

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SERHAT GULBAS,

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Civil Case No. 3:26-cv-0296-K

**PETITIONER'S REPLY BRIEF IN SUPPORT OF HABEAS PETITION AND
MOTION FOR A PRELIMINARY INJUNCTION**

RESPECTFULLY SUBMITTED,

/s/ Dan Gividen

Dan Gividen

Attorney for Petitioner

Texas State Bar No. 24075434

18208 Preston Rd., Ste. D9-284

Dallas, TX 75252

972-256-8641

Dan@GividenLaw.com

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INTRODUCTION

"The complex provisions of the INA have provoked comparisons to a 'morass,'"¹ a "Gordian knot,"² and 'King Minos's labyrinth in ancient Crete.'"³ These comparisons are well-deserved. Without any background or experience with immigration law it is easy to get lost in the INA's labyrinth of statutes and terms. Worse, the INA has a unique way of making it difficult for non-practitioners to realize that an interpretation they are confident is right given the "plain language" is actually incorrect as a result of the INA's repeated use of "specialized language."⁴

The petition in this case sets forth in detail the reasons ICE's current detention of Mr. Gulbas' is unlawful. The government's response did not address the overwhelming majority of them. Instead, it put all of its proverbial eggs in the *Buenrostro-Mendez* basket and declined to address any of them.⁵ The arguments, and more importantly distinguishing facts present here, are substantially and significantly different than and were not addressed in *Buenrostro-Mendez*. Most notably, unlike the noncitizens in that case, Mr. Gulbas was previously encountered and determined to be subject to § 1226 by DHS officials. Indeed, DHS created, authored, and signed documents were issued to Mr. Gulbas which explicitly

¹ *Torres v. Barr*, 976 F.3d 918, 923 (9th Cir. 2020) (quoting *Lacsina Pangilinan v. Holder*, 568 F.3d 708, 709 (9th Cir. 2009) (quoting *Agyeman v. I.N.S.*, 296 F.3d 871, 877 (9th Cir. 2002))

² *Id.* (quoting *Aguilar v. U.S. Immig. & Customs Enft*, 510 F.3d 1, 6 (1st Cir. 2007)).

³ *Id.* (quoting *Lok v. I.N.S.*, 548 F.2d 37, 38 (2d Cir. 1977)).

⁴ *Lopez v. Att'y Gen.*, 49 F.4th 231, 234 (3d Cir. 2022).

⁵ ECF No. 8 p. 5.

state is he was being released pursuant to § 1226 and, consistent with § 1226(a), indicate a warrant was issued for the arrest that immediately proceeded his release. Despite having the benefit of these arguments set forth in detail by the habeas petition, the government has made zero effort to address the anyone of the multiple arguments not mentioned much less controlled by *Buenrostro-Mendez*. For the reasons set forth below and in the prior filings, Petitioner respectfully requests the Court grant the relief requested by finding his detention unlawful because he has not been provided a bond hearing before an IJ in accordance with 8 U.S.C. § 1226 and its implementing regulations and order Mr. Gulbas' release no later than February 18, 2026 at noon.

DISCUSSION

First and foremost, it is important to state that Petitioner continues to stand behind and preserve for appeal any and all arguments made in support of the habeas petition that the Court believes to be foreclosed for the moment in the Fifth Circuit as a result of *Buenrostro-Mendez v. Bondi* --F. 4th --, 2026 WL 323330 (5th Cir. Feb. 6, 2026).⁶ In so

