

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

Edgar Alexander Rosales Urbina,
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-00677-XR

PETITIONER'S REPLY TO RESPONSE IN OPPOSITION

Petitioner respectfully replies to the government Respondents' February 24th Response to Petition for Writ of Habeas Corpus (hereafter "Response"), Docket No 7, 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.

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. Rosales Urbina, has been residing in San Antonio, Texas since October 26, 2024. Petitioner entered the United States lawfully under a parole and was given an I94 recording noting that his parole was valid until April 18, 2025. Petitioner is prima facie eligible for asylum as they are fleeing persecution in his country of origin, Venezuela. In allowing Petitioners to be released parole after his entry October 2024, Respondent’s made the determination that the Petitioner was neither a flight risk nor a danger to the community. There have been no changed circumstances since Respondent’s determination. In fact, the only reason that Petitioners are in an immigration detention center is due to a policy change from the Respondent’s. Petitioner has not violated any of the terms of release as he was granted a parole

into the United States. Respondent's detention of Petitioners on January 11, 2026 was only because he was questioned about his immigration status at a traffic stop in which he was neither given a citation or had any type of traffic violation, but was informed by officers that he was stopped for "looking like an immigrant."

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. '

With due respect to the great volume of litigation work that the Respondents have seen as a direct result of their practice of detaining people in violation of the constitution, Respondent's response in opposition is non-responsive and cannot rebut the constitutional violations alleged. Respondent's response is a "choose your own adventure" argument that contains no direct facts about Petitioner, nor any reference to specific arguments made in the original habeas petition. In an effort to preserve the petitioner's rights and all arguments for appeal, this reply will address arguments as though they were correctly addressed.

Respondents' Non-Responsive, Standardized Opposition Fails as a Matter of Law

Respondents openly concede that their opposition is not tailored to this Petitioner. Instead, they describe their filing as a "standardized response" submitted to "preserve legal issues" and to conserve resources given the "high volume of similar habeas litigation in this district." That admission is dispositive. Habeas corpus is an individualized inquiry into the legality of a particular person's detention. A generalized legal memorandum, untethered to the manner of Petitioner's arrest, parole history, his period of authorized stay, or his pending asylum application, cannot rebut the specific constitutional violations alleged here.

Where the government declines to contest petitioner-specific facts in a habeas proceeding, those facts are properly treated as undisputed. Respondents cannot avoid judicial review by ignoring the factual predicates of the Petition and retreating into generalized statutory exposition. The Court should evaluate the legality of Petitioner's detention based on the un rebutted record before it.

LEGAL ANALYSIS

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 Respondent's re-detained him more than a year and a half after releasing him on personal recognizance.

i. The fact that Petitioner is detained pursuant to § 1225(b)(2) does not bar their 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 his 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 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 their continued detention without any determination that presents a risk of flight or danger to the community. In the present case, Petitioners remind the Court that Respondents released Petitioner on a parole.

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 entered unlawfully without inspection. See, e.g., *Zadvvydas 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 Petitioner respectfully ask the Court to that find that their 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-Arevelo, 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 year and a half in which Petitioner has resided in the United States, he and his family have begun to build a life here. They are employed, have attended schooling, and have filed for asylum. 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, Respondents considered his detention in 2024 and evaluated both the flight risk and danger to community factors and determined that they were neither a flight risk nor a danger to the community and as such, allowed Petitioner to be released granting him a parole valid through April 2025. “[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 parole. Even assuming, *arguendo*, that Petitioner’s almost two years of living, and working in the San Antonio, Texas were insufficient to create a cognizable liberty interest, Respondent’s provided Petitioner with a liberty interest when they released them from custody on parole and granted him permission to be here. 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 their 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 their circumstances have changed such that they now presents a danger or a flight risk when the government previously determined that they 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 Petitioners violated any conditions of release or otherwise present a danger or a flight risk. Instead, Respondents rely solely on the government’s change in policy to justify Petitioners 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 based on "respondent [petitioner here] is an arriving alien and, thus, not eligible for a bond." The IJ issued this denial on January 27, 2026 without consider any changed circumstances or whether Petitioner was a flight risk or danger to the community. In other words, the post-detention process Respondents actually provided Petitioners 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 Petitioner is being held without due process of law. The Respondents re-detention of Petitioners after Respondent’s released him on a parole 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 their re-detention and simply arbitrary detained Petitioners on January 11, 2026 thereby violating the Fifth Amendment’s Due Process Clause of the United States Constitution.

