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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Diego Armando Guacho Paguay,

Petitioner,

v.

Kristi Noem, *et al.*,

Respondents.

Case No. 3:26-cv-00357-LS

**PETITIONER'S SUPPLEMENTAL
RESPONSE**

INTRODUCTION

1. Petitioner Diego Armando Guacho Paguay brought his Petition for a Writ of Habeas Corpus before the District of Minnesota on January 30, 2026. See ECF No. 1.
2. Respondents responded on February 1, 2026 requesting dismissal or transfer to Texas as Petitioner was detained in El Paso, Texas as well as arguments for the government's position that Petitioner's detention is mandatory under § 1225. See ECF No. 6.
3. Petitioner filed an objection regarding the transfer of the Petitioner to El Paso, Texas and Petitioner's petition to the Western District of Texas. See ECF No. 7
4. Petitioner had a bond hearing on February 5, 2026 in El Paso, Texas, which was denied stating "no jurisdiction." See ECF No. 8-1.
5. The Minnesota District Court transferred the case to the Western District of Texas. See ECF No. 9.
6. Counsel for Petitioner appears pro hac vice.
7. Petitioner submits this supplemental response in response to the Government's arguments.
8. Petitioner brought his petition in part seeking enforcement of his Fifth Amendment Due Process rights. Respondents' response addresses the statutory question as to whether Petitioner is detained pursuant to § 1225 or § 1226 , for which Respondents directed the court to support minority opinions in various district courts.
9. On February 6, 2026, the Fifth Circuit, in a split decision agreed with DHS and the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)., determining that all noncitizens present in the U.S. without lawful admission are subject to mandatory detention under §1225 (b)(2)(A) during removal proceedings rather than §1226(a). See *Buenrostro-*

Mendez v. Bondi, No. 25-cv-20496, WL 32333 (5th Cir. Feb. 6, 2026). *Buenrosto-Mendez* addresses the statutory claims only.

10. On February 18, 2026, the Central District of California vacated *Yajure Hurtado*, finding that 8 U.S.C. § 1226(a), not §1225(b)(2)(A) applies to class members nationwide in its enforcement of the declaratory judgment in *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 must receive individualized notice that they may be “unlawfully detained” and that they may seek release or conditional parole. *Id.*

11. It is undisputed that Petitioner is a *Maldonado Bautista* class member and Petitioner’s position is that he is not subject to mandatory detention under § 1225.

12. The statutory interpretations of § 1225 and § 1226 are no longer settled, and Petitioner understands that the ruling in *Buenrosto* currently precludes relief on this ground in the Fifth Circuit. Petitioner therefore asks that the Court note his previous statutory arguments and preserve for appeal.

PETITIONER IS ENTITLED TO DUE PROCESS

Petitioner re-alleges his due process claims outlined in his petition.

Buenrosto addressed the statutory claims only. The due process issues remain.

An appropriate remedy for a procedural due process violation is to “require a bond hearing at which the government bears the burden of proving by clear and convincing evidence that the detainee poses a danger or flight risk.” *Id.* at *Ramirez Cruz v. Noem*, et. al., No. 3:26-cv-00379-KC, ECF No. 14, quoting *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 688 (W.D.Tex. 2025). Petitioner had a bond hearing before the Immigration Judge in El Paso, Texas on February 5, 2026, which was denied on the grounds of “no jurisdiction.” See ECF Because

Petitioner was not given the opportunity to be heard, and because there were no findings or proof that he was a danger or a flight risk, he was in effect “detained without a bond hearing that accords due process.” *Ramirez Cruz*, at 5. The Petitioner in this case was not afforded a bond hearing that accords with due process as the government did not prove that Petitioner was a danger or a flight risk and those elements were not even addressed by the Immigration Judge. Further, there is no evidence that would warrant such a finding.

Because Petitioner had been previously released on recognizance, he was not a flight risk or danger and absent a material change in circumstances, should have been afforded pre-deprivation process. *See Morrissey v. Brewer*, 408 U.S. 471 (1972). Petitioner, who has no criminal history, has been wrongfully detained since January 29, 2026. “A post-deprivation bond hearing cannot cure the core violation of [Petitioner’s] due process rights,” *Cruz-Reyes v. Bondi*, ---F.Supp.3d---, 2026 WL 332315 at *5-7 (S.D. Tex. Feb. 3, 2026) (ordering immediate release); see also *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 688 (W.D.Tex. 2025), (ordering a post-deprivation bond hearing for those having been re-detained after release on recognizance). Because there was no lawful purpose for Petitioner’s detention upon his release in 2024 as he was neither a danger nor a flight risk, and because there has been no change in material circumstances since his release, there is no lawful purpose for Petitioner’s detention now. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). An appropriate remedy for a substantive due process violation is immediate release from detention.

Petitioner reiterates that the Immigration Judge must apply the U.S. Supreme Court’s balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)., that 1) Petitioner’s significant interest in freedom from physical detention outweighs 2) the government’s interest in “any administrative burdens that a substitute procedure requirement would entail.” *Id.* On the

contrary, his release would relieve the government of overcrowding and the taxpayer expense of maintaining the Petitioner, and 3) Petitioner was erroneously deprived of his interest in freedom while complying with a substitute procedural safeguard. *Id.* at 335.

The Government has no legitimate interest in continuing Petitioner's detention. Because there is no legal basis to continue his detention, he must be released.

DATED this 20th day of March, 2026.

Respectfully submitted,

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