

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Jose Eduardo Marmolejo Hurtado,	§	
	§	Cause No.
<i>Petitioner,</i>	§	
	§	5:26-CV-684
<i>v.</i>	§	
	§	
PAMELA BONDI,	§	
United States Attorney General;	§	
	§	
KRISTI NOEM,	§	
Secretary of the United States Department	§	
of Homeland Security;	§	
	§	
TODD M. LYONS,	§	
Director of United States Immigration and	§	
Customs Enforcement;	§	
	§	
SYLVESTER ORTEGA	§	
Field Office Director for Detention and	§	
Removal, U.S. Immigration and Customs	§	
Enforcement,	§	
	§	
BOBBY THOMPSON	§	
Warden South Texas ICE Processing Center	§	
	§	
<i>Respondents.</i>	§	
	§	
	§	

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF
HABEAS CORPUS CONSIDERING RECENT FIFTH CIRCUIT PRECEDENT

BACKGROUND

Petitioner is a native and citizen of Mexico who entered the United States without inspection in about 2020. Despite his initial entry into the United States without permission, Mr. Marmolejo Hurtado has maintained a hardworking, honorable life. He has a United States Citizen Partner and the two share a life together with her five United States Citizen Children. He is currently detained at the South Texas ICE Processing Center. Dkt. No. 1 at para 25. He and his partner plan to pursue a family petition to normalize his status in the United States through a marriage-based family petition. Mr. Marmolejo Hurtado has his next scheduled master calendar hearing in his immigration. *See* Exh. 1, Automated Case Information from the Executive Office of Immigration Review.

ARGUMENT

The Fifth Circuit overruled this growing body of judicial analysis by holding that those who entered without inspection are applicants for admission and therefore subject to §1225(b)'s mandatory detention provisions—whether they are apprehended at the border or after a period of living in the country. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026). Importantly, *Buenrostro-Mendez* addressed only this narrow question of statutory construction, the opinion does not address due process challenges to the mandatory detention policy. *Id.*

I. Petitioner's Due Process Claim Is Independent of His Statutory Challenge and Warrants Habeas Relief

In light of this development, however, Petitioner wishes to highlight for this Court a number of decisions in which District Courts have granted habeas relief solely on grounds that due process requires an individualized bond hearing, in the cases of detained individuals who do not challenge §1225(b) as the basis for their detention. *See, e.g., Hernandez-Fernandez v. Lyons*, No. 5:25-CV-

00773-JKP, 2025 WL 2976923, at *7 (W.D. Tex. Oct. 21, 2025) (“Regardless, *Hernandez-Fernandez* challenges his ongoing detention on constitutional grounds, as a violation of due process. . . . Therefore, the Court need not consider whether the agency's new mandatory detention policies reflect a proper reading of the INA. The issue, instead, is whether those policies. have been applied to *Hernandez-Fernandez* in an unconstitutional manner.”); *Pineda Parada v. Rice*, No. 25-CV-1660, 2025 WL 3146250, at *3 (W.D. La. Nov. 4, 2025) (“He is seeking review by this court of a constitutional claim – due process – as he is being subjected to mandatory detention under § 1225(b).”); *Azalyar v. Raycraft*, No. 1:25-CV-916, 2026 WL 30741, at *2 (S.D. Ohio Jan. 2, 2026) (“Azalyar brings this challenge on constitutional grounds . . . and asserts that his due process rights have been violated by his continued detention without a custody redetermination hearing.”); *Gonzalez-Albornoz v. Olson*, No. CV-25-208-DLB, 2026 WL 251955, at *2 (E.D. Ky. Jan. 30, 2026) (“Thus, unlike many recent habeas corpus petitions this Court has reviewed, Petitioner is not arguing that he is being improperly detained under 8 U.S.C. § 1225. Rather, Petitioner states that the issue before this Court is “whether the detention here was lawful *ab initio* [sic] and whether the Fourth and Fifth Amendment Procedural Due Process rights of the Petitioner were violated by the Respondents.”)

Courts examining the application of § 1225 to petitioners who, like Mr. Marmolejo Hurtado, were not detained upon entry and who have lived in the United States for some time have routinely found that mandatory detention is unconstitutional as applied to these individuals, because “non-punitive detention in the immigration context violates the Due Process Clause,’ absent ‘adequate procedural protections’ or a ‘special justification’ outweighing a petitioner’s liberty interest.” *Gonzalez-Albornoz*, 2026 WL 251955, at *3 (citing *Azalyar*, 2026 WL 30741, at *3 (quoting *Padilla*

v. United States Immigr. & Customs Enft, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2003) and *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001))).

The Western District of Texas thoughtfully analyzed this issue in *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923, at *8. The Petitioner in *Hernandez-Fernandez*, like Mr. Marmolejo Hurtado entered the United States and was living in the United States and creating a life in the United States before he was arrested. Mr. Marmolejo Hurtado was creating a life with his United States Citizen partner and the two plan to marry and pursue immigration relief from Mr. Marmolejo Hurtado.