⁶ Mr. Gulbas' undersigned counsel firmly, but respectfully, believes the *Buenrostro-Mendez* decision was wrongly decided. Furthermore, he believes this was largely a result of attempting to apply plain language and everyday life to the specialized language of the INA. Analysis of the INA without context or a real understanding of how its provisions have been operating together for decades is a recipe for disaster. Here, the *Buenrostro-Mendez* decision was based on a significant misunderstanding about the "anomaly" IIRIRA sought to fix—which had nothing to do with mandatory detention. (*Compare Buenrostro-Mendez*, 2026 WL 323330 at *1-2 with ECF No. 1 pp. 24-38 and 42-47.) From there, it attempted to apply plain language to a statute containing defined terms and ignored the most important constitutional provision to understanding those terms: the 4th Amendment. (*Compare Buenrostro-Mendez*, 2026 WL 323330 at *1-10 with ECF No. pp. 16-24, 59-64.) In addition to all of these errors, the *Buenrostro-Mendez* decision appears to be also be premised on the idea that for nearly 30 years the only reason IJs have been allowed to give EWI noncitizens bonds is because ICE allowed them to do so "in their discretion." *Buenrostro-Mendez*, 2026 WL 323330 at *8-9. Neither the internal ICE memorandum announcing this policy nor the BIA's *Hurtado* decision came anywhere near suggesting that EWI bond hearings have been a gift of discretion from DHS-ICE to DOJ-EOIR for nearly 30 years. This notion begs the question: Why didn't either agency

doing, it is important to point out that this petition included arguments supported by controlling authorities unrelated to the specific legal issues in *Buenrostro-Mendez v. Bondi*. In fact, there were a multitude of arguments concerning the INA, explained in the context of the manner in which it has been carried out, that were not mentioned or raised at any point in the proceedings and briefing leading to *Buenrostro-Mendez v. Bondi*.

Perhaps most notably, the instant case explained and pointed out that the 4th Amendment requires a warrant for the arrest and detention of any person in the interior of the United States of America—regardless of their status.⁷ Meanwhile, the Supreme Court explicitly stated in *Jennings*, the government may "detain an alien without a warrant at the border." This statement, of course, is nothing more than a recognition of the well-established "border exception" to the 4th Amendment's warrant requirement.⁸

Significantly, *Jennings* went on to explain that it "makes little sense" to interpret the relevant statutes (8 U.S.C. §§ 1225 & 1226) to require the arrest of a noncitizen "without a warrant" and then require one for the same noncitizen simply because they are placed in proceedings under § 1229a.⁹ Said differently, either a noncitizen's arrest and detention is subject to the warrant requirement or its not. Accordingly, *Jennings* implicitly—if not

know that EWI bond hearings before IJs (who are part of DOJ-EOIR) could be revoked by an internal memorandum issued by a DHS-ICE acting director for the first 28+ years of these statutes existence?

Mr. Gulbas continues to believe his contrary arguments and supporting authorities are correct and stands behind them as well as the position that *Buenrostro-Mendez* was wrongly decided.

⁷ (ECF No. 1.)

⁸ *Jennings*, 583 U.S. at 302.

⁹ *Id.*

explicitly—reasoned that when a warrant is required for the arrest and detention of a noncitizen, that noncitizen is detained under § 1226 as it includes a warrant requirement.¹⁰ Conversely, a noncitizen arrested and detained "without a warrant at the border" is, at least under *Jennings*, subject to detention under § 1225(b)(2)(A).

Here, the DHS created, authored, and signed documents which were issued to Petitioner explicitly stated his arrest was with a warrant and done pursuant to the authority of § 1226.¹¹ Said differently, the government's claims that Mr. Gulbas' is subject to and detained under § 1225(b)(2)(A) are contradicted by the documentary evidence the government itself issued. The significance of this fact is discussed below.

First, however, Mr. Gulbas will address the reasons his case is not merely distinguishable from *Buenrostro-Mendez*, but the circumstances of his case demonstrate that he benefits from it's holding. Specifically, the holding of *Buenrostro-Mendez* and already existing controlling 5th Circuit precedent leave no doubt that he was in fact "admitted" when he was encountered, inspected, released, and after seeking work authorization was granted the right to work lawfully in the United States.

