN BUENROSTRO

4. The Immigration and Nationality Act establishes distinct detention schemes:
 - a. 8 U.S.C. §1225(b) governs applicants for admission.
 - b. 8 U.S.C. §1226(a) governs arrest and detention pending removal proceedings under § 240.
5. The Supreme Court has recognized that these are separate statutory frameworks. *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018).
6. This case does not ask the Court to narrow *Buenrostro*. It asks a more basic question: what statutory provision was triggered by Petitioner's arrest?
 - a. §1225(b) applies when an individual is seeking admission.
 - b. §1226(a) applies when an individual already present is arrested pending removal proceedings.
7. The statutory trigger is factual, not discretionary. The Government's characterization does not determine the applicable statutory authority. The underlying posture does.
8. Because §1225(b) mandates detention only for a specific statutory category, the Government bears the burden of demonstrating that Petitioner falls within that category. Ambiguity regarding classification must be resolved in favor of the statute that preserves liberty, particularly in habeas proceedings.
9. Petitioner's factual posture is materially different from that of an applicant for admission:
 - He was living in the interior of the United States.
 - He had previously been released under ICE supervision.
 - He complied with ICE reporting requirements.
 - He appeared voluntarily at a scheduled ICE check-in.
 - He was arrested during that appointment.
 - He was placed in full removal proceedings under § 240.

10. Petitioner was not seeking entry into the United States. He was not apprehended at or near the border. He was not placed in expedited removal.
11. The record reflects that DHS initially exercised custody authority consistent with §236(a), including supervision and discretionary release. (See Verified Petition.)
12. Arrest during compliance with supervision does not transform a supervised interior resident into an applicant for admission.
13. Under the statutory structure, arrest and detention pending §240 proceedings are governed by §1226(a). Nothing in Buenrostro addressed a noncitizen arrested at a compliance appointment while residing in the interior under supervision.
14. Accordingly, Petitioner respectfully submits that this case falls within the §1226(a) framework.

II. THE GOVERNMENT'S OWN COURSE OF CONDUCT CONFIRMS THAT §1226(a) GOVERNS

15. The Government's present position cannot be reconciled with its own prior exercise of custody authority in this case.
16. Following Petitioner's initial encounter with DHS, the agency issued a Form I-220 (Order of Release on Recognizance) and permitted him to remain in the community subject to supervision and reporting requirements. DHS also issued custody documentation reflecting discretionary release and supervision.
17. A Form I-220 is issued pursuant to discretionary detention authority under INA §236(a), codified at 8 U.S.C. §1226(a). That statute authorizes arrest and continued detention pending removal proceedings but expressly permits release on bond or conditional parole.

18. By issuing the I-220 and placing Petitioner under reporting supervision, DHS exercised the discretionary authority contemplated by §1226(a).
19. Mandatory detention under §1225(b), by contrast, does not authorize discretionary release on recognizance followed by years of supervised reporting. If §1225(b) had governed Petitioner's custody from the outset, DHS would not have possessed authority to release him on an I-220 in the first instance.
20. §1225(b) does not authorize release on recognizance pending removal proceedings. The issuance of Form I-220 is therefore not merely discretionary conduct — it is a statutory indicator of the detention authority invoked.
21. Petitioner complied with all reporting obligations. He appeared voluntarily at a scheduled ICE appointment and was arrested during that compliance visit. That sequence of events reflects the continuation of discretionary custody authority, not the initiation of admission-based detention.
22. The Government cannot treat §1225(b) as governing now while having previously exercised §1226(a) authority in the same case. Statutory detention authority is determined by the legal basis for custody, not by subsequent recharacterization.
23. The Government's position effectively applies §1225(b) retroactively to a period during which DHS itself treated Petitioner as eligible for discretionary release. The INA does not authorize the Executive to convert previously exercised discretionary custody authority into mandatory detention based on a later reinterpretation of statutory posture.
24. The issuance of the I-220, the period of supervision, and the arrest at a reporting appointment confirm that Petitioner's detention arises from §1226(a).

25. §1225(b) operates at the threshold of admission. §1226(a) operates after the Government has chosen to place a noncitizen into full removal proceedings under §240. Once DHS elects the §240 framework, custody is governed by §1226(a) unless Congress has expressly provided otherwise. No such express provision applies here.

III. PETITIONER'S TPS STATUS FURTHER DISTINGUISHES THIS CASE

26. Petitioner has been granted Temporary Protected Status ("TPS") under 8 U.S.C. §1254a. (See Verified Petition.)

27. The TPS statute provides that during the designation period:

- a. The beneficiary "shall not be removed from the United States," §1254a(a)(1)(A);
- b. The beneficiary is authorized to work, §1254a(a)(1)(B);
- c. The beneficiary is considered as maintaining lawful status for specified purposes, §1254a(f).

28. TPS is a statutory protection enacted by Congress to permit continued presence during designated humanitarian crises. A TPS beneficiary who has been residing in the United States and complying with supervision does not fit neatly within the concept of an "applicant for admission."

