

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Gerardo Manuel GUZMAN CASTILLO,

Petitioner,

v.

WARDEN, ERO EL PASO CAMP EAST MONTANA; MARY DE ANDA-YBARRA, in her official capacity as Field Office Director, El Paso Field Office, U.S. Immigration and Customs Enforcement; TODD M. LYONS, in his official capacity as Director of Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; and U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents.

Case No. EP-26-cv-00355-DCG

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

Petitioner, a man with no criminal record who is the married father of a U.S. citizen child, has been imprisoned without bond in a tent camp for over a month in violation of his constitutional right to due process. After Petitioner was violently arrested by masked, unidentified men in Minnesota, Respondents unlawfully refused his demands to meet with a lawyer before transferring him to the El Paso camp, over a thousand miles from his family and community. Human rights groups have raised alarm over dire conditions prevailing at

the facility for months, *see* ECF No. 2 at 2-3, and news recently broke of a measles outbreak there.¹ Petitioner respectfully implores the Court to restore his liberty.

Courts in this District have done so in many like cases. In their response to the First Amended Verified Petition (Petition), Respondents do not address or mention the most on-point authorities cited therein – the numerous decisions issued by courts within this District granting habeas relief on procedural due process grounds *after* the Fifth Circuit’s ruling in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. 2026).² Instead, Respondents rehash arguments rejected in those decisions.

As courts in this District have recognized, *Buenrostro-Mendez* does not affect the outcome here, as it only dealt with a statutory question concerning the scope of Respondents’ detention authority under 8 U.S.C. § 1225(b). *See, e.g., Berting Marceau v. Noem*, No. 5:26-cv-237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026). Petitioner is similarly situated to petitioners in the cases where courts within this District found a *constitutional* violation, not a statutory violation. *See, e.g., Gomez Alvarado, v. Vergara, et al.*, No. 1:26-CV-00309-DAE, 2026 WL 594366 (W.D. Tex. Mar. 2, 2026); *Hassen v. Noem*, No. 26-cv-00048-DB, ECF No. 8 (W.D. Tex. Feb. 9, 2026); *Arnao-Linares v. Warden*, No. 3:26-cv-340-KC, ECF No. 5 (W.D. Tex. Feb. 18, 2026).

Petitioner respectfully submits that this Court should grant the Petition for the reasons explained in those cases. The contrary “cases (and government arguments)

¹ *See* Nicole Acevedo, *ICE confirms a measles outbreak in the nation’s largest detention facility in Texas*, NBC NEWS (Mar. 4, 2026), <https://www.nbcnews.com/news/us-news/ice-confirms-measles-outbreak-nations-largest-detention-facility-texas-rcna261659>.

² *See* ECF No. 2 at 11 citing *Arnao-Linares v. Warden*, No. 3:26-cv-340-KC, ECF No. 5 (W.D. Tex. Feb. 18, 2026); *Berting Marceau v. Noem*, No. 5:26-cv-237-KC, 2026 WL 368953 (W.D. Tex. Feb. 9, 2026); *Cortes-Escandon v. Garite*, No. 5:26-cv-314-KC, ECF No. 6 (W.D. Tex. Feb. 13, 2026); *Bonilla Conforme v. De Anda-Ybarra*, No. 5:26-cv-263-KC, 2026 WL 381110 (W.D. Tex. Feb. 11, 2026); *Hassen v. Noem*, No. 26-cv-00048-DB (W.D. Tex. Feb. 9, 2026).

rejecting due process challenges to detention based on the text of Section 1225 rely on circular reasoning.” *Valencia Reyes v. Noem*, No. 5:25-cv-01921-XR, ECF No. 7, at 7-8 (W.D. Tex. Feb. 25, 2026). For example, the Eastern District of Missouri in *Zhuang v. Bondi*, rejecting a due process claim, reasoned that “. . . this Court is following the mandate of Congress in Section 1225 that ‘applicants for admission’ shall be detained.” *Zhuang v. Bondi*, No. 1:25-CV-00201-CMS, 2026 WL 352872, at *5 (E.D. Mo. Feb. 9, 2026) (internal citations omitted). This analysis is wrong because “Petitioner’s claim is *constitutional*, not statutory, in nature[,]” and “‘Legislation cannot detract from the privilege afforded by the constitution.’” *Valencia Reyes*, ECF No. 7 at 8 (emphasis in original) quoting *Counselman v. Hitchcock*, 142 U.S. 547, 565 (1892), overruled on other grounds by *Kastigar v. United States*, 406 U.S. 441 (1972).

Respondents also rehash administrative exhaustion arguments that courts within this District already rejected for reasons described at length. *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 681 (W.D. Tex. 2025). The Court should reject them here for the same reasons. The Court should grant the Petition on due process grounds.

