IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JULIAN ANDRES MARIN BUSTOS, Petitioner, v. MIGUEL VERGARA, *Field Office Director, Immigration and Customs Enforcement San Antonio Field Office, et al.,* Respondents.	§ § § § § § § § § § § §	1:26-CV-294-RP

PETITIONER'S REPLY TO FEDERAL RESPONDENTS' RESPONSE, CONFIRMING NO FURTHER AMENDMENT AND REQUESTING EXPEDITED HABEAS RELIEF

Petitioner, through undersigned counsel, respectfully submits this Reply to Federal Respondents' March 9, 2026 Response and the Court's March 9, 2026 Order. Petitioner proceeds on the operative habeas pleadings already on file—Petitioner original Petition for Writ of Habeas Corpus and AO-242 form (Dkt. 1), together with the Protective Amended Petition filed March 3, 2026 (Dkt. 13)—and offers this Reply, based in part on information recently learned from the Government's own Form I-213 submitted with Respondents' March 9 exhibits (Dkt. 14-2), as additional support rather than as an amendment adding new claims. This Reply is intended as a focused companion to those pleadings and is narrowly directed to the jurisdictional, due-process, and detention-process issues identified in the Court's March 9, 2026 Order (Dkt. 15).

Prompt relief is essential given the loss of air conditioning in Petitioner's ICE housing unit since late February, Petitioner's imminent individual asylum hearing, and counsel's review of an I-213 that directly contradicts the Notice to Appear and reflects a structurally defective custody process. These I-213 details are offered not as a new ground for relief, but as further record support for the already-pled claim that Petitioner's detention rests on a defective custody framework. In light of this ongoing prejudice and the limited time before the April 14, 2026 merits hearing, Petitioner and undersigned counsel respectfully request that the Court resolve the petition on the existing papers and issue a prompt, expedited ruling, but stand ready to appear for any further habeas hearing should the Court determine that oral presentation would assist its review.

I. INTRODUCTION

The threshold question is whether this case is, as Respondents suggest, a non-reviewable dispute with an immigration judge's bond decision, or instead a reviewable challenge to the legality of the detention process. As *Demore v. Kim*, 538 U.S. 510 (2003) and *Jennings v. Rodriguez*, 583 U.S. 281 (2018) make clear, federal courts retain habeas jurisdiction to consider constitutional and legal challenges to the framework that authorizes detention, even where the ultimate custody decision involves discretion.

Here, Respondents attempt to recast the Petition as a mere disagreement with how an immigration judge weighed bond factors. That misstates Petitioner's claim. Petitioner does not ask this Court to reweigh those factors or to substitute its judgment for the immigration judge's discretionary assessment. Instead, Petitioner challenges the legality of the procedures used to maintain Petitioner ongoing civil detention: (1) continued detention on a materially contradictory Government record; (2) burden allocation requiring Petitioner to disprove dangerousness "by clear and convincing evidence"; (3) failure to meaningfully assess updated release evidence and alternatives to detention; and (4) concrete, present prejudice from continued detention as Petitioner individual merits hearing approaches.

Those are legal and constitutional questions about the lawfulness of the detention framework and procedures actually applied, not about the Attorney General's discretionary judgment as such. See *Demore*, 538 U.S. at 516–17 (recognizing review where the petitioner "does not challenge a discretionary judgment" but the statutory framework); *Jennings*, 583 U.S. at 296–98 (confirming that § 1226(e) does not bar constitutional challenges to detention procedures); *Loa-Herrera v. Trominski*, 231 F.3d 984, 991–92 (5th Cir. 2000) (distinguishing discretionary custody judgments from reviewable legal questions).

II. THIS COURT HAS JURISDICTION BECAUSE PETITIONER CHALLENGES REVIEWABLE LEGAL AND CONSTITUTIONAL DEFECTS IN THE DETENTION PROCESS

The next question is whether 8 U.S.C. § 1226(e) and related channeling provisions strip this Court of jurisdiction over Petitioner's claims. The governing rule is that § 1226(e) bars review of the Attorney General's discretionary "judgment" regarding detention or release, but "does not deprive the courts of jurisdiction to review habeas petitions that raise constitutional challenges or questions of law." *Demore*, 538 U.S. at 516–17; *Jennings*, 583 U.S. at 296–98; *Loa-Herrera*, 231 F.3d at 991–92.