- I. **By finding that a noncitizen may be seeking admission anywhere in the United States, *Buenrostro-Mendez* acted to make any encounter, release, and/or grant of status in the United States an admission under long-standing Fifth Circuit precedent which could not have been overturned by a three-judge panel.**

It has long been established that a noncitizen who has no legal status or documents

¹⁰ *Id.*

¹¹ (ECF No. 1

allowing them to enter the United States, but is nonetheless waived through the POE and into the United States by an immigration officer, has been "admitted" under the INA.^{12 13} Practically speaking, a procedural admission, (e.g. an entry through a POE after being "waved through"), is sufficient to allow an alien to meet the admitted requirement of 8 U.S.C. § 1255(a) for the purposes of adjustment of status within the U.S.¹⁴ Equally important, this admission through nothing more than the act of an immigration officer waiving an individual—whether on foot or one of several passengers in a vehicle—into the United States a free person also give them the exact same rights and benefits of being an "admitted" alien charged under § 1227 if placed in § 1229a proceedings.¹⁵ Among other things, this means that it is DHS—not the noncitizen—who bears the burden of proving removability in § 1229a proceedings.¹⁶¹⁷

Though it was always assumed—apparently incorrectly—that two things were required for such an admission: (1) coming from outside the United States into it through its proverbial door (i.e. i.e. POE), and (2) the immigration officer's action of waiving them

¹² *Matter of Quilantan*, 25 I. & N. Dec. 285, 290 (BIA 2010); see also *Martinez v. Att'y Gen.*, 693 F.3d 408, 414 (3d Cir.2012); *Sum v. Holder*, 602 F.3d 1092, 1096 (9th Cir.2010); *Emokah v. Mukasey*, 523 F.3d 110, 118 (2d Cir.2008).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See 8 U.S.C. § 1229a(c)(2)&(3) (proscribing burdens of proof in removal proceedings).

¹⁷ Though previously thought to be the only advantage such noncitizens had in removal proceedings over an EWI noncitizen, now also means that this group of noncitizens—who like EWIs never have had legal status in the U.S.—have the additional benefit over EWI noncitizens of being entitled to a bond hearing under *Buenrostro-Mendez*.

through or permitting them to enter free from restraint (i.e. an inspection).¹⁸ The list of reasons it was assumed both requirements must be met is a long one, most of which are explicitly or implicitly addressed throughout the habeas petition filed in this matter.¹⁹ Ultimately, all the reasons come back to the assumption that one may only seek admission at a POE—this assumption, according to *Buenrostro-Mendez* was apparently wrong.

In *Tula Rubio v. Lynch*, 787 F.3d 288 (5th Cir. 2015), the Fifth Circuit considered whether a noncitizen with no legal status who was the passenger in a vehicle waived through a POE after inspection by an immigration officer had been admitted in any status for the purposes of the 7-year residence requirement for cancellation of removal under § 1229b(a). There “at the age of four, Tula–Rubio entered the United States while riding in a car driven by a U.S. citizen, which was physically waved through the port of entry by an immigration officer.”²⁰ The immigration officer did not ask for proof of lawful status that would allow his entry into the U.S.—which it was undisputed he had none.²¹ A decade later, in 2002, Tula Rubio adjusted his status to that of a LPR.²² And four years later he was convicted for possession of marijuana and placed in removal proceedings.²³

The question presented in by *Tula Rubio* involved his eligibility for cancellation of

¹⁸ *Id.*

¹⁹ ECF No. 1 pp. 19-23 and 59-64.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

removal under 8 U.S.C. § 1229b(a).²⁴ Specifically, the issue was whether the procedural admission at the border in 1992 constituted being “admitted in any status.”²⁵ The statutory provision at issue there required, among other things, that the alien “has resided in the United States continuously for 7 years after having been admitted in any status.”²⁶

The *Tula Rubio* court concluded, consistent with others, that because they were permitted to come into the country after “inspection” (i.e. being waived through) by an immigration officer, was an “admission” as the term is defined²⁷ and concluded that “no status” is “any status.”²⁸ All of this led to the conclusion that Tula Rubio had satisfied the requirement of being “admitted in any status” for seven years under 8 U.S.C. § 1229b(a)(2) and (d)(1).²⁹

Together, prior controlling Fifth Circuit case law finding an “waive through” constitutes inspection by an immigration officer and *Buenrostro-Mendez*³⁰ holding that a noncitizen who has not been inspected is in a perpetual state of “seeking admission” no

²⁴ *Id.* at 291-92.