Respondents’ detention of Petitioner violates his due process rights

Respondents are detaining Petitioner without a bond hearing in violation of his due process rights. As a court in this District outlined in *Lopez-Arevelo*, “[t]o 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). Those factors are: (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.” *Lopez-Arevelo*, 801 F. Supp. 3d at 685 (internal citations and quotation marks omitted). All three factors weigh in favor of Petitioner here.

The first *Matthews* factor weighs in favor of Petitioner because he has “the most elemental of liberty interests”: “the interest in being free from physical detention.” *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Applying the *Matthews* test in *Lopez-Arevelo*, the court held “Because he spent nearly three years at liberty in the United States, Lopez-Arevelo possesses a cognizable interest in his freedom from detention.” *Lopez-Arevelo*, 801 F. Supp. 3d at 686. Petitioner here spent nearly four years at liberty in the United States before his arrest in late January 2026. Together with his wife and U.S. citizen daughter, he has built a life and family in the U.S.. He is his family’s primary financial supporter. ECF No. 2 at 1. The first *Matthews* factor weighs in his favor.

The second *Matthews* factor also weighs in Petitioner’s favor because he is currently being detained without a bond hearing. As the court in *Lala Barros v. Noem* held, “detaining him without holding a bond hearing creates a substantial risk that he may be erroneously deprived of his liberty.” *Lala Barros v. Noem*, No. EP-25-CV-488-KC, 2025 WL 3154059, at *4 (W.D. Tex. Nov. 10, 2025). As in *Lala Barros*, “Without an individualized determination, it cannot be said that detention is warranted . . .” and the risk of erroneous deprivation “can be easily ameliorated through a bond hearing” as “agency decisionmakers regularly conduct[] individualized custody determinations ... consider[ing] flight risk and dangerousness.” *Id.* (internal citations and quotation marks

omitted); *see also* *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *4 (W.D. Tex. Oct. 21, 2025); *Vargas Palacios v. Lyons*, No. 25-cv-00552-KC at 6-7 (W.D. Tex. Dec. 3, 2025).

The third *Matthews* factor weighs in favor of Petitioner because, while “[c]ertainly, the Government has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community . . . these concerns would be squarely addressed through a bond hearing.” *Lala Barros*, 2025 WL 3154059 at *5.

Buenrostro-Mendez decided a different question and does not foreclose relief

The Fifth Circuit decided a different question in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. 2026). There, a divided panel embraced the government’s new position that 8 U.S.C. § 1225(b) authorizes it to detain without bond millions of noncitizens inside the country on the same terms as if they were apprehended at the border, no matter how long they have resided in the country.³ Petitioner respectfully submits that *Buenrostro-Mendez* was wrongly decided in order to preserve his statutory claim, but it does not affect the outcome here.

Indeed, courts within this District have repeatedly granted habeas relief following the *Buenrostro-Mendez* decision and rejected Respondents’ argument that *Buenrostro-Mendez* somehow undermines the procedural due process analysis. This Court has already held that *Buenrostro-Mendez* “confined its decision to statutory interpretation and

³ The *Buenrostro-Mendez* majority opinion observed that “ . . . *Zadvydas v. Davis*, 533 U.S. 678, 678 (2001), has no direct application to aliens who are detained and being given due process during removal proceedings.” *Buenrostro-Mendez*, 2026 WL 323330 at *9. This does nothing to foreclose Petitioner’s entitlement to relief on due process grounds. *See Arnao-Linares v. Warden*, No. 3:26-cv-340-KC, ECF No. 5 (W.D. Tex. Feb. 18, 2026) (“The Fifth Circuit’s reiteration of *Zadvydas*’ general inapplicability to pre-final-removal-order-detention is not a ruling on the viability of any and all due process challenges to that detention. And this aside does not change the fact that the Fifth Circuit only decided the statutory question and did not adjudicate the petitioners’ due process claims.”).

did not reach the constitutional issues that Petitioner raises.” *Zamudio Sanchez v. Noem*, No. EP-25-cv-403 (DCG), 2026 WL 596133, at *8 (W.D. Tex. Mar. 2, 2026). This conclusion has been reached by numerous other Judges within this District.⁴

Thuraissigiam and Doe do not foreclose relief

Respondents cite *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) for the proposition that “the only process due for those who have never ‘been admitted into the country pursuant to law’ is whatever process is ‘expressly conferred by Congress.’” ECF No. 5 at 3 quoting *Thuraissigiam*, 591 U.S. at 138. Respondents also claim that the Supreme Court’s decision in *Connecticut Dep’t of Pub. Safety v. Doe*, 538 U.S. 1 (2003) forecloses relief because a bond hearing to address flight risk or danger would be irrelevant to 8 U.S.C. § 1225(b)(2)(A). ECF No. 5 at 2-3.