Courts in this District have followed that rule in immigration-detention cases. Recent decisions such as *Gonzalez-Gomez v. Bondi*, No. 5:25-CV-1861-JKP (W.D. Tex. Jan. 6, 2026), *Echevarria-Hernandez v. Noem*, No. 5:25-CV-1631-JKP (W.D. Tex. Dec. 18, 2025), *Martinez v. Noem*, No. 5:25-CV-1373-JKP (W.D. Tex. Nov. 26, 2025), and *Vara Sanchez v. Johnson*, No. 6:2025-CV-00503-ADA-DTG (W.D. Tex. Dec. 22, 2026), have rejected broad jurisdictional arguments based on 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9) and have held that district courts retain authority to adjudicate legal and constitutional challenges to detention, particularly where the petitioner contests the availability or adequacy of bond process or disputes which detention statute governs custody. Likewise, *Acosta Dominguez v. Noem*, No. 3:25-CV-00741-DB (W.D. Tex. Jan. 20, 2026) and *Rincon Chavero v. Bondi*, No. 3:2025-CV-00638 (W.D. Tex. Jan. 07, 2026), emphasize that habeas remains available to persons in immigration detention to challenge unlawful custody.

Here, those jurisdictional principles fit the case exactly. Petitioner is not attacking a discretionary custody judgment; Petitioner is challenging whether Petitioner detention can lawfully rest on an unreconciled Government record and on a process that placed a clear-and-convincing burden on him and failed to consider updated release evidence. That is the type of challenge *Demore*, *Jennings*, and *Loa-Herrera* treat as reviewable notwithstanding § 1226(e).

Respondents' own exhibits confirm that the dispute is about the legality of the framework, not about reweighing bond. Exhibit A and its EOIR confirmation materials describe Petitioner as a lawfully admitted B-2 nonimmigrant who lawfully filed asylum claims; Exhibit B (the I-213) asserts that Petitioner entered by foot at an unknown location, was not admitted, inspected, or paroled, and is present without admission or parole. Exhibit C shows that the immigration judge denied bond because Petitioner "did not meet [Petitioner] burden to show by clear and convincing evidence" that Petitioner is not dangerous, and Exhibit D shows that a later custody ruling refused reconsideration on narrow "material change" grounds without addressing the structural defects. Exhibit E confirms that Petitioner individual merits hearing is set for April

14, 2026. Those facts raise legal and constitutional questions about the lawfulness of Petitioner continued detention and the adequacy of the bond process applied.

A district court may resolve whether detention procedures are constitutionally adequate without deciding the merits of removability or asylum and without reweighing ordinary bond factors. That is exactly what Petitioner asks this Court to do. Accordingly, this Court has jurisdiction under 28 U.S.C. § 2241 to deny Respondents' jurisdictional challenge and grant habeas relief.

III. RESPONDENTS' OWN EXHIBITS CONFIRM A MATERIALLY CONTRADICTORY GOVERNMENT DETENTION RECORD

The Court must next examine whether the Government's own exhibits show a coherent factual basis for detention or an unreconciled contradiction. Due process requires that prolonged civil detention rest on a reasonably reliable and internally coherent factual foundation; when the Government's record is materially contradictory and unreconciled, the risk of erroneous deprivation increases substantially.

Here, Respondents' exhibits show that Petitioner's detention rests on mutually exclusive narratives, not a minor discrepancy. Under Exhibit A, DHS charged Petitioner as a lawfully admitted B-2 nonimmigrant who lawfully filed asylum claims; the Notice to Appear alleges admission at Miami on June 25, 2018, with removability under § 237(a)(1)(B) for remaining beyond Petitioner authorized stay, and the EOIR materials reflect the same. Exhibit B, the Form I-213, asserts the opposite predicate: it states that Petitioner entered "by foot, at or near [an] unknown location," was "not admitted, inspected, or paroled," and is "an alien present in the

United States without being admitted or paroled." Both narratives cannot be true, and the Government has never reconciled them.

That contradiction is material, not collateral. It bears directly on how the Government classifies Petitioner for detention purposes—whether as an admitted overstay or as someone "never admitted"—and thus on the reliability of the record used to justify continued confinement. Petitioner's asylum-based C08 employment authorization history further underscores that the Government has, over several years, processed him as a pending asylum applicant allowed to live and work in the community, which sits uneasily with the I-213's "never admitted" characterization.

