

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.

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1:26-CV-294-RP

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE
TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, through undersigned counsel, respectfully submits this reply to Respondents' March 18, 2026 response (ECF No. 20) to his Amended Petition for Writ of Habeas Corpus within the court deadline of March 24. Respondents' position rests on one core error: they recast Petitioner as an "arriving" EWI entrant subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), even though their own charging documents and admission records show he was lawfully admitted in B-2 status, later charged as an overstay under INA § 237(a)(1)(B), and has long-pending  asylum proceedings before EOIR.

First, Petitioner will show that the formal record — including the Notice to Appear (NTA), Form I-862 (Ex. A), the CBP I-94 (Ex. C), and USCIS's November 21, 2018 Notice of Intent to Deny (NOID) and August 5, 2020 Referral Notice (Ex. H) — confirms that DHS itself found Petitioner last entered at Miami on June 25, 2018 as a nonimmigrant B-2 admitted until December 24, 2018, that he filed his Form I-589 on September 10, 2018 and "established by

clear and convincing evidence that the application was filed within one year” of that admission, and that USCIS referred his asylum application to an immigration judge for adjudication “in removal proceedings” pursuant to an attached Form I-862, Notice to Appear. Under that record, Petitioner is an admitted B-2 overstay in § 240 removal proceedings, and his detention falls under 8 U.S.C. § 1226(a), not § 1225.

Second, Petitioner will explain that the contrary EWI notation in the Form I-213 and the purported October 22, 2025 “Order of Release” are internally inconsistent, unsigned by Petitioner, and directly contradicted by DHS’s own charging documents, USCIS’s admission and timeliness findings in Ex. H, and counsel’s written notices to OPLA and EOIR identifying and documenting the error; those internal field records cannot override the NTA, I-94, or asylum record.

Third, Petitioner will show that Respondents’ reliance on *Buenrostro-Mendez* and § 1225(b) is misplaced: that decision addresses only non-admitted EWI entrants and a statutory question, while this case concerns an admitted overstay detained under § 1226(a) who raises a procedural due-process challenge to the absence of a proper custody hearing.

Fourth, applying this Court’s recent decisions in *Ochoa v. Vergara* and *Herrera Aldana v. Collins*, as well as the *Mathews v. Eldridge* framework and related Western District authority, Petitioner will demonstrate that his continued detention without a constitutionally adequate § 1226(a) bond hearing violates both the INA and the Fifth Amendment.

Accordingly, the Court should order Petitioner’s immediate release under § 1226(a), or alternatively require a prompt, meaningful bond hearing before an immigration judge applying the correct statute, standard, and burden of proof.

BACKGROUND

A. The Government's Own Documents Establish Admitted Status and Timely Asylum

Petitioner entered the United States on a B-2 nonimmigrant visa at Miami International Airport on June 25, 2018, with authorized stay through December 24, 2018. The NTA (Exhibit A) charges him under INA § 237(a)(1)(B), and explicitly checks the box stating: “You have been admitted to the United States, but are removable.” The official CBP I-94 printout (Exhibit C) confirms that admission: Admission Record Number , Class of Admission B-2, Arrival Date June 25, 2018, and “Admit Until Date” of December 24, 2018.

During this period of authorized stay, Petitioner filed Form I-589 on September 10, 2018. An asylum officer conducted a credible-fear interview and referred the case to INA § 240 proceedings. By definition, those steps presuppose lawful entry: DHS treated Petitioner as an admitted nonimmigrant with a timely filed asylum application, not as an “arriving alien” caught at the border.

ICE arrested Petitioner on October 22, 2025 — seven years after entry — following a local DUI-related arrest. He resolved that matter by pleading to Obstruction of a Highway, a non-criminal Texas traffic offense. It is not a crime involving moral turpitude. It is not an aggravated felony.

The I-213 (Exhibit B) carries an EWI notation added by a field officer at arrest. It contradicts the NTA, the I-94, the credible-fear and asylum record, and — on its face — itself. As in *Herrera Aldana*, where the Court rejected an I-213 that stated the petitioner “was not admitted inspected or paroled” despite contrary parole evidence, this Court should look past the I-213 to the actual government record and grant relief.