Courts in this District have already explained why neither decision is a bar to relief here. *Thuraissigiam* involved a challenge to the deportability – not the detention – of a person who never established a significant presence within the United States. *See Gomez Alvarado v. Vergara*, No. 1:26-CV-00309-DAE, 2026 WL 594366, at *3 (W.D. Tex. Mar. 2, 2026). In *Lopez-Arevelo*, the court distinguished *Thuraissigiam* from cases like Petitioner’s: “. . . *Thuraissigiam* does not prohibit Lopez-Arevelo from pursuing his due process claim, for two reasons. First, because he challenges his detention, not his deportability. And second, because he was detained after years of presence in the United

⁴ *See, e.g., Arnao-Linares v. Warden*, No. 3:26-cv-340-KC, ECF No. 5 at 2-3 (W.D. Tex. Feb. 18, 2026) (same); *Cortes-Escandon v. Garite*, No. 5:26-cv-314-KC, ECF No. 6 (W.D. Tex. Feb. 13, 2026) (same); *Bonilla Conforme v. De Anda-Ybarra*, No. 5:26-cv-263-KC, 2026 WL 381110 (W.D. Tex. Feb. 11, 2026) (same); *Hassen v. Noem*, No. 26-cv-00048-DB, ECF No. 8 at 4 n.1 (W.D. Tex. Feb. 9, 2026) (same); *Valencia Reyes v. Noem*, No. 5:25-cv-01921-XR, ECF No. 7, at 6-10 (W.D. Tex. Feb. 25, 2026) (same); *Gomez Hernandez, v. ICE Field Off. Dir.*, No. EP-26-CV-67-KC, 2026 WL 503958, at *2 (W.D. Tex. Feb. 23, 2026) (same); *Gomez Alvarado, v. Vergara, et al.*, No. 1:26-CV-00309-DAE, 2026 WL 594366, at *2 n.2 (W.D. Tex. Mar. 2, 2026) (same).

States, rather than on the threshold of initial entry.” *Lopez-Arevelo*, 801 F. Supp. at 685.

Petitioner here is likewise challenging his detention, not his deportability. Petitioner has resided in the United States for even longer than the petitioner in *Lopez-Arevelo*.

Accordingly, *Thuraissigiam* does not bar his due process claim.⁵ Moreover, the petitioner in *Thuraissigiam*, unlike the Petitioner here, was deemed to be an “arriving alien,” and therefore subject to a summary removal proceeding, expedited removal, that foreclosed certain constitutional rights and protections. *Thuraissigiam*, 591 U.S. at 114.

The Supreme Court’s decision in *Connecticut Dep’t of Pub. Safety v. Doe* has no application here. As courts in this District have recognized, “. . . *Doe* arose in an entirely different context: a challenge to a sex offender registration statute.” *Gomez Alvarado v. Vergara*, 2026 WL 594366, at *3 (internal citations omitted). The court in *Gomez Alvarado* found *Doe* “inapposite.” *Id.*; see also *Gomez Hernandez, v. ICE Field Off. Dir.*, No. EP-26-CV-67-KC, 2026 WL 503958, at *2 (W.D. Tex. Feb. 23, 2026) (same).

Neither *Thuraissigiam* nor *Doe* bars habeas relief here.

⁵ The Court should also reject the analysis of the unpublished decision in *Wekesa v. U.S. Att’y*, No. 22-10260, 2022 WL 17175818 (5th Cir. Nov. 22, 2022) for the reasons explained in *Lopez-Arevelo*. See *Lopez-Arevelo*, 801 F. Supp. 3d at 683–84 (“Because *Wekesa* is an unpublished opinion, it has no binding precedential value, and the Court considers it only to the extent it is persuasive on the force of its own reasoning. . . . The Court does not find the *Wekesa* opinion persuasive because it did not discuss the due process issue at all or provide sufficient facts from which the Court could discern the reasons for which it rejected the due process claim. On the other hand, the Court finds Judge Dennis’ dissent persuasive, especially in light of other persuasive authority from out of circuit. More fundamentally, *Wekesa* is inapposite because it involved a due process challenge to prolonged, mandatory detention under § 1226. Here, however, *Lopez-Arevelo* challenges the decision to subject him to mandatory detention under § 1225(b) at all, without any process or individualized reasons, after he spent three years released on his own recognizance. These significant differences highlight the difficulty in applying *Wekesa*, with its scant analysis, here. And even *Wekesa* did not purport to read *Thuraissigiam* to entirely foreclose due process challenges in the mandatory detention context . . .”) (internal citations omitted).