This is not a harmless drafting error. DHS and the Board often treat the Form I-213 as presumptively reliable, but that presumption is rebuttable where the form contains demonstrably false information or multiple layers of hearsay or otherwise conflicts with the Government's own file. Here, the Government's record contains two irreconcilable accounts—an NTA and EOIR record reflecting lawful admission and overstay, and an I-213 asserting unlawful entry without inspection—and Respondents have never explained or resolved the conflict. In these circumstances, continued reliance on the I-213's "never admitted" narrative to sustain detention is fundamentally unfair and cannot support prolonged civil confinement.

In this habeas posture, the Court need not decide which narrative ultimately governs removability or asylum. Rather, the question is whether due process permits prolonged civil detention to continue on a record the Government itself has never reconciled.

IV. PRUDENTIAL EXHAUSTION SHOULD BE EXCUSED BECAUSE FURTHER ADMINISTRATIVE REVIEW WAS FUTILE OR INADEQUATE

Because Respondents invoke non-exhaustion, the Court must also determine whether Petitioner was required to pursue further administrative appeals. In the immigration-detention setting, exhaustion here is prudential, not jurisdictional, and may be excused where administrative remedies are futile, inadequate, or unable to provide timely and effective relief, particularly for ongoing constitutional injuries.

Those principles support excusing exhaustion on these facts. First, Petitioner's challenge is constitutional and structural. Petitioner argues that detention is being maintained through procedures that are unconstitutional as applied: reliance on contradictory Government records, burden allocation requiring him to prove non-dangerousness by clear and convincing evidence, and failure to meaningfully consider updated release evidence. The Board of Immigration Appeals cannot issue the final constitutional ruling Petitioner seeks or redesign the legal framework already applied; it operates within that framework.

Second, delay would make relief ineffective. Exhibit E shows that Petitioner's individual merits hearing is set for April 14, 2026, and continued detention is presently impairing preparation for that hearing, including consultation with counsel, access to records, collection of corroborating evidence, and preparation of testimony. An administrative process that cannot realistically conclude before that hearing—and that does not squarely address the structural due-process defects—cannot provide adequate relief.

Third, Exhibit D confirms the narrowness and inadequacy of the existing administrative route. The second custody ruling did not engage Petitioner's constitutional objections; it simply concluded that the supplemental evidence could have been presented earlier and therefore did not show a "material change of circumstances." That response illustrates that the available administrative mechanism is not designed to address the injury now occurring.

Recent Western District decisions such as *Shobande v. Lyons*, No. 1:25-CV-1744-RP (W.D. Tex. Nov. 14, 2025), *Gonzalez-Gomez v. Bondi*, No. 5:25-CV-1861-JKP (W.D. Tex. Jan. 6, 2026), *Echevarria-Hernandez v. Noem*, No. 5:25-CV-1631-JKP (W.D. Tex. Dec. 18, 2025), and *Martinez v. Noem*, No. 5:25-CV-1373-JKP (W.D. Tex. Nov. 26, 2025) recognize that when proposed administrative routes to bond-related relief cannot provide the kind of custody hearing or constitutional ruling a petitioner seeks before detention-related harms become effectively unreviewable, those remedies are futile or inadequate and insisting on further exhaustion would render detention-process claims effectively unreviewable.

In this case, the combination of ongoing constitutional injury, imminent prejudice to the merits hearing, and an administrative path that has already proven incapable of addressing the structural defects demonstrates futility and inadequacy. Prudential exhaustion should therefore be excused.

V. AS APPLIED HERE, DUE PROCESS REQUIRED THE GOVERNMENT TO JUSTIFY CONTINUED DETENTION

The Court must then determine whether, in light of the specific facts here, due process required the Government—not Petitioner—to justify continued civil detention. The governing framework is *Mathews v. Eldridge*, 424 U.S. 319 (1976), which instructs courts to balance the private interest at stake, the risk of erroneous deprivation and the probable value of additional safeguards, and the Government's interests.

Respondents overread Supreme Court precedent in this area. *Jennings v. Rodriguez*, 583 U.S. 281 (2018), rejected a statutory rewriting of 8 U.S.C. § 1226(a) under the canon of constitutional avoidance; it did not hold that the Constitution always permits prolonged civil detention while placing the burden on the detainee. Nor did *Demore v. Kim*, 538 U.S. 510 (2003), *Reno v. Flores*, 507 U.S. 292 (1993), or *Carlson v. Landon*, 342 U.S. 524 (1952) decide the as-applied due-process question presented here. Those cases either addressed mandatory detention in narrow criminal-alien settings or relied on different statutory and factual contexts, and none resolved whether, under *Mathews*, due process can require the Government to carry the burden in particular circumstances.

