

Case No. 03:26-CV-343-KC

INTRODUCTION

4. On February 6, 2026, this court issued a show cause order, pursuant to which Respondents are required to show no later than February 13, 2026 why this writ of habeas corpus should not be granted. ECF No. 16 at 2.

5. Also on February 6, 2026, the Fifth Circuit issued its opinion in *Buenrostro-Mendez v. Bondi*. No. 25-20496, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026). There, a Fifth Circuit panel examined 8 U.S.C. § 1225(b)(2)(A), which requires detention of certain aliens. *Id.* The panel concluded that § 1225(b)(2)(A) applies more broadly than courts understood for “almost thirty years.” *Id.* at *10 (Douglas, J., dissenting).

6. The panel addressed only one narrow question of statutory construction. *See id.* at *1. It did not address due process issues like those raised by Petitioner in Count One of her Petition. ECF No. 1 at 10–11. Accordingly, Petitioner submits this supplemental briefing in support of her Petition in light of the panel’s opinion.

7. Petitioner’s detention remains unconstitutional, and Petitioner respectfully requests this Court grant the Petition.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

8. Ms. Rocha Quispe is a resident of Minneapolis, Minnesota and a citizen of Ecuador. She has lived in the United States since November of 2022. Ms. Rocha Quispe is a beloved partner, mother, and community member. She lives with her partner, her two daughters (ages 18 and seven), two sons (ages 20 and 6), as well as her daughter-in-law and two-year-old grandson in Minneapolis. Ms. Rocha Quispe is close with her family. Ms. Rocha Quispe belongs to a church community in her neighborhood. She enjoys playing on the neighborhood football team. Ms. Rocha Quispe has no criminal record. *See* Ex. A (search results from Minnesota Court Record Online website on February 10, 2026).

9. Respondent ICE arrested Ms. Rocha Quispe on January 11, 2026 while she was headed to a church to bring home food with four of her family members in the car.

The family's car was tailed by vehicles believed to be driven by agents of Respondent ICE before agents pulled it over.

10. An agent approached the family's car and tried to force open a door. Additional ICE vehicles drove up and boxed in the family's car. Agents, who were wearing plain clothes, tactical vests, and masks, threatened Ms. Rocha Quispe and her family. The agents forced a door open and pulled everyone out of the car. The agents arrested Ms. Rocha Quispe, her partner, and her son. The other two family members begged the agents to let them go because they had children at home; they were allowed to leave due to pressure from observers. Ms. Rocha Quispe has young children at home herself but was arrested by the agents nevertheless.

11. The vehicles the agents drove were unmarked and did not have license plates. Upon information and belief, these individuals were agents of the Respondents and did not have a warrant to arrest Ms. Rocha Quispe.

12. Respondents then quickly transported Petitioner out of the District of Minnesota. ECF No. 8 at 2 (stating Ms. Rocha Quispe was arrested on January 11, 2026 and transferred to El Paso on January 12, 2026).

13. Ms. Rocha Quispe has a pending asylum application. She does not have a final order of removal.

14. Petitioner filed her verified writ of habeas corpus and motion to show cause in the U.S. District Court District of Minnesota on January 30, 2026. ECF Nos. 1 & 2.

15. On February 2, 2026, Respondents filed a motion to dismiss or transfer on the grounds that Ms. Rocha Quispe was detained in Texas at the time her petition was filed.

ECF No. 5. Deportation Officer William J. Robinson filed a declaration in support of Respondents' motion, declaring that on January 12, 2026, the day after she was detained, Ms. Rocha Quispe was transferred to an ICE facility in El Paso, Texas, due to bed space constraints in Minnesota, and that as of February 2, 2026, she remains in El Paso. ECF No. 8.

16. On February 4, 2026, the U.S. District Court for the District of Minnesota transferred this case to the Western District of Texas, where it was assigned to this Court. ECF Nos. 12 & 13. Texas counsel appeared on February 6, 2026, ECF No. 15, and the Court issued an Order to Show Cause. ECF No. 16.

17. Petitioner submits this supplemental brief to address *Buenrostro v. Mendez* and to include Respondents with responsibility for Ms. Rocha Quispe's detention in Texas.

PARTIES

18. Petitioner is a citizen of Ecuador and a resident of Minneapolis, Minnesota, who was detained in Minnesota. Petitioner is under the direct control of the Respondents and has no scheduled release date.

19. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice. Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Ms. Rocha Quispe.

20. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is

responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the Western District of Texas, supervises the ERO El Paso Camp East Montana, and is legally responsible for pursuing Petitioner's detention and removal. As such, Respondent Noem is a legal custodian of Ms. Rocha Quispe.

21. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Petitioner's detention.