The Court should reject Respondents' administrative exhaustion arguments for the reasons explained in Lopez-Arevelo

Respondents reprise the argument that “Petitioner must first seek relief with the immigration court or the BIA, fully exhausting administrative remedies before coming to this Court.” ECF No. 5 at 22. However, as the court explained in *Lopez-Arevelo*, “Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.” *Lopez Arevelo*, 801 F. Supp. 3d at 680 citing *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007); 8 U.S.C. § 1252(d)(1) (“A court may review a final order of removal only if ... the alien has exhausted all administrative remedies.”). Petitioner challenges his detention, not a final order of removal. The Court should reject Respondents’ administrative exhaustion arguments for the same reasons the *Lopez-Arevelo* court rejected them.

Respondents unlawfully refused Petitioner's request to speak with a lawyer before transferring him out of Minnesota, tainting his resulting detention

Respondents failed to respond to Counts Three and Four of the Petition, which explained that Petitioner asked to speak to an attorney after his arrest in Minnesota, but Respondents transferred him over a thousand miles away to El Paso without providing him any opportunity to access counsel. ECF No. 2 at 17-18. As alleged by the Petition, denying a detainee access to counsel and transferring them out of state in this manner violates due process rights. ECF No. 2 at 17 citing *Advocates for Human Rights v. Department of Homeland Security, et al.*, No. 0:26-cv-749-NEB at 28-30 (D. Minn. Feb. 12, 2026). This conduct also violates the INA. *See* ECF No. 2 at 17 citing 8 U.S.C. § 1362. Respondents’ violation of the due process clause and the INA, unlawfully

interfering with Petitioner's ability to timely obtain counsel and seek relief near his home, taints the resulting detention and mandates release.

The proper remedy is Petitioner's immediate release from custody

In several habeas orders issued prior to *Buenrostro-Mendez*, this Court has determined that the proper remedy for unlawful detention is immediate release from custody. *See Ramirez-Morales v. Lyons*, No. 25-cv-476 (DCG), 2025 WL 3767075, at *3 (W.D. Tex. Dec. 30, 2025); *Alvarado Luna v. Warden*, No. 25-cv-565 (DCG), 2025 WL 3787494, at *11 (W.D. Tex. Dec. 29, 2025).

Following *Buenrostro-Mendez*, several courts within this District have ordered petitioners' immediate release after finding that their unreviewed detention violated due process. *See, e.g., Gloria Noyola v. Bondi*, No. 1:26-cv-405 (RP), 2026 WL 607266, at *5 (W.D. Tex. Mar. 4, 2026); *Villegas Angel v. Noem*, No. 1:26-cv-384 (DAE), 2026 WL 594368, at *5 (W.D. Tex. Mar. 3, 2026).

The reasoning for this is simple. In addition to the general principle that, where a court finds an ongoing detention unlawful, "the typical remedy for such detention is, of course, release," *Munaf v. Green*, 553 U.S. 674, 693 (2008), Petitioner's due process rights were violated at the point of detention, which Respondents effectuated without any determination that he was a danger to the community or a flight risk. "A bond hearing is 'no substitute for the requirement that ICE engage in a 'deliberative process prior to, or contemporaneous with,' the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause.'" *Cruz-Reyes v. Bondi*, No. 5:26-cv-60 (DS), 2026 WL 332315, at *6 (S.D. Tex. Feb. 3, 2026) (citing *Gonzalez v. Joyce*, No. 25-cv-8250 (AT), 2025 WL 2961626, at *5 (S.D.N.Y. Oct. 19, 2025)). Accordingly, "a post-deprivation

bond hearing cannot cure the core violation of [Petitioner's] due process rights that occurred when he was unlawfully []detained under a mandatory detention provision without any individualized determination of the need for detention.” *Bonilla Chicas v. Warden*, No. 5:26-cv-131 (DS), 2026 WL 539475, at *12 (S.D. Tex. Feb. 20, 2026); *see also id.* at *11 (“[T]he lack of any notice, opportunity for Petitioner to challenge his detention, or individualized determination by DHS when he was detained under mandatory detention creates a very high risk of erroneous deprivation of liberty that cannot be mitigated through a post-deprivation hearing.”).

The Court should therefore follow these decisions and order Petitioner's release. In the alternative, should the Court grant a bond hearing as a remedy, it should ensure that “the burden shifts to the Government to show, by clear and convincing evidence, that [Petitioner] poses a danger or flight risk.” *Zamudio Sanchez*, 2026 WL 596133, at *15 & n.158 (collecting cases).

Conclusion

Petitioner respectfully asks the Court to grant the petition on due process grounds. *Buenrostro-Mendez* decided a different question and does not foreclose relief, as recognized by the numerous in-District decisions granting habeas relief after *Buenrostro-Mendez*. The Court should therefore order Petitioner's immediate release or, in the alternative, a bond hearing in which Respondents bear the burden of demonstrating that Petitioner is a danger to the community or a flight risk by clear and convincing evidence.

Dated: March 3, 2026

Respectfully submitted,

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