

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

Mario Jeovani Chiriboga SALAZAR,

Petitioner,

v.

Pamela Jo BONDI, et. al.,

Respondents.

Case No. 3:26-cv-00408-DCG

**PETITIONER'S REPLY MEMORANDUM IN SUPPORT OF PETITION FOR WRIT
OF HABEAS CORPUS**

Comes now Petitioner Mario Jeovani Chiriboga Zalazar who files this Reply in Support of his Petition for Writ of Habeas Corpus, and would respectfully show the Court as follows:

INTRODUCTION

The sole substantive argument in the Government's response brief is that Mr. Salazar is "subject to mandatory detention under § 1225(b)(2)." Dkt. 6, ("Resp.") at 5. While Mr. Salazar strenuously objects to that assertion, even if it were correct, his detention is still unlawful. As his petition explains in detail, beyond Mr. Salazar's claim that his detention violates substantive due process and that § 1225(b)(2) is inapplicable, he has also set forth claims regarding violations of procedural due process and the Fourth Amendment. The Government did not address these claims at all. This waiver alone requires that Mr. Salazar's petition be granted. Moreover, Mr. Salazar's detention does in fact constitute a violation of procedural due process and the Fourth Amendment.

Accordingly, Mr. Salazar respectfully requests that this Court grant his petition for a Writ of Habeas Corpus and order his release from custody.

ARGUMENT

Mr. Salazar's request for a Writ of Habeas Corpus should be granted. *First*, the Government did not respond to Mr. Salazar's assertion of procedural due process and Fourth Amendment violations. It has waived any argument in opposition to these claims. *Second*, Mr. Salazar's due process rights are indeed being violated, as he is presently detained without a bond hearing, despite the fact that he was previously granted deferred action and has a long history of residence in this country. *Third*, Mr. Salazar's Fourth Amendment rights have been violated as well. Mr. Salazar's arrest was carried out without a probable cause determination and outside of the authority granted by the Immigration and Nationality Act (INA). *Finally*, Mr. Salazar disagrees with the Government's position that § 1225(b)(2) applies to him and reserves all rights with respect to this argument.

1. The Government has waived any response regarding procedural due process or the Fourth Amendment.

The Government has failed to respond to Mr. Salazar's procedural due process and Fourth Amendment arguments. Other than requesting that the case be transferred to this Court¹, the Government's only response to Mr. Salazar's petition was to argue that his detention is mandatory under § 1225(b)(2) because he is a noncitizen present in the United States who entered without

¹ It is notable that while the Government appears to express surprise that the petition for a writ of habeas corpus was filed in Minnesota, *see* Resp. at 1, it does not dispute Petitioner's allegation that Mr. Salazar resides in Minnesota and that information regarding his location was not available in the detention locator system when the petition was filed, *see* Dkt. 1 ("Pet.") ¶ 1. Mr. Salazar opposes both his transfer to the facility in Texas as well as the transfer of this case to the Western District of Texas. *See Luis E. M. C. v. Bondi*, No. 26-333 (JRT/DTS), 2026 WL 184538, at *3 (D. Minn. Jan. 23, 2026) (finding that "government-controlled [immigration] transfers" executed shortly after detention and before the detainee can communicate with counsel "risk[] defeating timely judicial review.") (quoting *E.E. v. Bondi*, No. 26-314, at 5 (D. Minn. Jan. 17, 2026)).

inspection. Resp. at 3. Mr. Salazar disputes that claim, *see infra* Section 4, but in all events, this narrow response from the Government also fails to address key claims in Mr. Salazar’s petition.

