IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ADELSO FIGUEROA LOPEZ	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 2:26-cv-771
	:	
BRIAN MCSHANE, ET AL.,	:	
	:	
Respondents.	:	

PETITIONER'S REPLY TO GOVERNMENT'S RESPONSE
IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

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A. The Laken Riley Act does not apply to this case.

The Government's first argument raises a simple issue of statutory construction. The Laken Riley Act is codified at 8 U.S.C. §1226(c)(1)(E)(i) and (ii), which provide, in pertinent part:

> The Attorney General shall take into custody any alien who-
>
> (E)(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and
>
> (ii) **is charged with, is arrested for, is convicted of**, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, **or any crime that results in death or serious bodily injury to another person**,

Petitioner concedes that he is inadmissible under paragraph (6)(A) of section 1182(a) of Title 8; however, he disputes that he "is charged with, is arrested for, is convicted of, admits having committed or admits committing acts which constitute the essential elements of" any crime described in subparagraph (2) above for two reasons. First, as the government concedes in its response, the "aggravated assault" charge was dismissed at the preliminary hearing stage, so Petitioner is not charged with, arrested for, or convicted for an offense described in subparagraph (2). In its Response, the Government argues that Petitioner "was arrested for and later charged with Aggravated Assault," but that is no longer the case, making him fall outside of the intended scope of the statute.

Second, as indicated in the affidavit of probable cause attached to the Government's Response, none of Petitioner's alleged offenses resulted in death or serious bodily injury to another person. If Congress had intended to subject aliens to mandatory detention based on an attempt to commit any crime where death or serious bodily injury to another is an essential element of the offense, it would have said so. It would have enacted a statute that reads "…or any crime or any attempt to commit a crime that results in death or serious bodily injury to another person."

Further, the Government's reading of the statute may be narrower than what Congress intended. A plain reading of the statute indicates that an alien may be subject to mandatory detention for committing a crime that does not have death or serious bodily injury to another as an essential element but rather any crime that results in death or serious bodily injury to another person. For example, the crime of "driving under the influence of alcohol" might result in death or serious bodily injury to another person, even though it is not an essential element of the offense.

B. Petitioner is subject to discretionary detention under 8 U.S.C. §1226(a), rather than mandatory detention under 8 U.S.C. §1225(b)(2).

Until 2025, noncitizens who entered the United States without inspection and were later detained and placed in removal proceedings were generally considered subject to discretionary detention under 8 U.S.C. § 1226(a), and were therefore able to seek release on bond. Last July, however, the Department of Homeland Security

(DHS) suddenly changed course, issuing a policy claiming that all noncitizens not lawfully admitted into the country are instead mandatorily detained under 8 U.S.C. § 1225(b)(2)(A) and are therefore ineligible for bond. In September 2025, the Board of Immigration Appeals (BIA) issued a precedential decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), cementing DHS's novel position into law.

Thereafter, Federal district courts across the country began receiving an onslaught of habeas petitions challenging the detention of thousands of noncitizens under the government's new interpretation of these statutes. These courts overwhelmingly agreed that the position the government had held for decades was the correct one: noncitizens detained in the interior of the United States, who do not have certain disqualifying criminal history, are subject to discretionary detention under 8 U.S.C. § 1226(a) and therefore cannot be denied a bond hearing. The government appealed many of these decisions to the circuit courts, however, and most of these appeals are still pending.[1]

On February 6, 2026, the Fifth Circuit became the first circuit court to weigh in on this issue, in Buenrostro-Mendez v. Bondi, No. 25-cv-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026) ("Buenrostro"). In a split decision with a strong dissent, the Fifth Circuit sided with DHS and the BIA to determine that all noncitizens who are

[1] A link listing all pending appeals is here: https://ailassoc.sharepoint.com/:x:/s/legalteam/IQA2yXjRe8IRSo3nZWYuH_i9AS6gbz4QwH-RWp-sYd6vSLQ?rtime=ag2WX5V43kg

present in the United States without lawful admission are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) during removal proceedings, rather than discretionary detention under § 1226(a). The decision overruled dozens of district court opinions in the Fifth Circuit interpreting 8 U.S.C. §§ 1225 and 1226.

On February 18, 2026, the Central District of California issued an order vacating Yajure Hurtado, part of its enforcement of a prior classwide declaratory judgment finding—directly contrary to the Fifth Circuit in Buenrostro—that 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), applies to class members nationwide. *See* Maldonado Bautista et al., v. Santacruz Jr. *et al*., No. 25- 01873, ECF No. 116 (C.D. Cal. Feb. 18, 2026). The court ordered that all class members receive individualized notice that they "may be unlawfully detained and may seek release on bond or conditional parole under 8 U.S.C. § 1226(a)." *Id.*

Buenrostro was a statutory interpretation opinion only. It did not consider any due process issues. *See* Oral Argument, Buenrostro-Mendez v. Bondi, No. 25-cv-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 ("We have one issue before the Court now: the statutory question. . . . There's not, in other words, a due process claim here.").