²⁵ *Id.*

²⁶ *Id.*

²⁷ (quoting *In re Quilantan*, 25 I. & N. Dec. 285, 290 (B.I.A.2010) and (citing *Martinez v. Att’y Gen.*, 693 F.3d 408, 414 (3d Cir.2012); *Sum v. Holder*, 602 F.3d 1092, 1096 (9th Cir.2010); *Emokah v. Mukasey*, 523 F.3d 110, 118 (2d Cir.2008)).

²⁸ *Id.*

²⁹ *Id.*

matter where they are in the U.S., the only conclusion that can be drawn is that an inspection need not be at a POE or anywhere near the border.

Here, Mr. Gulbas was encountered by an immigration official three years before his prior detention. This encounter included questioning, taking fingerprints, and documents being issued and signed by multiple immigration officers. Thereafter, he was released from restraint. Mr. Gulbas then sought work authorization by filing an application with immigration officers (i.e. USCIS) who granted such authorization of an inspection of his application.

If an immigration officer effects an "inspection" sufficient for a noncitizen to be admitted by simply waiving a vehicle by him or her, than surely Mr. Gulbas' prior encounter and inspection, including fingerprinting and questioning, by immigration officials in 2022 is sufficient "inspection" to constitute an admission under § 1101(a)(13). Alternatively, surely when his I-765 Application for Employment Authorization was inspected and approved by an immigration officer, that constituted an admission. After all, how could a lazy waive through result in being "admitted" and receiving ALL the benefits in § 1229a proceedings that a LPR would enjoy, but the multiple in-depth inspections of Mr. Gulbas does not? After *Buenrostro-Mendez*, the only logical conclusion is that Mr. Gulbas who was in a perpetual state of "seeking admission" must have been seeking admission when encountered and inspected by immigration officers before being released in 2022.

This is quite different from the noncitizens in *Buenrostro-Mendez*. There the petitioners had lived in the U.S. for decades but were never encountered by DHS until

2025.³⁰ Each of them were detained in connection with their first encounters.³¹ The government alleged his detention immediately after the first encounter was pursuant to § 1225(b)(2)(A).³² Said differently, the government in *Buenrostro-Mendez* alleged that when the petitioners there was encountered by immigration officers, the officers determined they were "applicants for admission" who were "seeking admission" but were not clearly and beyond doubt entitled to be admitted.³³

Conversely, after Mr. Gulbas was thoroughly inspected by DHS officials in 2022, he was (1) issued paperwork leaving no doubt that the inspecting immigration officers involved in that encounter determined he was a noncitizen who was subject to § 1226, and (2) released free from restraint after said inspection.

In sum, well-established controlling Fifth Circuit precedent holding an immigration officers actions of "waiving a car" past them is sufficient to meet the inspection requirement of an "admission." *Buenrostro-Mendez* did not purport to overrule any of the relevant precedent, including *Tula Rubio*. Accordingly, *Buenrostro-Mendez* served to further clarify that noncitizens are, until inspected by an immigration officer, seeking admission. Because Mr. Gulbas was thoroughly inspected, he has been admitted.

³⁰ *Buenrostro-Mendez v. Bondi* --F. 4th --, 2026 WL 32330, *1-3 (5th Cir. Feb. 6, 2026).

³¹ *Id.*

³² *Id.* at 3.

³³ *Id.* at 1-3.

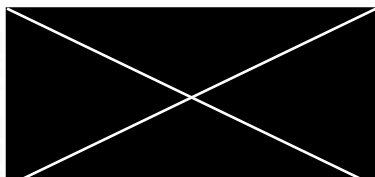

One thing cannot be disputed: the immigration officers who inspected Mr. Gulbas in 2022 determined that he was subject to § 1226 not § 1225. Mr. Gulbas will now address the significance of this fact now.