By contrast, recent decisions in this District, including *Dominguez v. Noem* and *Chavero v. Bondi*, apply *Mathews* in the immigration-detention context and, following cases like *Hernandez-Lara v. Lyons*, require the Government to justify continued detention by clear and convincing evidence at a court-ordered custody hearing where existing procedures pose a substantial risk of erroneous deprivation of liberty. Those decisions do not create a categorical rule for all detention cases, but they confirm that, in appropriate situations, due process can—and sometimes does—place the burden on the Government.

Here, Petitioner's claim fits comfortably within that framework. Petitioner does not ask this Court to impose a universal rule for every § 1226(a) custody hearing. Petitioner argues that, as applied here and under *Mathews* balancing, due process required the Government to justify continued detention because: (1) Petitioner detention has become prolonged; (2) the Government's own record is materially contradictory; and (3) the operative custody order expressly placed on him the burden to prove by clear and convincing evidence that Petitioner is not dangerous.

Under *Mathews*, the private interest is substantial: freedom from continued civil confinement and a meaningful opportunity to prepare an asylum case that may determine whether Petitioner is returned to harm. The risk of error is likewise substantial. It is heightened by the Government's irreconcilable records, by a burden allocation that required Petitioner to disprove dangerousness by clear and convincing evidence, and by a later ruling that declined meaningful reconsideration of updated release evidence on narrow material-change grounds. The value of additional safeguards is obvious: a corrected and reconciled record, a hearing that meaningfully considers current release evidence, like the transportation plan, and a burden on the Government to justify further detention. The Government's interests in ensuring appearance and public safety remain weighty, but those interests can be assessed at a constitutionally adequate hearing and protected through reasonable conditions of release where appropriate.

The risk of error is especially acute because the I-213's "never admitted" characterization is precisely the type of government evidence now used, in the wake of decisions such as *Matter of Yajure Hurtado* and *Buenrostro-Mendez v. Bondi*, No. 25-20496 (5th Cir. Feb. 6, 2026), to reclassify long-term residents as "applicants for admission" and move them from § 1226(a)'s bond-eligible custody into § 1225(b)(2)(A)'s mandatory, no-bond detention regime. Where a single, unreconciled form can be used to erase an acknowledged prior admission and extinguish bond eligibility, due process requires heightened procedural safeguards and a burden on the Government to justify continued detention.

On this record, the *Mathews* balance therefore supports Petitioner's as-applied claim that the Government—not Petitioner—must carry the burden at a constitutionally adequate custody hearing.

VI. EXHIBITS C AND D CONFIRM—RATHER THAN CURE—THE DUE-PROCESS DEFECT

Respondents suggest that the existence of multiple custody decisions cures any due-process problem. But the controlling principles focus on the quality of procedures, not merely their quantity; repeating an unconstitutional framework does not make it constitutional.

Here, Exhibit C confirms—not cures—the defect. It shows that the immigration judge applied the challenged burden, concluding that Petitioner "did not meet Petitioner burden to show by clear and convincing evidence" that Petitioner is not dangerous. That is the very allocation Petitioner challenges under *Mathews* and under the more recent immigration-detention cases in this District.

Exhibit D likewise does not fix the problem. It denied renewed custody redetermination because the supplemental evidence "could have reasonably been presented" at the initial hearing and therefore did not establish a material change of circumstances. That ruling did not reconcile the contradiction between Exhibits A and B, did not meaningfully engage Petitioner's updated community-support evidence, and did not address the constitutional burden-allocation claim. It instead declined to revisit custody without confronting the foundational defects in the detention record and process.

In short, more process on paper did not produce constitutionally adequate process in substance. The same unreconciled record and improper burden persisted. Exhibits C and D therefore confirm rather than cure the due-process violation.

VII. CONTINUED DETENTION IS CAUSING PRESENT PREJUDICE, AND COUNSEL'S PRESENCE IN REMOVAL PROCEEDINGS DOES NOT ELIMINATE IT

Respondents also contend that any prejudice is mitigated because Petitioner is represented in Petitioner removal proceedings. The relevant question, however, is whether detention under defective procedures is presently impairing Petitioner's ability to prepare and present Petitioner case, not whether counsel has formally appeared.