**Respondents’ Failure to Conduct Any *Mathews v. Eldridge* Analysis Independently
Violates Due Process**

Respondents invoke *Mathews v. Eldridge*, 424 U.S. 319 (1976), but perform no balancing whatsoever. They do not analyze Petitioner’s liberty interest, the risk of erroneous deprivation, or the availability of less restrictive alternatives to detention. That omission is not incidental; it is the constitutional defect. Due process requires individualized assessment. A standardized brief that applies the same conclusory assertions to every detainee cannot satisfy

Mathews, which demands case-specific evaluation of whether existing procedures adequately protect against erroneous deprivation of liberty.

Here, the risk of error is substantial. Detention is imposed categorically, without a hearing, without individualized findings, and without any opportunity for Petitioner to contest the necessity of confinement. Respondents' refusal to engage in Mathews balancing underscores that Petitioner's detention is not the product of reasoned decision-making, but of categorical policy.

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 San Antonio, Texas) for almost 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 a parole. In the instant case, Respondent’s made this assessment in October 2024 and granted Petitioner’s parole

Fifth Circuit Precedent on Procedural Due Process

Federal courts in the Fifth Circuit have repeatedly granted release on procedural and constitutional 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 their almost two years in the United States, as he lived and worked in San Antonio, 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 11, 2026 was violative of his due process rights. Due to a change in government policy and an interim memo issued by Respondents, the government actors detained Petitioner on January 11, 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). A court in the El Paso Division of the Western District of Texas 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 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 Petitioners were released by Respondent's and Respondent's re-detained the noncitizen after a period of time of living in the interior of the United States with no changed circumstances.

Petitioner urges the Court to follow the determinations made by the Court in the Southern District of Texas in this case, as it is also in the Western District of Texas and was decided on February 25, 2026. In that case, the Judge found that the many violations of constitutional due process merited an immediate release of Petitioner. The Court ordered the following: “The Court therefore ORDERS that Petitioner be released from custody within 48 hours pursuant to the terms of his 2021 release order. 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. Respondents similarly may not subject Petitioner to additional conditions of release without showing why new conditions are necessary”. *Alvarez-Rico v. Noem*, (S.D. Tex. Feb. 24, 2026).

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.

Respondents’ Failure of Proof Requires Immediate Relief

Respondents bear the burden of justifying civil detention. They have not done so. Their failure to provide any individualized rationale leaves the Court with no lawful basis to defer, remand, or delay relief. Where detention is unsupported by individualized findings and insulated

from meaningful review, the Constitution requires intervention. The appropriate remedies are immediate release or, at minimum, a prompt bond hearing at which the government bears the burden of proving that continued detention is necessary.

Petitioners argue 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 parole. Respondents previously determined that Petitioners were 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 Petitioners from custody, and Petitioners have complied with all the conditions of their release. Despite this compliance, Petitioners have been unlawfully detained without bond for nearly two months. 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 Petitioners plead 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 their release on parole, and order that Respondents may not re-detain Petitioners during the pendency of their removal proceedings absent a pre-detention hearing before an IJ at which the government demonstrates, by clear and convincing evidence, that they are a flight risk or a danger to the community or Petitioners have violated the conditions of their release.

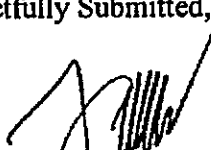
Respondents bear the burden of justifying civil immigration detention. They have not met that burden here. Their opposition expressly disclaims any attempt to engage with Petitioner’s individual circumstances, relying instead on a standardized memorandum untethered to the facts

of this case. As a result, Respondents do not dispute that Petitioner was released on parole, lived openly in the interior for an extended period with the government's authorization, filed an asylum application, and was arrested without any individualized determination that detention was necessary.

Civil detention must be the product of reasoned, individualized decision-making. Where the government offers no petitioner-specific justification, no procedural safeguards, and no available administrative remedy, continued detention violates the Fifth Amendment. This Court is not required to defer to a detention regime that is defended only in the abstract and unsupported by the record.

For these reasons, Petitioner respectfully requests that the Court grant the writ and order Petitioner's immediate release. In the alternative, Petitioner requests a prompt bond hearing before a neutral decision maker at which the government bears the burden of proving that continued detention is justified.

Respectfully Submitted,



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03/03/2026

Date

Attorney for Petitioner

CERIFICATE OF SERVICE

I certify that on today's date, March 3, 2026, I filed the above of Petitioner's Reply to Response in Opposition 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

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioners, Edgar Alexander Rosales Urbina, and submit this verification on their behalf. I hereby verify that the factual statements made in the foregoing PETITIONER'S REPLY TO RESPONSE IN OPPOSITION are true and correct to the best of my knowledge and belief.

Dated this 3rd day of March 2026.

By: /s/ Leticia Gonzalez

Leticia Gonzalez