UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Bayron Adonay Garcia Hernandez,

Petitioner,

v.

Pamela Bondi, et al,

Respondents

CASE NUMBER: 3:26-cv-318-KC

RESPONSE TO ORDER FOR SUPPLEMENTAL BRIEFING

The Court ordered supplemental briefing. Petitioner pleaded that Respondents did not arrest Petitioner "on a warrant issued by the Attorney General." *See* ECF No. 1 ¶ ¶ 19 and 25. Only Respondents have access to its records to demonstrate otherwise. Petitioner avers that this renders the detention unlawful and inconsistent with both sections 1226(a), which requires such a warrant, and 1225(b)(2)(A), which would only apply if he were "seeking admission" from outside the country as that term is defined at 8 U.S.C. § 1101(a)(13). This is why Petitioner requested immediate release. ECF No. 1 ¶¶ 20 and 32. *See, e.g.*, *Ahmed M. v. Bondi et al.*, 25-CV-4711 (ECT/SGE), 2026 WL 25627 (D. Minn. Jan. 5, 2026); *Chavez Avila v. Bondi*, No. 8:25CV729, 2026 WL 63328 (D. Neb. Jan. 8, 2026).

Buenrostro-Mendez v. Bondi, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026), seemingly made the existence of any administrative warrant immaterial to Petitioner's eligibility for bond under 8 U.S.C. § 1226(a). Whether or not such a warrant was issued, in the Fifth Circuit, 8 U.S.C. § 1225(b)(2)(A) governs Petitioner's detention. *Buenrostro-Mendez*, 2026 WL 323330, at *3. There is no statutory prerequisite that a warrant be issued. A bond hearing is nonetheless still necessary. *Buenrostro-Mendez is limited to a statutory construction question. Buenrostro-Mendez* did not address or consider whether the Fifth Amendment tolerates suddenly detaining

individuals who have been free within the United States for an extended period and denying them an opportunity to seek release from custody. Petitioner pleaded alternate theories of relief.

"The question at hand is not whether current agency guidance reflects a proper reading of the statutory schemes underlying pre-removal detention of noncitizens. 'The issue, instead, is whether those policies have been applied ... in an unconstitutional manner.' *Azalyar v. Raycraft*2026 WL 30741, at *4 (S.D. Ohio Jan. 2, 2026) (quoting *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923, at *7 (W.D. Tex. Oct. 21, 2025). Section 1225(b)(2)(A) is constitutionally deficient because it forecloses access to any hearing wherein Petitioner might challenge his arrest and ongoing detention. "'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." *Trump v. J.G.G.*, 604 U.S. 673 (2025). This is particularly true for individuals once released and then re-detained. "Respondents cannot re-classify, re-arrest, and detain Petitioner … without any process." *Blanco v. Bondi*, No. 5-25-CV-01412-FB-RBF, 2025 WL 3908488, at *4 (W.D. Tex. Dec. 30, 2025), report and recommendation adopted sub nom. *Betancourt Blanco v. Bondi*, No. SA-25-CV-01412-FB, 2026 WL 78204 (W.D. Tex. Jan. 9, 2026).

A hearing is necessary to acknowledge Petitioner's due process rights. "To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976)." *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025).

It is unassailable that Petitioner has a substantial liberty interest. "The interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Even if the statute proscribes Petitioner's mandatory detention, he still possesses "liberty interests created by the fact that the Petitioner[ ] in this case [was] released on

recognizance prior to the manifestation of this interpretation." *Hernandez-Fernandez*, 2025 WL 2976923, at *8. This is consistent with the longstanding principle that due process requires a pre-deprivation hearing before the revocation of parole. *See Young v. Harper*, 520 U.S. 143, 147–49 (1997). Just as parolees have a protected interest in their "continued liberty" once released from immigration custody, noncitizens acquire "a protectable liberty interest in remaining out of custody on bond." *Hernandez-Fernandez*, 2025 WL 2976923, at * 9. The longer a person is present in the United States free of restraint, the greater the liberty interest becomes.