This was the family's plan before he was swept up in the recent policy change and detained under the government's new mandatory detention policy. *Id.* The *Hernandez-Fernandez* court declined to analyze whether the new, expanded interpretation of § 1225(b)'s mandatory detention authority is lawful, noting instead that the policy as applied "fail[s] to contend with the liberty interests created by the fact that the Petitioner[] in this case [was] released on recognizance *prior to the manifestation of this interpretation.*" (citing *Lopez-Arevelo v. Ripa*, 801 F.Supp.3d 668, 677–78 (W.D. Tex. 2025)(internal citations omitted)).

The Court applied the familiar three factor test set out in *Mathews v. Eldridge* to determine whether the new mandatory detention policy was unconstitutional as applied to the petitioner. *Hernandez-Fernandez*, 2025 WL 2976923 at *7-8 (citing *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L.Ed.2d 18 (1976); *Martinez v. Noem*, No. 5:25-CV-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025)). The *Mathews* factors examine: (1) "the private interest that will be affected by the official action"; (2) "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 (3) "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, 96 S. Ct. 893.

As to the first factor, the private interest affected by the challenged action, the *Hernandez-Fernandez* court noted that “[t]he interest in being free from physical detention’ is ‘the most elemental of liberty interests.’” *Hernandez-Fernandez* 2025 WL2976923, at *8 (quoting *Martinez v. Sec. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025)). The court did not reach whether a mandatory detention policy can lawfully cabin that interest in individuals arrested near the border, but instead found that the petitioner, who had been living in the interior of the U.S. had a protected liberty interest in remaining free while his case continued. *Hernandez-Fernandez* 2025 WL2976923, at *8 (citing *Lopez-Arevelo v. Ripa*, 801 F.Supp.3d 668, 677–78 (W.D. Tex. 2025); *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at *10 (E.D. Cal. Sept. 5, 2025)). The *Hernandez-Fernandez* court noted that “once released from immigration custody, noncitizens acquire ‘a protectable liberty interest in remaining out of custody on bond.’” *Id.* (quoting *Diaz v. Kaiser*, No. 25-CV-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025) (collecting cases)); accord *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025) (“Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.”) (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025) (same).

The second *Mathews* factor examines “whether the challenged procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate these risks.” *Hernandez-Fernandez*, 2025 WL 2976923 at *9 (citing *Martinez v.*

Noem, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *3 (W.D. Tex. Sept. 8, 2025) (quoting *Gunaydin v. Trump*, 784 F.Supp.3d 1175, 1187 (D. Minn. 2025)). The *Hernandez-Fernandez* court found that the immigration court's current policy of mandatory detention without bond under § 1225 creates a "high risk that [Petitioner] has been and will continue to be erroneously deprived of his liberty." *Hernandez-Fernandez*, 2025 WL 2976923 at *9 citing *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at *11 (E.D. Cal. Sept. 5, 2025)). Because "individualized custody determinations ... consider[ing] flight risk and dangerousness" are a safeguard that is typically available and that would "greatly reduce the risk of an erroneous deprivation of his liberty," the court found the second *Mathews* factor favored the petitioner. *Hernandez-Fernandez*, 2025 WL 2976923, at *9 (citing *Velesaca v. Decker*, 458 F. Supp. 3d 224, 242 (S.D.N.Y. 2020)).

Finally, the *Hernandez Fernandez* court examined the third *Mathews* factor: "the government's interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community." *Hernandez-Fernandez*, 2025 WL 2976923, at *9. The Court found the petitioner's involvement in ongoing asylum proceedings on a non-detained basis "'reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.'" *Id.* (quoting *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd* 905 F.3d 1137 (9th Cir. 2018)).

The court further noted that any incremental cost resulting from the need to provide bond hearings to people like petitioner "cannot be terribly burdensome, given the BIA concedes in *Yajure Hurtado* "[w]e acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection." *Hernandez-Fernandez*, 2025 WL 2976923, at *10 (quoting *In re: Yajure Hurtado*, 29 I&N Dec. 216, 226 (BIA 2025)); accord *Singh v. Andrews*, No. 25-CV-00801, 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025)

(“In immigration court, custody hearings are routine and impose a ‘minimal’ cost.”) (*Doe v. Becerra*, 787 F.Supp.3d 1083, 1094–95 (E.D. Cal. 2025)). The *Hernandez-Fernandez* court thus found this factor also weighs in favor of habeas relief.

Based on this analysis of the *Mathews* factors, the *Hernandez-Fernandez* court ruled that “detaining [the petitioner] without any individualized assessment of his flight risk and dangerousness deprives him of his constitutional right to procedural due process under the Fifth Amendment of the United States Constitution.” *Hernandez-Fernandez*, 2025 WL 2976923, at *10. The Court noted “a growing number of district courts across the country who have found that holding people like *Hernandez-Fernandez* in mandatory detention without a bond hearing likely constitutes a due process violation.” *Id.* (citing *Espinoza v. Kaiser*, No. 25-CV-01101, 2025 WL 2581185, at *11–12 (E.D. Cal. Sept. 5, 2025); *Kostak v. Trump*, No. CV 3:25-CV-01093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Singh v. Andrews*, No. 25-CV-00801, 2025 WL 1918679, at *8–9 (E.D. Cal. July 11, 2025) (collecting cases)).