On March 19, 2026, immigration counsel Clarisse Carbonell, Esq. served written notice on ICE's Office of the Principal Legal Advisor (OPLA) identifying the EWI error, citing the I-94 and passport, and requesting a corrected I-213 or stipulation. Exhibit D is counsel's March 19, 2026 cover letter to ICE/DHS OPLA, expressly titled "Notice of inaccuracy in Form I-213," explaining that the I-213 wrongly states that Respondent entered "without inspection by crossing the border on foot" and clarifying that he "entered the United States with a valid visa, as supported by documentary evidence including his passport, visa, and Form I-94." Exhibit E is the ECAS e-service confirmation for that submission, subject line "Notice of Inaccuracy in Form I-213," showing electronic transmission of the signed cover letter and clarification. DHS has not responded or corrected the record.

Respondents' own brief, moreover, acknowledges that "Petitioner is a citizen and national of Colombia who was admitted to the United States on a visa and subsequently overstayed," Resp. at 2, then in the very next sentence claims he entered "illegally" and is subject to § 1225. Resp. at 1. That is not a coherent legal position. It is an admission of lawful admission that the government cannot now walk back.

B. Immigration Counsel's Efforts to Preserve and Correct the Record

Two bond hearings were held: January 27, 2026 and February 12, 2026. Attorney Carbonell orally challenged the EWI notation at both. Exhibit F is her notarized declaration, dated March 19, 2026, explaining that DHS submitted an I-213 indicating entry without inspection "by crossing the border on foot," that she clarified on the record that Respondent entered with a valid visa, and that she presented documentary evidence including the passport, visa page, and I-94 showing lawful entry on June 25, 2018. There is no transcript. There is no audio recording. The written bond orders reflect the EWI classification.

On March 19, 2026, counsel filed a Notice of Clarification with the Immigration Court — Exhibit G — a written, evidentiary challenge to the EWI notation in any proceeding with a reviewable record. The Notice expressly disputes the I-213's EWI allegations, directs the court to the B-2 admission reflected in the I-94, and asks EOIR to correct the record.

ARGUMENTS

I. Petitioner Is an Admitted Alien Governed by § 1226(a), Not § 1225

Section 1225(b)(2)(A) applies to “applicants for admission” — noncitizens who have not been admitted. 8 U.S.C. § 1225(a)(1). Section 1226(a) applies to noncitizens who have already been admitted and are now subject to removal. Those categories are mutually exclusive.

The government charged Petitioner under § 237(a)(1)(B) — “Deportable aliens.” That provision covers only lawfully admitted noncitizens who “overstay” a defined period of authorized stay. A person who entered without inspection cannot “overstay” because there is no authorized period to exceed. By filing a § 237 NTA with Box 3 checked “You have been admitted to the United States, but are removable” (Exhibit A), DHS represented to EOIR that Petitioner was admitted. It is bound by that position. *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (judicial estoppel).

The CBP I-94 record (Exhibit C) independently confirms B-2 admission on June 25, 2018 and an admit-until date of December 24, 2018. Petitioner then filed asylum (Form I-589) within that admitted period and was referred from expedited removal to § 240 proceedings after a positive credible-fear finding. Those facts place Petitioner squarely in the § 1226(a) category. Because he was admitted and then timely sought asylum during his authorized stay, § 1226(a) governs, and he is entitled to a bond hearing at which the government bears the burden by clear and convincing evidence. See, e.g., *Rincon Chavero v. Bondi*, No. 3:25-CV-00638-DB (W.D.

Tex. Jan. 14, 2026); *Acosta Dominguez v. Noem*, No. 3:25-CV-00741-DB (W.D. Tex. Jan. 20, 2026).

II. *Buenrostro-Mendez* Does Not Control This Case

Buenrostro-Mendez v. Bondi, 166 F.4th 494 (5th Cir. Feb. 6, 2026), held that noncitizens who entered without inspection are “applicants for admission” subject to § 1225(b)(2)(A). Its holding turns entirely on the premise that the petitioners “have not been admitted by lawful means.” *Id.* at 501. Petitioner here was admitted by lawful means, as Exhibits A and C demonstrate, and he timely claimed asylum while in B-2 status. *Buenrostro-Mendez* does not reach such admitted noncitizens.

This Court already recognized the narrow scope of *Buenrostro-Mendez* in *Ochoa v. Vergara*, holding that the decision “addressed only statutory interpretation of the INA” and “did not examine whether Petitioner’s ongoing detention without access to a bond hearing violates the Constitution.” *Ochoa*, slip op. at 3. At oral argument in *Buenrostro-Mendez*, government counsel similarly limited the case to “the statutory question,” expressly stating that “there’s not, in other words, a due process claim here.” The Fifth Circuit therefore did not, and could not, decide the procedural due-process question presented here. Other courts in this District have agreed that *Buenrostro-Mendez* does not alter the due-process analysis. See *Hassen v. Noem*, No. EP-3:26-CV-00048-DB (W.D. Tex. Feb. 9, 2026); *Marceau v. Noem*, No. EP-3:26-CV-00237-KC (W.D. Tex. Feb. 9, 2026).

