

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JANINA STEFANIA MONTERO GRANDA
Petitioner,

v.

KRISTI NOEM, in her official capacity as
Secretary of the U.S. Department of Homeland
Security;

ANGEL GARITE, in his official capacity as
Assistant Field Office Director of Enforcement
and Removal Operations, El Paso Field Office,
U.S. Immigration and Customs Enforcement;

MARY DE ANDA-YBARRA, in her official
capacity as Field Office Director of
Enforcement and Removal Operations, El Paso
Field Office, U.S. Immigration and Customs
Enforcement;

TODD LYONS, in his official capacity as
Acting Director and Senior Official Performing
the Duties of the Director of U.S. Immigration
and Customs Enforcement;

DORA CASTRO, in her official capacity as
Warden of the Otero County Processing Center;

and

PAMELA BONDI, in her official capacity as
United States Attorney General

Respondents.

Case No. 2:26-cv-00294-MLG-JFR

PETITIONER'S REPLY BRIEF

I. INTRODUCTION

Respondents filed a response to the petition for writ of habeas corpus on February 14, 2026. Doc. 09. The Respondents asked the Court to consider arguments previously presented in *Cortez-Gonzales v. Noem*, No. 2:25-cv-00985, 2025 WL 3485771 (D.N.M. Dec. 4, 2025) as well as the recent Fifth Circuit decision from *Buenrostro-Mendez v. Bondi*, --- F.4th---, 2026 WL 323330 (5th Cir. 2026). Petitioner now submits her reply.

II. The Court should reaffirm the holding from *Cortez-Gonzalez*

The Respondents have incorporated all arguments raised from *Cortez-Gonzales v. Noem*, No. 2:25-cv-00985, --- F.Supp.3d ----, 2025 WL 3485771 (D.N.M. Dec. 4, 2025). The Court has already considered these arguments and expressed its disagreement. *Id.* at *6 (granting injunctive relief and requiring an individualized bond hearing for the Petitioner). Petitioner respectfully asks that the Court reaffirm its holding from *Cortez-Gonzalez*, but to also consider immediate release as a remedy because Petitioner was arrested without a warrant required for a lawful arrest under Section 1226(a). *Segundo G.U.O. v. Bondi*, No. 26-830 (DWF/LIB), 2026 WL 266562, *2 (D. Minn. Feb. 02, 2026); *Norma V.A. v. Bondi*, No. 26-618 (JRT/DJF), 2026 WL 252506, *2 (D. Minn. Jan. 30, 2026)

III. *Buenrostro-Mendez*'s reasoning should not be adopted by this Court

The *Buenrostro-Mendez* decision from the Fifth circuit should not be adopted by this Court. The overbroad interpretation of 8 U.S.C. 1225(b) reached by the *Buenrostro-Mendez* court risks relegating the “default rule” of Section 1226(a) to a statute that would only apply to a mere handful of noncitizens. *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (referring to Section 1226(a) as the “default rule” in an analysis of detention authority pertaining to noncitizens already within the United States). The *Buenrostro-Mendez* court argued that interpreting section 1226(a) as described by *Jennings* would be a “language-parsing inquiry[.]” *Buenrostro-Mendez*,

2026 WL 323330, at *7. However, Courts within the Tenth Circuit have a “solemn duty to faithfully identify and apply precedent” from both the Supreme Court and the Tenth Circuit. *Nation v. San Juan Cnty.*, 150 F. Supp. 3d 1253, 1266 (D. Utah 2015), *aff’d sub nom. Navajo Nation v. San Juan Cnty.*, 929 F.3d 1270 (10th Cir. 2019)

Based on reading of the plain language in *Jennings*, this Court’s peer in Colorado found that “the Court can ‘draw from’ [*Jennings*] a guiding principle: ‘U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).’” *Singh v. Baltazar*, 2026 WL 352870, at *5 (D.Colo., Feb. 09 2026). *Buenrostro-Mendez* is inconsistent with this guiding principle and should not be adopted by this Court. Additionally, Petitioner respectfully asks that all the critiques of *Buenrostro-Mendez* recently articulated in *Singh v. Baltazar*, --- F.Supp.3d ----2026 WL 352870, *4-6 (D. Colo. Feb. 09, 2026), be incorporated by reference.

Even if the Court found *Buenrostro-Mendez* to be persuasive, the Court should still grant the petition for writ of habeas corpus because due process violations are not precluded by the recent decision from the Fifth Circuit. The *Buenrostro-Mendez* Court ruled on statutory interpretation and made no ruling with respect to due process violations resulting from detention. Multiple district courts within the jurisdiction of the Fifth Circuit have noticed this omission and have granted habeas corpus petitions based on due process violations following the *Buenrostro-Mendez* decision. *Marceau v. Noem*, No. EP-26-CV-237-KC, 2026 WL 368953, *2 (W.D. Tex. Feb. 09, 2026); *see also Clemente Ceballos v. Garite*, 3:25-cv-312-DB, at 6 n.2 (W.D. Tex. Feb. 10, 2026) (“*Buenrostro-Mendez* does not change this case’s outcome on procedural due process grounds.”). Counsel from the Department of Justice conceded that due process violations were

not at issue in *Buenrosto-Mendez*: “We have one issue before the Court now: the statutory question. ... There's not, in other words, a due process claim here.” Oral Argument, *Buenrosto-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. This Court has found that detention without review “constitutes an ongoing violation of [petitioner’s] right to due process.” *Cortez-Gonzalez v. Noem*, --- F.Supp.3d ----, 2025 WL 3485771, *5 (D.N.M. Dec. 04, 2025). Therefore, the petition for habeas corpus should still be granted even if the Court finds *Buenrosto-Mendez* to be persuasive.

IV. CONCLUSION

For all of the foregoing reasons, Petitioner asks this Court to grant her petition for habeas corpus and order immediate release or a bond hearing where the government bears the burden of justifying continued detention. Petitioner agrees with the Respondents that a hearing will not be necessary for this case, but undersigned counsel will be prepared to participate should the Court determine that a hearing is necessary to resolve the case.

DATED: February 18, 2026

Respectfully submitted,

/s/ Evan Brown

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CERTIFICATE OF SERVICE

I certify that on February 18, 2026, I filed the attached document electronically through the CM/ECF system. All parties are participants in the CM/ECF filing system.

/s/ Evan Brown
Attorney for the Petitioner