Indeed, even before Buenrostro, some district courts within the Fifth Circuit were already granting habeas petitions for similarly-situated petitioners solely on

procedural due process grounds, analyzed under Mathews v. Eldridge, 424 U.S. 319 (1976). *See, e.g.*, Lopez-Arevelo v. Ripa, 801 F. Supp. 3d 668 (W.D. Tex. 2025) (Cardone, J.); Vieira v. De Anda-Ybarra, 806 F. Supp. 3d 690 (W.D. Tex. 2025) (Briones, J.); Hernandez-Fernandez v. Lyons, No. 25-cv-00773, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025) (Pullman, J.); Parada-Hernandez v. Johnson, No. 25-cv-2729, 2025 WL 3465958 (N.D. Tex. Oct. 29, 2025), R. & R. adopted, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025) (Kinkeade, J.). For petitions that were already pending prior to Buenrostro, some judges have affirmatively issued orders allowing petitioners to amend to "make a further filing with additional authorities or distinguishing facts," and indicating which further claims may remain viable post-Buenrostro. *See, e.g.*, Landaverde Gonzalez v. Bradford, No. 26-cv-1125, ECF No. 5 (S.D. Tex. Feb. 17, 2026) (Eskridge, J.). Other petitioners have sought leave to amend pursuant to Fed. R. Civ. P. 15(a). *See also* Petty v. Great W. Cas. Co., 783 F. App'x 414, 414 (5th Cir. 2019) (confirming Rule 15(a) "evinces a bias in favor of granting leave to amend").

Here, Petitioner alleges a violation of Due Process under the Fifth Amendment. *See* Count II. An arriving alien who was previously apprehended and released on recognizance under 8 C.F.R. § 1236.1(c)(8), which requires a finding that they were not a flight risk or a danger, can argue should be afforded pre-deprivation process before being re-detained (i.e. a hearing before a neutral arbiter

in which the government has to show material changed circumstances justifying their re-detention). *See* Morrissey v. Brewer, 408 U.S. 471 (1972). Some district courts in the Fifth Circuit granted habeas petitions on this basis even before Buenrostro foreclosed the statutory argument. *See, e.g.*, Cruz-Reyes v. Bondi, - -- F.Supp.3d ----, 2026 WL 332315, at *5–7 (S.D. Tex. Feb. 3, 2026) (ordering immediate release, as "a post-deprivation bond hearing cannot cure the core violation of Mr. Cruz Reyes's due process rights"); *see also* Lopez-Arevelo v. Ripa, 801 F. Supp. 3d 668, 688 (W.D. Tex. 2025) (ordering a post-deprivation bond hearing for individuals who had been re-detained after release on recognizance); Parada-Hernandez v. Johnson, No. 25-cv-2729, 2025 WL 3465958, at *7 (N.D. Tex. Oct. 29, 2025) (same), R. & R. adopted, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025).

District Courts outside of the Fifth Circuit support this argument. *See, e.g.*, Ye v. Maldonado, No. 25-cv-6417, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025) (ordering release of petitioners previously released on recognizance and barring re-detention without pre-deprivation process); Singh v. Noem, No. 26-cv-00079, 2026 WL 265670 (W.D. Wash. Feb. 2, 2026) (same); Singh v. Albarran, No. 25-cv-02006, 2026 WL 445713 (E.D. Cal. Feb. 17, 2026) (recommending same).

Petitioner was previously released on recognizance because there was no lawful purpose for his detention at that time (*i.e.* he was neither a danger nor a flight risk). Due process requires that he should be afforded an opportunity to argue that

there have been no changes in material circumstances since his release and that there continues to be no lawful purpose for his detention now. *See* Zadvydas v.Davis, 533 U.S. 678, 690 (2001); *see also* Rodriguez Romero v. Ladwig, No. 25-cv-1106, 2026 WL 321437 (M.D. La. Feb. 6, 2026); *see also* Jacobo Ramirez v. Noem, --- F.Supp.3d ----, 2025 WL 3270137, at *8–9 (D. Nev. Nov. 24, 2025) (finding petitioners who entered without inspection, some previously released on recognizance, likely to prevail on substantive due process claim).[2]

Lastly, some courts have found that re-detention of individuals previously released, without material changed circumstances, is arbitrary and capricious in violation of the APA. *See, e.g.*, Rios v. Noem, No. 25-cv-2866, 2025 WL 3141207, at *3–4 (S.D. Cal. Nov. 10, 2025); *see also* Garro Pinchi v. Noem, No. 25-cv-05632, 2025 WL 3691938, at *25 (N.D. Cal. Dec. 19, 2025) (finding government policy of re-detaining previously released noncitizens is likely arbitrary and capricious). But see Santiago v. Noem, No. 25-cv-361, 2025 WL 2792588, at *5–6 (W.D. Tex. Oct. 2, 2025) (finding decision to detain during removal proceedings not to constitute a final agency action reviewable under the APA).

[2] Petitioner acknowledges that he may have difficulty establishing that he is not a danger to the community given his pending criminal charges; however, that issue is for the immigration judge to decide in bond proceedings, even though he has not been convicted of any offense. But that issue is not presently before this Court, which need only decide whether Petitioner's due process rights are violated if he is not afforded a bond hearing to present his arguments for discretionary release under 8 U.S.C. §1226(a).

Based on the foregoing, Petitioner asserts that he should be afforded an opportunity to apply for bond to seek release under 8 U.S.C. §1226(a).

Respectfully submitted,

/s/ Michael S. Henry

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CERTIFICATE OF SERVICE

I certify that on this date, I filed the foregoing Response in Opposition to Petition for Writ of Habeas Corpus via the Court's CM/ECF System, thereby making it available for viewing and download for all parties to the case.

/s/ Michael S. Henry

Dated: March 2, 2026

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