In particular, the Government has provided no response whatsoever with respect to Count Three (“Violation of the Immigration and Nationality Act and Procedural Due Process”) and Count Four (“Violation of the Fourth Amendment to the U.S. Constitution, 8 U.S.C. § 1357(a)(2), and 8 C.F.R. § 287.3(d) Unlawful Arrest”). Notably, this Court has recently expressed that the applicability of § 1225(b)(2) to a petitioner has no bearing on the petitioner’s claims with respect to procedural due process, explaining that the “statutory interpretation of Section 1225(b)’s mandatory detention provision” recently expounded by the Fifth Circuit in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. 2026), “does not change this case’s outcome on procedural due process grounds.” *Ceballos v. Garite, et al.*, EP-26-CV-00312-DB, at 3, n. 2 (W.D. Tex. Feb. 10, 2026) (*see also Hassan v. Noem, et al.*, EP-26-CV-00048-DB, at 4, n. 1 (W.D. Tex. Feb. 10, 2026) (same); *Rodrigues De Oliveira v. Joyce*, No. 2:25-cv-00291, 2025 WL 1826118, at *5 (D. Me. July 2, 2025) (“preoccupation with technical concerns over 1225 processing versus 1226 processing for detention only exalts form over substance insofar as the Due Process Clause, writ large, is concerned,” especially where, as here, the case involves “a prolonged period of [lawful presence in the United States].”). Simply put, Section 1225(b) and *Buenrostro* have no bearing on Counts Three and Four.

It is well-established that a party’s failure to respond to arguments constitutes “waiver or abandonment of those issues.” *Stratta v. Roe*, No. 6:18-CV-00114-ADA, 2021 U.S. Dist. LEXIS 60221 at *17 (W.D. Tex. Mar. 30, 2021); *see also Black v. N. Panola Sch. Dist.*, 461 F.3d 584, 588 n.1 (5th Cir. 2006) (holding that failing to brief an argument abandoned the argument). This principle applies with full force in the context of an immigration detainee’s petition for a writ of

habeas corpus. *Estephanny P. v. Bondi*, No. 26-CV-198 (ECT/JFD), Doc. No. 10, 2026 U.S. Dist. LEXIS 7843, at *2-3 (D. Minn. Jan. 15, 2026) (collecting cases and concluding “Respondents did not respond to [Petitioner’s] arguments about her refugee status . . . meaning Respondents waived any challenge to these arguments.”); *see also Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 262265, at *43 (C.D. Cal. Dec. 18, 2025) (“Failure to respond to the arguments when the issues were squarely at issue constitutes waiver by Respondents to their current arguments.”). The Government has committed waiver here and Mr. Salazar’s petition should be granted on this basis alone.

2. Mr. Salazar’s procedural due process rights are being violated.

The Government has violated Mr. Salazar’s procedural due process rights. As discussed, Respondents’ only defense of Petitioner’s detention is that he is detained under 8 U.S.C. § 1225(b), which authorizes mandatory detention. But that is beside the point. All detention—even mandatory detention—is subject to the protections imposed by the Due Process Clause of the Constitution. As the Supreme Court has repeatedly made clear, “[t]he Due Process Clause applies to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (compiling cases further supporting the due process protections); *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976). This includes noncitizens detained under 8 U.S.C. § 1225(b). *See Jennings v. Rodriguez*, 138 S. Ct. 830, 851 (2018) (allowing lower courts to consider as-applied due process challenges to detention under § 1225(b)).

Specifically, this Court has made clear that immigration detention “without an individualized assessment of flight risk and dangerousness deprives [an individual] of his constitutional right to procedural due process under the Fifth Amendment of the United States Constitution.” *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 U.S. Dist. LEXIS 209332, at *12

(W.D. Tex. Oct. 21, 2025). Courts considering due process challenges in these circumstances consider three factors, which have their origin in *Mathews v. Eldridge*, 424 U.S. 319 (1976): (1) “the interest in being free from physical detention,” (2) the “risk of erroneous deprivation,” and (3) the “government’s interest.” See *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 U.S. Dist. LEXIS 195616, at *29 (W.D. Tex. Oct. 1, 2025).