II. The DHS created, authored, and signed documents issued to petitioner all explicitly state he was subject to § 1226—this, courts have found, prevents the government from claiming a sudden switch to § 1225 as the basis for detention.

On February 4, 2026, Mr. Gulbas filed a habeas petition and evidence in support of his position that he is entitled to a bond hearing under § 1226 and its implementing regulations.³⁴ Additionally, the I-213 Record of Deportable/Inadmissible Alien from his first encounter with ICE on November 30, 2022 and release on December 2, 2022, is attached to this filing.³⁵

Some of the relevant portions of the DHS created, authored, and signed documents issued in conjunction with the encounter in December 2022, are picture below:

Case 3:26-cv-00296-K Document 1-1 Filed 02/04/26 Page 129 of 141 PageID 203
DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
ORDER OF RELEASE ON RECOGNIZANCE

Name GULBAS, SERHAT File No. 
Date 

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions

³⁴ (ECF No. 1.)

³⁵ (Reply Ex. 1.)

MARTIN WILSON, JR.
Border Patrol Agent

ials) (Signature and Title of Immigration Officer)

Received: (Subject and Documents) (Report of Interview)

Officer: **MARTIN WILSON, JR.**

on: **December 2, 2022** (time)

Disposition: **Warrant of Arrest/Notice to Appear**

Examining Officer: **AVILA, CHRISTOPHER** 36

U.S. Department of Homeland Security

Continuation Page for Form I-213

Alien's Name	File Number	Date
GULBAS, SERHAT	[REDACTED]	11/30/2022
DISPOSITION: The subject was processed as Warrant of Arrest/Notice to Appear and will be transferred to ICE/ERO for proper Disposition.		

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Critically, the above are all taken from DHS created and authored documents issued after Petitioner was encountered, arrested, and released by DHS in 2022. These documents leave no room to dispute that the authority for his arrest and detention was under 8 U.S.C. § 1226. Indeed, these documents leave indicate DHS issued a warrant and equivocally treated Mr. Gulbas as though his arrest, detention, and release were subject to 8 U.S.C. § 1226.³⁸

Despite the fact that all of the DHS created and authored documents leave no question that DHS has treated Mr. Gulbas as an alien whose arrest and detention was pursuant to § 1226, the government claims that contrary to the documents it created,

³⁶ (Reply Ex. 1 p. 1 – I-213 Record of Deportable Alien dated 12/2/2022.)

³⁷ (Reply Ex. 1 p. 3– I-213 Record of Deportable Alien dated 12/2/2022.)

³⁸ (ECF No. 1-1 p. 127.)

authored, signed, and issued, he is now suddenly being detained under § 1225(b)(2)(A). It did not provide any evidence whatsoever to support this claim. Meanwhile, the government's brief was completely silent in response to the petition's argument pointing out that courts have repeatedly rejected similar attempts by DHS to attempt to switch detention tracks.³⁹ As the petition pointed out, courts have explained that "settled law precludes the Government from now switching gears [from § 1226] to contend that he has actually been detained under Section 1225(b)(2)."⁴⁰ For example, the facts with respect to entry, encounter, and the documents issued were nearly identical to those issued to the noncitizen in *Acea-Martinez v. Noem*, Case No. 5:25-CV-01390-XR (Order, ECF No. 9, Nov. 18, 2025). In that case out of the U.S. District Court for the Western District of Texas, Judge Xavier Rodriguez rejected the government's attempts to claim that petitioner was being detained under the provisions of § 1225(b) contrary to all of the DHS authored and signed documents indicating detention was under § 1226 when previously encountered.⁴¹

In another case involving a noncitizen who the evidence demonstrated had been treated as though subject to § 1226 when previously encountered and later released by DHS, *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025) Though the There the government did not attempt to claim she was detained under § 1225(b)(1), but did attempt to claim that it was allowed to switch her from

³⁹ (ECF No. 1 pp. 67-68.)

⁴⁰ *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at *6 (N.D. Ill. Oct. 24, 2025).