22. Respondent Mary De Anda-Ybarra is being sued in her official capacity as the Acting Field Office Director for the ERO El Paso Camp East Montana for ICE within DHS. In that capacity, Field Director De Anda-Ybarra has supervisory authority over the ICE agents responsible for detaining Petitioner.

23. Respondent Marisa Flores is being sued in her official capacity as the Field Office Director for the El Paso Field Office for ICE within DHS. In that capacity, Field Office Director Flores has supervisory authority over the ICE agents responsible for detaining Ms. Rocha Quispe. The address for the El Paso Field Office is 1541 Montana Ave, Suite E, El Paso, Texas, 79936.

24. Respondent Major General Curtis Taylor is being sued in his official capacity as the Commanding General responsible for the ERO El Paso Camp East Montana Detention Center within the U.S. Army Fort Bliss. Because Petitioner is detained in the ERO El Paso Camp East Montana Detention Center, Major General Taylor has immediate day-to-day control over Petitioner.

LEGAL DISCUSSION

25. Petitioner is still entitled to the relief sought in her habeas petition following the *Buenrostro-Mendez* ruling on constitutionally protected due process grounds. Indeed, Senior United States District Judge David Briones of the El Paso Division recently concluded that “*Buenrostro-Mendez* does not change this case’s outcome on procedural due process grounds.” *Ceballos v. Garite*, No. 3:26-cv-312-DB, ECF No. 6, 3 n.2, (W.D. Tex. Feb. 10, 2026) (order granting in part petition for writ of habeas corpus and ordering bond hearing or release under supervision).

26. On Friday, February 6, 2026, the Fifth Circuit Court of Appeals issued an opinion overruling a growing body of judicial analysis and holding that § 1225(b)’s mandatory detention provisions may be applied to all applicants for admission to the United States who entered without inspection, regardless of whether they were 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). *Buenrostro-Mendez* did not address any issues other than this narrow question of statutory construction. *Id.* In particular, the opinion does not examine any due process challenge to the mandatory detention policy. *Id.*

27. Petitioner first notes the *Buenrostro-Mendez* ruling on statutory construction is highly likely to generate a circuit split and reach the Supreme Court, given the broad consensus among courts across multiple circuits that § 1225(b) cannot be read so broadly. Indeed, in December 2025, the Seventh Circuit, in ruling on the government’s emergency motion to stay a district court’s decision to order release of detainees, wrote that “given the factual record before us, we conclude that Defendants are not likely to succeed on the

merits of their argument that those individuals, whom ICE arrested in Chicago without a warrant, are subject to mandatory detention under § 1225(b)(2)(A).”¹ *Castañon-Nava v. U.S. Dep’t Homeland Security*, 161 F.4th 1048, 1601 (7th Cir. 2025). Accordingly, Petitioner does not withdraw her claims for relief rooted in challenges to the application of § 1225(b) in this case.

28. In light of the opinion, 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 when detained individuals 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)

¹ On February 3, 2026, the Seventh Circuit held oral argument on the merits in *Castañon-Nava*. *See* U.S. Court of Appeals for the Sevent Circuit, Oral Argument in *Castañon-Nava v. U.S. Dep’t Homeland Security*, Case No. 25-3050 (Feb. 3, 2026), https://media.ca7.uscourts.gov/sound/external/cm.25-3050.25-3050_02_03_2026.mp3 [<https://perma.cc/5JTQ-Y95Z>].

(“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* and whether the Fourth and Fifth Amendment Procedural Due Process rights of the Petitioner were violated by the Respondents.” (cleaned up)).

29. Whether the Fifth Circuit’s “novel interpretation regarding mandatory detention . . . is correct . . . Petitioner is entitled to procedural due process in h[er] as-applied challenge.” *Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526, at *1 n.2 (W.D. Tex. Nov. 20, 2025). “After all, it is a ‘well established’ rule ‘that the Fifth Amendment entitles aliens to due process of law.’” *Id.* at *3 (quoting *Trump v. J. G. G.*, 145 S. Ct. 1003, 1006 (2025)).

30. While Ms. Rocha Quispe challenges her detention under 8 U.S.C. § 1225(b)(2), that is not her only legal challenge to her detention. She challenges her detention on the separate and independent legal basis that her detention violates Fifth Amendment Due Process protections. ECF 1 at 10–12.

31. The Western District of Texas thoughtfully analyzed this issue in *Hernandez-Fernandez v. Lyons*. 2025 WL 2976923, at *8. The Petitioner in *Hernandez-Fernandez* was engaged in active asylum proceedings and had not been previously detained. *Id.* at *7–

8. He lived in the United States for some time, until 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 that the policy as applied "fails 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.*" *Id.* at *8 (quoting *Lopez-Arevelo v. Ripa*, 801 F.Supp.3d 668, 677–78 (W.D. Tex. 2025) (Cardone, J.) (cleaned up) (emphasis in original)).