Every case Respondents cite illustrates the distinction rather than erasing it: *Garibay-Robledo v. Noem*, 2026 WL 81679 (N.D. Tex. Jan. 9, 2026) (EWI since 1994); *Zuniga v. Lyons*, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025) (EWI for 25

years); *Calderon Lopez v. Lyons*, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026) (EWI near Eagle Pass). None involved a traveler admitted at a port of entry in B-2 status who filed asylum during authorized stay and is charged under § 237. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which removes IJ bond authority over noncitizens “present without admission,” likewise does not apply, because Petitioner was admitted. The Western District of Texas cases Respondents invoke — *Rodriguez Hernandez v. Collins* (EWI, circa 2015) and *Lopez Jaimes v. Lyons* (expired humanitarian parole) — involve noncitizens who were never charged under § 237 and thus do not alter the analysis here.

III. The I-213’s EWI Notation Cannot Override the NTA, I-94, and Asylum Record

Form I-213 is an internal field record; it is not a charging document, not an order, and not a binding legal determination of admission status. This Court has already faced the problem of I-213 overreach. In *Herrera Aldana*, despite the petitioner presenting affirmative evidence of lawful parole, the I-213 asserted that he “was not admitted inspected or paroled into the United States by an immigration official nor did he present himself at a designated port of entry.” The Court did not defer to that notation. Instead, it examined the actual government record — including the I-94 and formal parole documentation — and held the I-213 unreliable, ultimately ordering release.

Here, the I-213 is even less reliable. On one page, it claims that Petitioner entered without inspection “by foot at an unknown location.” On another, it labels him a “nonimmigrant overstay.” An overstay classification presupposes a lawful admission and an authorized period of stay — exactly what Exhibits A and C show. The EWI and overstay entries cannot both be true.

The Court should instead credit the formal records that define Petitioner’s legal status:

Exhibit A (NTA), in which DHS charges Petitioner under INA § 237(a)(1)(B) and checks the box “You have been admitted to the United States, but are removable.”

Exhibit C (I-94), an official CBP database record, independently verifiable, showing B-2 admission on June 25, 2018 and an admit-until date of December 24, 2018.

The asylum and credible-fear record, which reflects a timely I-589 filed within authorized stay, a positive credible-fear determination, and referral to § 240 proceedings — a procedural path that presupposes lawful admission.

DHS has been on written notice of the I-213’s inaccuracy since March 19, 2026. Exhibit D, counsel’s cover letter, and Exhibit E, the ECAS e-service confirmation (“Notice of Inaccuracy in Form I-213”), show that DHS was asked to amend or supplement the I-213 or stipulate to the correct manner of entry. Exhibit G, the Notice of Clarification filed with the Immigration Court, likewise puts EOIR and DHS on notice of the B-2 admission and timely asylum filing. Yet Respondents have made no effort to reconcile the contradictions. As in *Herrera Aldana*, their continued reliance on the I-213 reflects a litigation strategy, not a good-faith view of the record.

IV. Petitioner’s Claim Sounds in Procedural Due Process, Not Substantive Due Process

Respondents attempt to recast Petitioner’s claim as a substantive due-process challenge under *Washington v. Glucksberg*, 521 U.S. 702 (1997). That mischaracterization is foreclosed by this Court’s own precedent. In *Ochoa*, the Court rejected an argument based on *Department of Homeland Security v. Thuraissigiam*, 591 U.S. __ (2020), explaining that Petitioner “does not challenge the admission process in any way or assert a right to remain in the United States — he merely seeks a chance to apply for release.” *Ochoa*, slip op. at 4. The same is true here:

Petitioner does not contest the removal proceedings; he challenges only the absence of a lawful, meaningful custody determination under the correct statute.

Moreover, unlike the petitioner in *Thuraissigiam*, who was “stopped by Border Patrol within twenty-five yards of the border, immediately detained, and never released,” Petitioner has resided in the United States for over seven years, lawfully entered, timely claimed asylum, and built a life in Texas. The Supreme Court has made clear that “[t]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Noncitizens are entitled to due process under the Fifth Amendment. See also *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025); *Demore v. Kim*, 538 U.S. 510, 523 (2003).