⁴¹ *Acea-Martinez v. Noem*, Case No. 5:25-CV-01390-XR (Order, ECF No. 9, Nov. 18, 2025)

§ 1226 detention to § 1225(b)(2)(A) detention for the same reason (she could have been subjected to expedited removal). The court rejected the government's attempt to claim it was now detaining the petitioner under § 1225 after consistently treating them as subject to § 1226, explaining:

The Government's argument does not hold. As a preliminary matter, whether the Government may have had the power to detain Ms. Salcedo Aceros under 1225(b), the reality is that the detention authority consistently applied by the government to Ms. Salcedo Aceros since her arrival in the United States has always been § 1226. In 2024, the Government placed Ms. Salcedo Aceros in normal removal proceedings under Sections § 1229, not § 1225(b)(1), and chose to release her on conditional parole under § 1226(a), not hold her in detention under § 1225(b)(2). These actions created a reliance interest in her continued freedom, so long as she abided by the terms of her release. . . .

Ms. Aceros enjoys a liberty interest under § 1226(a) and the procedural protections thereunder that cannot be unilaterally abrogated without process by the Government simply “switching tracks.”⁴²

Moving across the country to Illinois, a district court there, like here, all of the documents issued to the alien from his encounter with ICE after entering indicated:

the Government has consistently treated Patel as detained under the authority of Section 1226(a) since the date he was first apprehended after crossing the border, and settled law precludes the Government from now switching gears to contend that he has actually been detained under Section 1225(b)(2).⁴³

These facts are identical to the ones here. This led the court in *Patel* to conclude " the Government has affirmatively decided to treat Patel as being detained under Section

⁴² *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *7–8 (N.D. Cal. Sept. 12, 2025) (cleaned up).

⁴³ *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at *6 (N.D. Ill. Oct. 24, 2025).

1226(a) and it cannot now be heard to change its position to claim that he is detained under Section 1225(b).⁴⁴

Though there are likely many other cases finding similarly, Mr. Gulbas will only provide one more example, this time from the east coast. Once again, the same facts as in this case with all the documents (arrest warrant, release, and NTA) stating the alien was arrested and released pursuant to § 1226 and was not treated as an arriving alien on the NTA. This led the court in that case to explain:

[I]t is indisputable that Respondents have consistently treated Mr. Lopez Benitez as subject to § 1226...Indeed, the record is devoid of any reference to § 1225 in connection with Mr. Lopez Benitez's arrest and detention until they filed their Opposition to his Petition. The Court cannot credit Respondents' new position as to the basis for Mr. Lopez Benitez's detention, which was adopted post hoc and raised for the first time in this litigation. These facts, taken together, can support only one conclusion—that Mr. Lopez Benitez was not mandatorily detained as a noncitizen “seeking admission” under § 1225(b), but rather as someone “already in the country,” pursuant to . . . Respondents' discretionary authority under § 1226(a)—which Respondents have consistently maintained . . .⁴⁵

⁴⁴ *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at *6 (N.D. Ill. Oct. 24, 2025) (cleaned up). (citing *Kennedy v. Kijakazi*, No. 22-2258, 2023 WL 1990303, at *3 (7th Cir. Feb. 14, 2023), quoting *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 24 (2020) (the “*Chenery* doctrine requires [an] agency to ‘defend its actions based on the reasons it gave when it acted’ in the interest of promoting agency accountability, instilling confidence in agency decisions, and maintaining an orderly process of review.”); *Lopez-Campos*, 2025 WL 2496379, at *7 (“It was not until Lopez-Campos requested a custody redetermination hearing (bond hearing) that Respondents claimed his detention was under Section 1225(b)(2)(A). The Court cannot credit this new position that was adopted post-hac, despite clear indication that Lopez-Campos was not detained under this provision.”); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 237188, at *5 (S.D.N.Y. Aug. 13, 2025) (same); *E.C.*, 2025 WL 2916264, at *8 (rejecting Respondents' claim that Section 1225(b) should apply where they “have presented no evidence that the ... NTA was rescinded or that a new one was issued, nor any determination by ICE/DHS that Petitioner is detained under § 1225(b), other than the arguments made by Respondents in their briefing.”).

