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

HAYI, Mohamed Abdi

Petitioner,

v.

WARDEN,

Operator of the ERO El Paso East Montana
Camp; MARY DE ANDA-YBARRA, El
Paso ICE Field Office Director; TODD
LYONS, Acting Director U.S. Customs and
Immigration Enforcement; KRISTI NOEM,
U.S. Secretary of Homeland Security;
PAMELA BONDI, Attorney General of the
United States;

Respondents.

Case No. 3:26-cv-00400-LS

Agency No. A 

PETITION FOR WRIT OF HABEAS
CORPUS

REPLY TO RESPONDENTS' ARGUMENTS CONTAINED IN RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner restates and realleges all arguments included in the Petition for Writ of Habeas Corpus. ECF No. 1.

II. REPLY TO RESPONDENTS' ARGUMENTS CONTAINED IN RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS.

A. *Buenrostro* relies on the BIA's decision in *Yajure Hurtado*, which has since been vacated by the District Court for the Central District of California.

The Respondents assert that *Buenrostro* is controlling over Petitioner's detention. ECF No. 3. However, 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.*

Furthermore, *Buenrostro* was a statutory interpretation opinion only which did not address 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.”).

Petitioner's case is distinct from *Buenrostro* as he asserted claims in due process, as well as other constitutional, statutory, and regulatory violations, and even the Administrative Procedure Act (APA). ECF No. 1. Indeed, even before *Buenrostro*, 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).¹

Nevertheless, Petitioner does not waive his statutory claims.

B. Petitioner asserted Procedural Due Process claims in his petition for Writ of Habeas Corpus.

Here, Petitioner was apprehended on March 30, 2023 and released on his own recognizance on April 2, 2023. ECF No. 1 Ex. 1: 2.

Petitioners who were 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, should be afforded a pre-deprivation process before being re-detained. See *Morrissey v. Brewer*, 408 U.S. 471 (1972).

District courts in the Fifth Circuit were also granting 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

¹ 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.).

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).

The *Buenrostro-Mendez* court did not reach the due process question, confining its analysis and holding to statutory interpretation. *Gomez Hernandez v. ICE Field Off. Dir., El Paso*, Tex., No. 3:26-cv-67-KC, 2026 WL 503958, at *2 (W.D. Tex. Feb. 23, 2026) (citations omitted). “Thus, ‘*Buenrostro-Mendez* has no bearing on this Court’s determination of whether [a habeas petitioner] is being detained in violation of her constitutional right to procedural due process.’” *Id.* at *2 (citations omitted).

Other “[f]ederal district courts in Texas have also made this finding subsequent to the Fifth Circuit issuing its opinion in *Buenrostro-Mendez*.” *Ochoa v. Vergara*, No. 1:26-cv-266-RP, 2026 WL 482211, at *3 (W.D. Tex. Feb. 20, 2026) (collecting cases). See also *K’naan Mohamud v. Warden, ERO El Paso Camp East Montana et. al.*, 3:26-cv-00456-KC (W.D. Tex. Feb. 26, 2026).

In analogous situations post-*Buenrostro*, courts in the Western District of Texas have held that Respondents’ detention of a noncitizen with a valid grant of parole in place rendered the detention unlawful. See *Camacho-Gutierrez*, 2026 WL 195758, at *3 (“[B]ecause DHS re-detained [a petitioner] without notice or an individualized determination in violation of its own regulations, [her] detention is unlawful.”); see also *Ramirez-Gavilan v. Collins*, No. 1:25-CV-2052-RP, 2026 WL 274705, at *5 n.7 (W.D. Tex. Jan. 17, 2026) (if a petitioner is subject to mandatory detention under § 1225(b)(2)(A) but released pursuant to parole under § 1182(d)(5), so long as parole was not terminated when petitioner was redetained, he would be “held in violation of the INA—and must be released.”); *Hassen v. Noem*, No. EP-26-CV-00048-DB, 2026 WL 446506, at *2 (W.D. Tex. Feb. 9, 2026) (“Because the

Government released [p]etitioner [under parole] and permitted him to live in the United States for over a year, they cannot revoke that liberty without an individualized determination of the need to do so.”). See also *Mendoza v. Bondi, et. al.*, No. 1:26-cv-00322-RP (W.D. Tex. Feb. 25, 2026.) See also *Kahilo v. Thompson, et. al.*, No. 5:26-cv-00449-DAE (W.D. Tex. Feb. 26, 2026).

There is also significant positive out-of-circuit case law supporting this argument.²

Therefore, the Court should still hold that Petitioner’s detention without a pre-deprivation hearing violated his procedural due process rights.