All three *Eldridge* factors point in favor of Mr. Salazar and support his petition challenging his detention. First, as a practical matter, it is abundantly clear that because Mr. Salazar has been detained, he is being deprived of his liberty. Moreover, his liberty interest is particularly strong given the pending U visa application. Second, the Government’s interest in his detention is negligible since Mr. Salazar is protected by deferred action: “Where an individual is protected from removal through deferred action, their detention serves no valid purpose.” *Santiago*, 2025 U.S. Dist. LEXIS 195616, at *36 (W.D. Tex. Oct. 1, 2025). And finally, the risk of erroneous deprivation is high, particularly because the Government previously determined that Mr. Salazar was not a flight risk. Pet. ¶ 8. See *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 U.S. Dist. LEXIS 203930, at *19 (W.D. Tex. Oct. 16, 2025) (“The risk lies in the automatic continued deprivation of liberty for a noncitizen who has already been determined to not be a flight risk nor a danger to the community, and has lived in the United States for a prolonged period of time, especially where there are no facts in the record to reflect material changes in Petitioner’s dangerousness or flight risk.”). Notably, Mr. Salazar has no criminal history and is not a danger to the community. At bottom, “the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Eldridge*, 424 U.S. at 333. No such process was extended to Mr. Salazar here.

3. Mr. Salazar's Fourth Amendment rights are being violated.

Mr. Salazar's arrest without a warrant or probable cause finding violates the Fourth Amendment. As a general matter, the Fourth Amendment requires that all arrests be supported by a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). Immigration arrests in the U.S. generally require a warrant, and the INA provides immigration agents with only limited authority to conduct warrantless arrests. *See Arizona v. U.S.*, 567 U.S. 387, 407-08 (2012); 8 U.S.C. § 1357(a)(2). Specifically, an officer must have probable cause to believe the person is violating the immigration laws and that the person "is likely to escape before a warrant can be obtained." 8 U.S.C. § 1357(a)(2). "Courts have . . . made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties." *Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. CV 25-3417 (BAH), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (collecting cases).

Federal immigration regulations also provide that a noncitizen arrested without a warrant must receive a custody determination within 48 hours of the arrest, unless there is "an emergency or other extraordinary circumstance" that requires "an additional reasonable period of time" to make the custody determination. 8 C.F.R. § 287.3(d). During that custody determination, the immigration officer must make findings as to whether "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8).

Here, the Government has made no effort to rebut Mr. Salazar's contention that the Government failed to comply with these requirements. The Government did not obtain a warrant for Mr. Salazar's arrest. *See* Pet. ¶ 89. Moreover, the arrest does not comply with 8 U.S.C. § 1357(a)(2): as discussed above, the Government itself previously determined that Mr. Salazar is not a flight risk. That prior determination was correct and no circumstances have changed since

that determination; Mr. Salazar has strong ties to his community and his children, and has resided in the United States for over three years. And the Government does not contest Mr. Salazar's assertion that it has not complied with the regulatory requirements of 8 C.F.R. § 287.3(d) either. In short, the Government has violated the Fourth Amendment's probable cause requirement as well as its own statutory and regulatory mandates. Mr. Salazar's release is required for these reasons as well.

4. Mr. Salazar maintains that § 1225(b)(2) is inapplicable.

Finally, Mr. Salazar maintains his position that § 1225(b)(2) does not apply to individuals like himself who have passed through the initial immigration inspection process and thereafter resided in the country for years. While Mr. Salazar acknowledges the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. 2026), he notes that its interpretation of § 1225(b)(2) is a minority position. *See, e.g., Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *4 & n.22 (S.D.N.Y. Nov. 26, 2025) (collecting cases); *Jose Andres R.E. v. Bondi*, No. 25-CV-3946 (NEB/DLM), 2025 WL 3146312, at *1 n.2 (D. Minn. Nov. 4, 2025) (same); *Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947, at *5–6 (D. Minn. Oct. 1, 2025) (same). As his petition explains, *see* Pet. ¶ 78, by its plain language, § 1225(b)(2) does not apply to Mr. Salazar or other noncitizens who entered the United States without inspection and are detained by ICE for removal proceedings while they are residing in the United States. He reserves all rights with respect to this argument.

CONCLUSION

Mr. Salazar respectfully requests that the Court grant his Petition for a Writ of Habeas Corpus and order his release with all of his possessions and documents. In the alternative, if the Court declines to order release, Mr. Salazar requests an immigration bond hearing.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of February, 2026, the foregoing document was e-filed pursuant to the Federal Rules of Civil Procedure.

/s/ Alexa Balderrama

Alexa Balderrama