⁴⁵ *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025) (cleaned up).

As all of these decisions, common sense, and the traditional notions of fairness on which this Country was built indicate, the government may not be permitted to consistently treat an alien as though they are subject to § 1226 then suddenly, without a valid change of law or circumstance, change their mind and claim such person is subject to having their liberty stripped from them.

The indisputable evidence demonstrating DHS has consistently treated Mr. Gulbas as being subject to § 1226 and the government's failure to dispute or even attempt to address this fact is, from Petitioner's perspective, enough by itself to demonstrate his current detention is unlawful, and therefore, he respectfully requests the Court grant the petition.

III. Mr. Gulbas' petition raised two constitutional claims that *Buenrostro-Mendez* did not address at all—the government did not even bother mentioning them, much less disputing their merit.

A. Even if *Hurtado* and *Buenrostro-Mendez* were decided correctly, (which Petitioner does not believe they were), this extraordinary change in the interpretation and implementation of the INA and its implementing regulations cannot be retroactively applied to Mr. Gulbas.

The United States Constitution's Ex Post Facto Clause and the judicial presumption against statutory retroactivity form a bedrock principle of American jurisprudence. This principle is animated by what the Supreme Court has termed the "familiar considerations of fair notice, reasonable reliance, and settled expectations."⁴⁶ In the immigration context, where the stakes of deportation are immense, the Supreme Court has been particularly

⁴⁶ *Vartelas v. Holder*, 566 U.S. 257, 266 (2012) (quoting *INS v. St. Cyr*, 533 U.S. 289, 323 (2001)).

vigilant in guarding against the retroactive application of laws that alter the legal consequences of past actions.

In *INS v. St. Cyr*, the Supreme Court held that the repeal of a form of discretionary relief from deportation could not be applied retroactively to individuals who had pleaded guilty to criminal offenses at a time when that relief was available.⁴⁷ The Court emphasized that "elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly."⁴⁸

Similarly, in *Vartelas v. Holder*, the Court found that an amendment to the INA that broadened the definition of who is "seeking admission"—thereby subjecting certain returning lawful permanent residents to new grounds of inadmissibility—could not be applied to an individual whose conviction predated the statutory change.⁴⁹ The Court reasoned that to do so would "attach a new disability, in respect to transactions or considerations already past."⁵⁰

This principle against retroactivity extends not only to statutory amendments but also to new judicial interpretations of existing law that dramatically shift the legal landscape. The United States Court of Appeals for the Fifth Circuit, in *Monteon-Camargo v. Barr*, 918 F.3d 423 (5th Cir. 2019), addressed the retroactive application of the BIA's decision in *Matter of Diaz-Lizarraga*, 26 I. & N. Dec. 847 (BIA 2016) which significantly

⁴⁷ *St. Cyr*, 533 U.S. at 325.

⁴⁸ *Id.* at 321.

⁴⁹ See generally *Vartelas*, 566 U.S. 257.

⁵⁰ *Id.* at 266 (internal quotation marks omitted).

expanded the scope of what constitutes a "crime involving moral turpitude" (CIMT). The Fifth Circuit held that applying this new, broader definition to conduct that occurred before the decision was issued would be impermissibly retroactive because it would upend the "settled expectations" of individuals concerning the immigration consequences of their actions.⁵¹ The court conducted a balancing test, weighing the "ills of retroactivity against the disadvantages of prospectivity" and found that the frustration of the parties' expectations outweighed any benefit of retroactive application.⁵²

This consistent and robust body of case law establishes a clear rule: new statutory provisions or judicial interpretations that impose new, adverse immigration consequences for past conduct cannot be applied retroactively. Accordingly, even if the government's new interpretation and *Buenrostro-Mendez* were correct, its detention of Petitioner based on an Ex Post Facto rule change is nonetheless unlawful under the Constitution.