C. Petitioner asserted Substantive Due Process claims in his petition for Writ of Habeas Corpus.

Petitioner was previously determined not to be a flight risk and released on his own recognizance; there has been no change in material circumstances since his release, therefore there is no lawful purpose for their detention now. ECF No. 1 at 24. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Respondents’ revocation of Petitioner’s order of release on recognizance and re-detention therefore also violates his substantive due process rights. See *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).

As such, the Court should hold that Respondents’ revocation of Petitioner’s order of release on recognizance and re-detention violates Petitioner’s substantive due process rights.

² 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).

D. Petitioner asserts a Fourth Amendment and Administrative Procedures Act claim in his petition for Writ of Habeas Corpus.

Even in the noncriminal immigration context, an officer must have “reason to believe” the person is violating immigration laws and that the person will likely escape before a warrant is obtained. 8 U.S.C. § 1357(a)(2); see also 8 C.F.R. § 287.8(c)(2)(i)-(ii). Similarly, the Fourth Amendment requires a neutral, judicial determination of probable cause either before the arrest, in the form of a warrant, or shortly after the arrest, in the form of a prompt judicial probable cause determination. See *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975).

Where these requirements are not followed, the petitioner is entitled to argue violations of the statute, regulations, Fourth Amendment, and APA. See *Rosado v. Figueroa*, No. 25-cv-02157, 2025 WL 2337099, at *18 (D. Ariz. Aug. 11, 2025) (recommending immediate release because petitioner’s “current detention violates her constitutional rights because her arrest was in violation of her Fourth Amendment rights”), R. & R. adopted sub nom. *Rocha Rosado v. Figueroa*, No. 25-cv-02157, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Munoz Materano v. Arteta*, No. 25-cv-6137, 804 F. Supp. 3d 395, 423, 426 (S.D.N.Y. 2025) (finding a violation of the Fourth Amendment where the government lacked justification for arrest); *A.B.D. v. Wamsley*, No. 25-cv-02014, 2026 WL 178306, at *11 (D. Or. Jan. 22, 2026) (finding warrantless arrest violated § 1357(a)(2) and the APA); see also *Gamez Lira v. Noem*, No. 25-cv-00855, 2025 WL 2581710, at *3 (D.N.M. Sept. 5, 2025) (finding petitioner substantially likely to prevail on Fourth Amendment warrantless arrest claim); *Urquilla-Ramos v. Trump*, No. 2:26-cv-00066, 2026 WL 475069, at *5–16 (S.D.W.V. Feb. 19, 2026) (finding petitioner’s Fourth Amendment rights were violated when he was arrested by a group of masked agents and ordering release).

Petitioner directly challenges the legality of ongoing detention, which resulted from unlawful arrest. See *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (“Habeas is at its core a remedy for unlawful executive detention.”); see also *Poree v. Collins*, 866 F.3d 235, 242–43 (5th Cir. 2017).

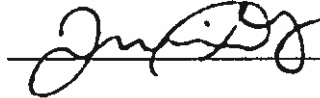
Respondents may argue that the appropriate relief following a warrantless arrest is not release, but more process. Petitioner asserts that *Cf. Rodriguez Romero v. Ladwig* is persuasive. No. 25-cv-1106, 2026 WL 321437, at *8 (M.D. La. Feb. 6, 2026) (stating in the release revocation context that where a rule was intended to “avoid erroneous deprivation of a noncitizen’s liberty,” then “[n]othing this Court can do can retroactively cure the lack of process resulting in Petitioners’ wrongful detention,” and therefore ordering release).

Respondents may further suggest that language from *INS v. Lopez Mendoza*, 468 U.S. 1032, 1039–40 (1984) about “[t]he ‘body’ or identity of a defendant or respondent” never being “suppressible as a fruit of an unlawful arrest” suggests that release is not an appropriate remedy for a Fourth Amendment violation. See, e.g., *Rodrigues De Oliveira v. Joyce*, No. 25-cv-0029, 2025 WL 1826118, at *5 (D. Me. July 2, 2025) (adopting this position). But *Lopez Mendoza* was not a habeas case and petitioners there did not seek release as a remedy, but termination of their removal proceedings. The Court’s language was thus about the inability of individuals to avoid criminal or deportation proceedings entirely based on unlawful arrests—not their inability to avoid unlawful detention. And while release is not typically a remedy for unlawful arrest in the criminal context, these individuals—unlike noncitizens detained under § 1225(b)(2)(A)—are afforded a *Gerstein* hearing within 48 hours of arrest in which the government must justify their detention. Absent such a process, release is arguably an appropriate remedy.

III. CONCLUSION

The Court should grant the Petition. Respondents have not presented novel arguments that would warrant a different outcome than analogous cases already decided by this Court. Petitioner respectfully requests that the Court grant this petition.

DATE: 03/04/2026

A handwritten signature in black ink, appearing to read "Jacklyn Kelly Garcia", is written over a horizontal line.

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