29. Buenrostro did not address the interaction between TPS and detention authority. Nor did it consider whether a TPS beneficiary arrested in the interior at a scheduled reporting appointment may be treated as an applicant for admission for purposes of §1225(b).

30. Reading §1225(b) to categorically apply to TPS beneficiaries placed in §240 proceedings risks creating tension within the statutory scheme. The INA should be interpreted, where possible, in a manner that harmonizes its provisions. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000).

31. Applying §1226(a) here preserves both the detention framework and Congress's TPS structure.

IV. TPS STATUS INTERRUPTS THE ADMISSION FRAMEWORK

32. §1225(b) presumes that removal is a legally available outcome.

33. TPS, by statute, suspends removability during the designation period. See 8 U.S.C. §1254a(a)(1)(A).

34. Where removal is statutorily suspended, detention predicated on admission screening becomes conceptually misaligned with the statutory scheme.

35. Even if TPS may be terminated, detention authority must be assessed based on the individual's current statutory posture — not on a hypothetical future termination.

V. HABEAS REVIEW REMAINS AVAILABLE TO DETERMINE STATUTORY DETENTION AUTHORITY

36. This petition does not ask the Court to disregard binding Fifth Circuit precedent. It asks the Court to determine which detention statute applies.

37. The Fifth Circuit has recognized that habeas review is available to assess statutory detention authority. See *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006). Determining whether §1225(b) or §1226(a) governs is a legal question appropriate for habeas review.

38. If §1226(a) applies, Petitioner is entitled to an individualized custody redetermination hearing.

VI. ALTERNATIVELY, IF BUENROSTRO CONTROLS, CONSTITUTIONAL LIMITS REQUIRE INDIVIDUALIZED REVIEW

39. If the Court concludes that §1225(b) governs under Buenrostro, Petitioner respectfully submits that constitutional considerations require individualized review of his continued detention.

40. Immigration detention is civil and must bear a reasonable relation to its regulatory purpose. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

41. Petitioner:

- Has no criminal history.
- Has strong community ties.
- Previously complied with supervision.
- Was arrested while appearing for a scheduled ICE appointment.
- Has been granted TPS.

42. While Buenrostro addresses statutory interpretation, it does not eliminate constitutional constraints on civil detention.

43. The Supreme Court has repeatedly emphasized that prolonged civil detention without adequate procedural safeguards raises serious Fifth Amendment concerns. See *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510 (2003) (upholding limited mandatory detention in narrow criminal contexts).

44. Even if §1225(b) applies as a matter of statutory interpretation, the Due Process Clause imposes independent limits. The Supreme Court in *Demore* upheld mandatory detention only in the narrow context of criminal aliens and emphasized the limited duration of such detention. 538 U.S. at 529–31. Petitioner does not fall within that category. Nor is his detention tied to criminal conduct or national security concerns.

45. Where detention becomes prolonged and individualized review is unavailable, constitutional concerns intensify. *Zadvydas*, 533 U.S. at 690. At minimum, due process

requires a meaningful opportunity to demonstrate that continued detention is not necessary to serve the statute's regulatory purpose.

46. Petitioner's detention is no longer tied to an initial admission determination. He was previously deemed suitable for community supervision. Continued detention, absent individualized review, departs from the limited and temporary detention framework recognized in *Demore v. Kim*, 538 U.S. 510 (2003).

VII. CONCLUSION

47. Petitioner respectfully submits that:

- a. His arrest at a scheduled ICE reporting appointment,
- b. His placement in §240 removal proceedings, and
- c. His grant of Temporary Protected Status place him within the detention framework of 8 U.S.C. §1226(a), not §1225(b).

48. In the alternative, if the Court concludes that Buenrostro-Mendez controls and that §1225(b) applies, constitutional principles require that Petitioner receive an individualized bond hearing.

VIII. RELIEF REQUESTED

49. Petitioner respectfully requests that this Court:

- a. Grant the Petition for Writ of Habeas Corpus;
- b. Order Respondents to provide Petitioner with an individualized bond hearing under 8 U.S.C. §1226(a) within seven (7) days;
- c. At that hearing, require that the Government bear the burden of proving by clear and convincing evidence that continued detention is justified under the Constitution and is narrowly tailored to a lawful regulatory purpose;
- d. Require that the Immigration Judge consider conditions of release as an alternative to continued detention;

- e. Require that any denial of bond be supported by specific written findings based on record evidence; and
- f. Order Petitioner's release if such a hearing is not conducted within the time prescribed.

Respectfully submitted,

Diego Freites

Diego Alejandro Freites Villalobos

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Petitioner, Pro Se

IX. VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct.

Date: 02/20/2026

Signature: *Diego Freites*

Diego Alejandro Freites Villalobos

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Petitioner, Pro Se

X. CERTIFICATE OF SERVICE

I served a copy of the foregoing Reply to Respondents' Response to Petition for Writ of Habeas

Corpus by U.S. Mail to the following addresses:

Date: 02/20/2026

Signature: Diago Freitas

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