Here, the expansive monumental shift in the interpretation of who is entitled to a bond hearing in *Hurtado* and an internal memorandum violated the retroactivity doctrine. It imposed a new disability (ICE detention without a bond hearing) for past conduct (manner of entry into the U.S.). Its that simple. For this reason alone, it is Mr. Gulbas' position that his detention is unlawful.

IV. Mr. Gulbas' as applied procedural due process challenge is in no way impacted by *Buenrostro-Mendez* and was ignored by the government's response, despite courts in the Fifth Circuit repeatedly granting similar petitions solely on this constitutional ground.

⁵¹ *Id.* at 430-31.

⁵² *Id.* (quoting *Microcomputer Tech. Inst. v. Riley*, 139 F.3d 1044, 1050 (5th Cir. 1998)).

The government's response made no effort to dispute Mr. Gulbas' constitutional claims as set forth and analyzed in detail under the *Mathews* factors in his petition. Given the absence of argument from the government, Mr. Gulbas' will not repeat the arguments, facts, or supporting legal authorities that demonstrate the unlawfulness of his detention detailed in the prior filings. Instead, Mr. Gulbas simply re-urges his positions detailed in those filings and respectfully requests the Court grant this petition due to the procedural due process violations set forth in his filings.

Before concluding this reply, however, Mr. Gulbas believes it is important to point out that multiple courts, including courts in the Western District of Texas, ruling on similar habeas petitions have declined to address the statutory construction arguments altogether—instead, finding similar petitions should be granted on procedural due process grounds.

Judge Cardone, for example, has explained:

The interest in being free from physical detention is the most elemental of liberty interests. Respondents' position appears to be that Gonzalez Martinez does not acquire a liberty interest until his detention becomes unreasonably prolonged, because he is mandatorily detained under § 1225 and does not have a statutory right to a bond hearing. However, one's physical freedom is a paramount liberty interest, secured not just by statute but by the Constitution. This liberty interest applies to noncitizens, although to varying degrees. Our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission ... and those who are within the United States after an entry, irrespective of its legality. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely “on the threshold of initial entry.”⁵³

⁵³ *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *3 (W.D. Tex. Oct. 21, 2025)(internal citations and quotations omitted)

Judge Briones has also found a constitutional violation apart from the INA's statutory scheme in similar cases. In one such case, Judge Briones explained:

[The government's] position overlooks the well-established “distinction between an alien who has effected an entry into the United States and one who has never entered [that] runs throughout immigration law.” “[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all “persons” within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” Even in *Thuraissigiam*, the core point of the Court's analysis in rejecting an as-applied challenge rested on the fact that as an individual who was on the initial threshold of entry, he wasn't entitled to more due process than that afforded by statute. Precedent and logic tell us that those individuals who have established ties in the country are protected by constitutional procedural due process. After all, it is a “well established” rule “that the Fifth Amendment entitles aliens to due process of law.”⁵⁴

Mr. Gulbas is not a danger or flight risk. This was plainly the determination made by the inspecting immigration officers who encountered him in 2022 before releasing him. As his petition and preliminary injunction motion detail, all of the *Mathews* factors weigh in his favor. Accordingly, he respectfully requests the Court grant this petition and order his immediate release from ICE custody.

⁵⁴ *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *2 (W.D. Tex. Oct. 16, 2025)(internal citations and quotations omitted).

CONCLUSION

For the above stated reasons and those stated in all his previous filings, Mr. Gulbas respectfully requests the Court find Respondent's detention of him without a bond hearing is contrary to the both the statutory scheme and the U.S. Constitution for the reasons set forth in his petition and above, and as a result order ICE to immediately release him.

RESPECTFULLY SUBMITTED,

/s/ Dan Gividen

Dan Gividen

Texas State Bar No. 24075434

18208 Preston Rd., Ste. D9-284

Dallas, TX 75252

972-256-8641

Dan@GividenLaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the U.S. District Court and counsel for the government in accordance with the Federal Rules of Civil Procedure on February 13, 2026.

/s/ Dan Gividen

DAN GIVIDEN

Attorney for Defendant