In *Herrera Aldana*, this Court further held that detention without following proper statutory and regulatory procedures “violates the INA and its implementing regulations,” and ordered immediate release on that non-constitutional ground. The Court also noted that other courts in this District have concluded that detention of a noncitizen with valid humanitarian or public-benefit parole, without following the procedures for revoking parole, violates the Due Process Clause. See, e.g., *Camacho-Gutierrez v. Thompson*, 2026 WL 195758 (W.D. Tex. Jan. 16, 2026); *Marceau v. Noem*, 2026 WL 368953 (W.D. Tex. Feb. 9, 2026). The same principle applies here: the government is detaining an admitted B-2 overstay with a timely asylum claim under a legal framework — § 1225 EWI mandatory detention — that is directly contradicted by its own charging documents and admission records, and without providing the process that § 1226(a) requires. Petitioner’s claim is procedural. The framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976), governs.

V. The *Mathews* Factors Require Relief — and Immediate Release

In *Ochoa*, this Court applied *Mathews* and found that all three factors favored immediate release. The same factors weigh even more heavily in Petitioner's favor.

First, the private interest. In *Ochoa*, the Court held that a petitioner who had spent over a year at liberty had an interest that “deserves great weight and gravity.” Petitioner has spent seven years at liberty in the United States. He lawfully entered, timely claimed asylum during his B-2 stay, and has a pending  asylum claim that DHS deemed credible. He owns a home with his husband in San Marcos, has deep community ties, and faces an imminent merits hearing without confirmed substitute counsel while detained in carceral conditions at T. Don Hutto.

Second, the risk of erroneous deprivation. Petitioner is detained as an EWI based solely on an I-213 notation that (a) contradicts the § 237 NTA, (b) contradicts the official CBP I-94 record, (c) contradicts the asylum and credible-fear record, and (d) contradicts itself by simultaneously labelling him an EWI and a “nonimmigrant overstay.” He has never received a bond hearing under § 1226(a) at which the government bears the burden by clear and convincing evidence. As this Court recognized in *Ochoa*, the “risk of erroneous deprivation lies in this ‘automatic continued deprivation of liberty’” where a detainee has “no opportunity to contest the reasonableness of his detention.” In *Herrera Aldana*, this Court found that where Respondents failed to produce evidence reconciling contradictory government records, an I-213 notation could not sustain continued detention. The same failure is present here, compounded by the I-213's internal inconsistency and DHS's refusal to correct the record despite Exhibits D, E, and G.

Third, the government's interest. As in *Ochoa* and *Herrera Aldana*, any concerns about appearance and public safety “would be squarely addressed at a bond hearing” under § 1226(a).

Petitioner entered lawfully, timely claimed asylum, resolved the DUI arrest via a non-criminal traffic plea, and has no aggravated-felony or CIMT conviction. Courts in this District routinely order release or lawful bond hearings for similarly situated noncitizens. See, e.g., *Gonzalez-Gomez v. Bondi*, No. 5:25-CV-1861-JKP (W.D. Tex. Jan. 6, 2026) (release ordered); *Echevarria-Hernandez v. Noem*, No. 5:25-CV-1631-JKP (W.D. Tex. Dec. 18, 2025) (release within 48 hours); *Juarez-Aguilar v. Noem*, No. SA-5:26-CV-00987-XR (W.D. Tex. Mar. 10, 2026) (reversing prior adverse holdings and granting relief post-*Buenrostro*).

All three *Mathews* factors favor Petitioner. This Court has already reached the same conclusion on materially similar facts in *Ochoa* and *Herrera Aldana*. The appropriate result is immediate release.

VI. The Prior Bond Denials Applied the Wrong Law and Burden and Do Not Bar Relief

The bond hearings conducted in Petitioner's case do not cure the constitutional defect or foreclose habeas relief. Both were conducted under § 1225's mandatory-detention framework, with the burden effectively placed on Petitioner to disprove dangerousness, rather than under § 1226(a) with the government bearing the burden by clear and convincing evidence. A bond proceeding conducted under the wrong statute, with the burden on the wrong party, is not a constitutionally adequate hearing. This Court's order in *Ochoa* made clear that "Respondents bear the burden of justifying, by clear and convincing evidence of dangerousness or flight risk, Petitioner's detention."

The factual predicate for the IJ's dangerousness finding is also deficient. The denial rests on a DUI-related arrest that was resolved by a non-criminal plea to Obstruction of a Highway. There is no DWI conviction, no crime involving moral turpitude, and no aggravated felony.