Mr. Marmolejo Hurtado stands in a similar position and is entitled to habeas relief for the same reasons articulated in *Hernandez-Fernandez*. Mr. Marmolejo Hurtado has been living in the United States since 2020 and creating a life with his United States Citizen Partner, the two were planning on marrying and filing a family petition to normalize Mr. Marmolejo’s status in the United States prior to being detained. Thus, Mr. Marmolejo Hurtado has a cognizable due process interest in remaining free while his case is pending, absent some showing that he is a flight risk or a danger to the community. *Hernandez-Fernandez*, 2025 WL 2976923, at *8. The government’s dragnet arrest and policy of blanket detention without bond creates a high risk that she is being deprived of this right in error; an individualized bond hearing would greatly reduce this risk. *Id.* at *9. Finally, the government’s interest in ensuring that Mr. Marmolejo Hurtado appears for his removal

proceedings and poses no danger to the community in the meantime can be satisfied by providing an individualized bond hearing to determine whether detention is appropriate or release with reasonable conditions. *Id.* at *10.

Petitioner's continued detention without bond under a blanket mandatory detention policy is therefore a violation of his due process rights. *Id.* This claim for Due Process relief is independent of and in addition to Petitioner's statutory claims, and is not affected by the recent Fifth Circuit opinion in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026).

II. The Appropriate Relief for Petitioner is his Release from Detention.

In habeas cases where the Court finds an ongoing detention unlawful, "the typical remedy for such detention is, of course, release." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). In recent months, courts across the country have ordered the release of detainees in similar situations. *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (ordering immediate release and collecting cases across jurisdictions); *Cruz-Reyes v. Bondi*, 5:26-CV-60, 2026 WL 332315, at *13 (S.D. Tex. Feb. 3, 2026) ("[D]ue process concerns weigh heavily in favor of granting immediate release."); *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13–14 (W.D. Tex. Oct. 2, 2025) (collecting cases and finding that "immediate release appropriately remedies Respondents' violation of [Petitioner's] due process rights through her continued detention.").

In this case, because Mr. Marmolejo Hurtado is held in violation of his due process rights, the proper remedy is an order instructing Respondents to release Petitioner from custody, under reasonable conditions of supervision." *Id.* Or alternatively "provide Petitioner with a bond hearing

before an Immigration Judge, at which the Government shall bear the burden of justifying, by clear and convincing evidence of dangerousness or flight risk, Petitioner's continued detention.

CONCLUSION

For the foregoing reasons, Mr. Marmolejo Hurtado's continued detention under a blanket mandatory detention policy violates the Fifth Amendment's guarantee of procedural due process. Although the Fifth Circuit in *Buenrostro-Mendez* addressed the statutory interpretation of § 1225(b), it did not resolve — nor foreclose — the independent constitutional question presented here. As numerous district courts have recognized, individuals who have lived in the interior of the United States, established family ties, and were previously at liberty possess a protected liberty interest in remaining free from physical detention absent adequate procedural safeguards. The government's refusal to provide Mr. Marmolejo Hurtado with an individualized bond hearing creates an unacceptably high risk of erroneous deprivation of that liberty.

Under the *Mathews v. Eldridge* framework, all three factors weigh decisively in Petitioner's favor: (1) the private interest in freedom from physical restraint is fundamental; (2) the absence of an individualized custody determination creates a substantial risk of erroneous deprivation that a bond hearing would readily cure; and (3) the government's interest in ensuring appearance and community safety can be fully protected through a routine bond hearing procedure that immigration courts have long conducted.

Accordingly, this Court should grant the Petition for Writ of Habeas Corpus and order Respondents to immediately release Mr. Marmolejo Hurtado under reasonable conditions of supervision. In the alternative, the Court should order Respondents to provide Petitioner with

a prompt individualized bond hearing before an Immigration Judge at which the Government bears the burden of proving, by clear and convincing evidence, that continued detention is justified based on dangerousness or flight risk.

Such relief is necessary to remedy the ongoing violation of Mr. Marmolejo Hurtado's constitutional rights.

DATED this 26th day of February 2026.

/s/Amanda Aguilar

CERTIFICATE OF SERVICE

I hereby certify that on February 26th, 2026, I caused a true and correct copy of the foregoing PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS CONSIDERING RECENT FIFTH CIRCUIT PRECEDENT and all accompanying exhibits to be served by certified mail, return receipt requested, on the following:

Justin R. Simmons | U.S. Attorney's Office for the Western District of Texas
ATTN: Civil Process Clerk
601 NW Loop 410,
San Antonio, Texas 78216
and by email at: USATXS.CivilNotice@usdoj.gov

Bobby Thompson, Warden
South Texas ICE Processing Center
566 Veterans Drive
Pearsall, TX 78061
United States

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

Dated this 26th day of February 2026.

/s/Amanda Aguilar
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