32. 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. *Id.* at *7–8 (citing *Mathews v. Eldridge*, 424 U.S. 319, 96 (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.

33. 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*, 2025 WL 2598379, at *2). The court did not reach

whether a mandatory detention policy can lawfully cabin that interest for individuals arrested near the border, but instead found that the petitioner, who had been living in the interior of the U.S. and who had an ongoing asylum proceeding, had a protected liberty interest in remaining free while his case continued. *Id.* at *8 (citing *Lopez-Arevelo*, 801 F.Supp.3d at 677–78; *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).

34. 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 (quoting *Martinez*, 2025 WL 2598379, at *3 (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.” *Id.* (citing *Espinoza*, 2025 WL 2581185, at *11). 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. *Id.* (citing *Velesaca v. Decker*, 458 F. Supp. 3d 224, 242 (S.D.N.Y. 2020)).

35. 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.” *Id.* 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)).

36. 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 [Board of Immigration Appeals] 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.’” *Id.* 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 weighed in favor of habeas relief.

37. 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*, 2025 WL 2581185, at *11–12; *Kostak v. Trump*, No. CV 3:25-CV-01093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Singh*, 2025 WL 1918679, at *8–9 (collecting cases)).

38. Ms. Rocha Quispe stands in a similar position and is entitled to habeas relief for the same reasons articulated in *Hernandez-Fernandez*. Ms. Rocha Quispe has been living in the United States since November 2022 and has a pending asylum claim. She is an active member of her community, belonging to a church and playing on the neighborhood football team. She lives with her family, including her two daughters, two sons, and grandson.

39. Ms. Rocha Quispe has a cognizable due process interest in remaining free while her asylum case is pending, absent some showing that she is a flight risk or a danger to the community. *Hernandez-Fernandez*, 2025 WL 2976923, at *8. The government’s 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 Ms. Rocha Quispe appears for her

asylum 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. *Id.* at *10.

40. Indeed, in just the days since *Buenrosto-Mendez* was decided, two courts in this district have granted in part habeas petitions brought on behalf of petitioners who, like Ms. Rocha Quispe, were detained by ICE without any individualized determination of danger or flight risk, noting that *Buenrosto-Mendez* does not change the outcome of the cases on procedural due process grounds, because each court's original due process analysis, it accepted without deciding that Respondents' interpretation of § 1225(b) was true. *See Hassen v. Noem*, 3:26-cv-0048-DB, ECF 8, 4 n.1 (W.D. Tex. Feb. 9, 2026) ("*Buenrosto-Mendez* does not change this case's outcome on procedural due process grounds"); *Ceballos v. Garite*, 3:26-cv-00312-DB, ECF No. 6, 3 n.2 (W.D. Tex. Feb. 10, 2026) ("*Buenrosto-Mendez* does not change this case's outcome on procedural due process grounds").

PRAYER FOR RELIEF

41. WHEREFORE, Ms. Rocha Quispe respectfully prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be removed from the United States or transferred outside of the Western District of Texas while this habeas petition is pending;

- (3) Issue an Order requiring Respondents to show cause as to why Petitioner should not be released immediately, consistent with this Court's February 6, 2026 Show Cause Order. ECF No. 16 at 2.
- (4) If the Court sees fit to order Petitioner's release, specified relief to ensure a safe return home, including release:
 - a) Inside of Minnesota;
 - b) At a safe time and place communicated in advance to counsel; and
 - c) With all of Petitioner's personal effects, such as driver's license, immigration papers, passport, wallet, cell phone, and keys.
- (5) Enjoin Respondents from implementing any conditions of release, including ICE's "Alternatives to Detention" measures, which include ankle monitors, body-worn GPS, telephonic tracking, or use of the SmartLINK Mobile Application;
- (6) Grant any other and further relief that this Court may deem just and proper.

Date: February 11, 2026

/s/ Jennifer Rappoport
Jennifer Rappoport
State Bar No. 24072761
BOTKIN CHIARELLO CALAF PLLC
1209 Nueces Street
Austin, Texas 78701
jennifer@bccAustin.com
T: (512) 960-4162
F: (737) 289-4695

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of February 2026, a true and correct copy of this document was served on all counsel of record who have appeared in this case using the Court's CM/ECF system as a Filing User.

/s/ Jennifer Rappoport
Jennifer Rappoport

Verification
Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney and acting on Petitioner's behalf. I have discussed the factual assertions in this petition with Petitioner's family member and Petitioner's Minnesota representative, who is also acting on Petitioner's behalf and who I understand to have personal knowledge of the facts alleged herein based on conversations with Petitioner's family. I hereby verify that the statements made in the attached Supplemental Verified Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status, are true and correct to the best of my knowledge.

Date: February 11, 2026

/s/ Jennifer Rappoport
Jennifer Rappoport
Attorney for Petitioner