Here, Petitioner's individual merits hearing is imminent, and continued detention is causing concrete, ongoing prejudice. Exhibit E shows the hearing is set for April 14, 2026. In the meantime, detention is impairing Petitioner ability to consult freely with counsel, obtain and review records, gather corroborating evidence and declarations, and prepare testimony. These obstacles are exacerbated by deteriorating conditions at Hutto, including the loss of air conditioning and related health and comfort concerns, which further impede meaningful preparation.

The detention record itself remains flawed: it rests on unreconciled Government narratives and on custody decisions that placed a clear-and-convincing burden on Petitioner and refused to consider new evidence. Petitioner is therefore forced from detention and under time pressure, both to prepare for an asylum hearing that may determine whether Petitioner is returned to harm and to attempt to correct structural defects already embedded in the custody record.

The presence of counsel cannot, standing alone, cure those systemic problems. As cases like *Powell v. Alabama*, 287 U.S. 45 (1932) illustrate, the right to counsel is tied to a meaningful opportunity to consult and prepare, not simply to a name on a docket. Counsel's appearance cannot reconcile contradictory Government records, cannot correct a misallocated burden, and cannot, by itself, overcome the practical limitations detention imposes on the preparation of a complex asylum case.

Accordingly, Petitioner faces present, legally cognizable prejudice from continued detention under defective procedures, and the fact that counsel has appeared in removal proceedings does not eliminate that injury.

VIII. PROTECTIVE RELIEF SHOULD REMAIN IN PLACE TO PRESERVE MEANINGFUL HABEAS REVIEW

Finally, Respondents ask the Court to vacate protective relief. The governing rule is that federal courts have authority to preserve the effectiveness of their jurisdiction by maintaining the status quo where necessary, and in the immigration context, *Nken v. Holder*, 556 U.S. 418 (2009) confirms that traditional stay factors—likelihood of success on the merits, irreparable injury, the balance of harms, and the public interest—govern such relief.

Here, each factor supports maintaining protection. First, for the reasons detailed above and in the operative pleadings, Petitioner has raised substantial legal and constitutional questions and has shown a meaningful likelihood of success on Petitioner claims that Petitioner detention is unlawful under 28 U.S.C. § 2241 and the Due Process Clause. Second, irreparable harm is clear: if Petitioner is removed, transferred, or otherwise subjected to changes in custody before this Court can decide the legality of Petitioner present detention, any later ruling in Petitioner favor would be of sharply diminished practical value. Third, the balance of harms favors preserving the status quo for the short period necessary to adjudicate the petition; the incremental burden on Respondents of maintaining existing protective measures is outweighed by the risk to Petitioner of losing meaningful habeas relief. Fourth, the public interest is served by ensuring that immigration detention is carried out within constitutional bounds and that judicial review remains effective, particularly where detention rests on an unreconciled record and a process that placed the decisive burden on the detainee.

Protective relief should therefore remain in place to preserve the Court's habeas jurisdiction and ensure that any favorable ruling remains effective in practice.

IX. CONCLUSION

For all of these reasons, Petitioner respectfully requests that the Court: (1) reject Respondents' jurisdictional and exhaustion objections; (2) hold that Petitioner continued civil detention on an unreconciled Government record and under the challenged procedures violates due process as applied; (3) maintain existing protective relief; and (4) grant habeas relief by vacating the defective custody orders and fully release on reasonable conditions, in the alternative or in combination, (5) directing a prompt, constitutionally adequate custody hearing—before a different Immigration Judge—at which the Government bears the burden to justify any further detention and Petitioner is afforded a meaningful opportunity to challenge and strike materially inconsistent Government records.

In light of the imminent April 14, 2026 individual asylum hearing and the ongoing harms described above, Petitioner and undersigned counsel respectfully request that the Court resolve the petition on the existing papers and issue a prompt, expedited ruling, but stand ready to appear for any further habeas hearing under 28 U.S.C. § 2243 should the Court determine that oral presentation would assist its review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 11, 2026, I electronically filed the foregoing document with the Clerk of Court using the Court's CM/ECF system, which will send notice of such filing to all counsel of record who are registered CM/ECF users.