In *Herrera Aldana*, this Court noted that even a pending assault charge — a more serious allegation — does not independently trigger mandatory detention, and emphasized that “assault” is not among the offenses that mandate detention. An arrest is not a conviction. See *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). The IJ did not meaningfully weigh seven years of lawful residence, home ownership, employment, the pending asylum claim, the positive credible-fear determination, or the verified release plan.

Nor is there any usable record: no transcript, no audio, and written orders that simply repeat the EWI classification and discretionary conclusions without engaging the admitted-status evidence. Repeating a constitutionally defective framework twice does not cure it.

Finally, exhaustion is futile. The government cannot claim, on the one hand, that Petitioner is subject to mandatory, no-bond detention under § 1225, and on the other hand insist that he must exhaust a bond-review process that, by their theory, does not exist. As *Ochoa* held, “Because Respondents argue the detention of Petitioner is mandatory, claiming no one, including the Immigration Judge, can review the detention issue, any attempt to require Petitioner to exhaust any administrative remedies would be futile.” The same logic applies here.

VII. The Appropriate Remedy Is Immediate Release

In both *Ochoa* and *Herrera Aldana*, this Court held that “[i]n habeas cases where the Court finds an ongoing detention unlawful, ‘the typical remedy for such detention is, of course, release.’” (quoting *Munaf v. Geren*, 553 U.S. 674, 693 (2008)). In both cases, the Court ordered immediate release under conditions no more restrictive than those that existed before detention, required advance notice of the time and location of release, and enjoined re-detention without a lawful custody hearing.

The April 14 merits hearing in Petitioner's asylum case is fast approaching. Petitioner faces that hearing detained under the wrong statute, without ever having received a lawful § 1226(a) bond hearing, and without confirmed substitute merits counsel. As in *Herrera Aldana*, where the Court found that detention "legally unauthorized, not merely procedurally defective," warranted immediate relief rather than remand, this Court should act now to prevent further entrenchment of the constitutional violation.

CONCLUSION

For the foregoing reasons, Petitioner Julian Andres Marin Bustos respectfully requests that this Court:

1. Order Petitioner's immediate release under conditions no more restrictive than those in place prior to detention, consistent with the relief ordered in *Ochoa* and *Herrera Aldana*; or, in the alternative, order a constitutionally adequate bond hearing before a different Immigration Judge at which: (a) the government bears the burden by clear and convincing evidence; (b) the IJ conducts the full *Matter of Guerra* analysis; and (c) Petitioner may contest the I-213's contradictory entries with reference to Exhibits A-H;
2. Enjoin Respondents from re-detaining Petitioner without first conducting a bond hearing consistent with this Court's order, and from revoking any release conditions without following applicable regulations and providing written notice;
3. Hold that Petitioner is an admitted alien governed by 8 U.S.C. § 1226(a) and entitled to a bond hearing at which the government bears the burden, by clear and convincing evidence, of proving dangerousness or flight risk;

4. Alternatively, hold that his continued detention violates the Fifth Amendment's Due Process Clause as applied under *Mathews v. Eldridge*, consistent with this Court's decisions in *Ochoa v. Vergara* and *Herrera Aldana v. Collins*; and
5. Maintain the existing no-removal, no-transfer order (ECF No. 10) pending final resolution of these proceedings.

Respectfully submitted,

By: /s/ William James Furlow
William James Furlow
D.C. Bar No. 90035080
The SciTech & IP Law Firm PLLC
2401 Aldrich St., Apt. 477
Austin, Texas 78723
Tel: (770) 377-5903
Email: WilliamFurlow@scitechlawfirm.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2026, a true and correct copy of the foregoing Reply was served on counsel for Respondents via the Court's CM/ECF electronic filing system.

Respectfully submitted,

By: /s/ William James Furlow

William James Furlow

D.C. Bar No. 90035080

The SciTech & IP Law Firm PLLC

2401 Aldrich St., Apt. 477

Austin, Texas 78723

Tel: (770) 377-5903

Email: WilliamFurlow@scitechlawfirm.com

Counsel for Petitioner

EXHIBIT INDEX

Exhibit	Description
A	Notice to Appear (NTA) — attached to government's response
B	Form I-213 — attached to government's response
C	Official CBP I-94/I-95 Electronic Arrival Record (I-94 No. [REDACTED] B-2 admission June 25, 2018)
D	Cover Letter to ICE/DHS OPLA, dated March 19, 2026
E	E-Service Confirmation Screenshot, March 19, 2026
F	Notarized Declaration of Clarisse Carbonell, Esq., dated March 19, 2026
G	Notice of Clarification filed with Immigration Court, March 19, 2026
H	USCIS Notice of Intent to Deny Asylum Application