Matter of Yajure Hurtado, 29 I. &. N. Dec. 216 (BIA 2025), prevents immigration courts from providing Petitioner with an "opportunity to contest the existence, nature, or significance of [any] supervision violations" or otherwise make an individualized assessment of the need to re-detain him." *Hernandez-Fernandez*, 2025 WL 2976923, at * 9. *Yajure Hurtado* requires the immigration court to find that a "lack authority to hear [Petitoner's] bond request." 29 I. & N. Dec. at 216. Petitioner "will continue to be erroneously deprived of his liberty without any forum to challenge his detention." *Hernandez-Fernandez*, 2025 WL 2976923, at * 9. "In terms of available alternatives and their probable benefits, agency decisionmakers regularly 'conduct[ ] individualized custody determinations ... consider[ing] flight risk and dangerousness.'" *Id.* (internal citation omitted); *see also* 8 C.F.R. §§ 236.1(c)(8); 1003.19(h)(3). Until recently, these bond hearings were afforded with regularity, so they pose no real burden on the government, and "[b]ecause such a proceeding would give [Petitioner] the opportunity to be heard and receive a meaningful assessment of whether he is dangerous or likely to abscond, it would greatly reduce the risk of an erroneous deprivation of his liberty." *Hernandez-Fernandez*, at * 9. This factor also weighs in Petitioner's favor.

While "Respondents have an interest in ensuring that Petitioner appears for his removal hearings and poses no danger to the community, … the decision to release [Petitioner] on his own recognizance three years ago, in and of itself, 'reflects a determination by the government that [he] is not a danger to the community or a flight risk.'" *Id.* (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd 905 F.3d 1137 (9th Cir. 2018). Moreover, "if such concerns exist, they would be squarely addressed if the Court were to grant the petition and order a bond hearing." *Id.* Thus, all three factors illustrate a due process violation.

DHS v. Thuraissigiam, 591 U.S. 103 (2020), does not foreclose the Court from granting this Petition for two reasons. First, *Thuraissigiam* "challenged the denial of his asylum claim, whereas [Petitioner] challenges his detention in immigration custody." *Lopez-Arevelo*, 2025 WL 2691828, at *8 (citing *Thuraissigiam*, 591 U.S. at 103). Moreover, Thuraissigiam "had already received his due process through the credible fear interview," *id.*, whereas Petitioner has received no process at all. Second, *Thuraissigiam* does not apply because Petitioner "was detained after years of presence in the United States, rather than on the threshold of initial entry." *Lopez-Arevelo*, 2025 WL 2691828, at *10. *Thuraissigiam* rested on the notion that "an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause" than those set by Congress. 591 U.S. at 107. But Petitioner was not at the threshold when he was detained, so "'it cannot be denied that [he] was 'already in the country.'" *Lopez-Arevelo*, 2025 WL 2691828, at *10. The Court therefore must grant this Petition. And because Petitioner "does not fit into the category of "noncitizens who had committed certain enumerated offenses," as discussed in *Demore v. Kim*, 538 U.S. 510 (2003), nor does he challenge the admission process itself, such as in *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), those cases are distinguishable in the context of" the matter before the Court. Azalyar v. Raycraft, 2026 WL 30741at *8.

Courts agree that ordering a hearing during which the government must establish either flight risk or danger is the appropriate recourse. *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668 (W.D. Tex. 2025); *Camacho-Guierrez v. Thompson et al.*, No. 5:25-CV-01876-MA, 2026 WL 195758 (W.D. Tex. Jan. 16, 2026); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *George v. Noem*, No. 3:25-CV-02935-S-BW, 2026 WL 30829 (N.D. Tex. Jan. 5, 2026); *Parada-Hernandez v. Johnson*, No. 3:25-CV-2729-K-BN, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025); *De Law Cruz Salmeron v. Olson*, No. 4:25-CV-198-RGJ, 2026 WL 324486 (W.D. Ky. Feb. 6, 2026); *Hernandez-Parrilla v. De Anda-Ybarra*, No. 2:25-CV-01224-MIS-KK, 2025 WL 3632769 (D.N.M. Dec. 15, 2025); *Guerra v. Noem*, No. 1:25-CV-1341, 2025 WL 3204289 (W.D. Mich. Nov. 17, 2025); *E.V. v. Raycraft*, No. 4:25-CV-2069, 2025 WL 3122837 (N.D. Ohio Nov. 7, 2025); *Azalyar v. Raycraft*, No. 1:25-CV-916, 2026 WL 30741 (S.D. Ohio Jan. 2, 2026); *Destino v. FCI Berlin, Warden*, No. 1:25-CV-374-SE-AJ, 2025 WL 4010424 (D.N.H. Dec. 24, 2025). This Court should too.

CONCLUSION

A bond hearing in which Respondents have the burden of proof by clear and convincing evidence is the appropriate remedy for this constitutional violation. The Court should grant this Petition and order Respondents to hold this hearing within three business days.

DATED: February 13, 2026

Respectfully submitted,

/s/ David Wilson

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