UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MONTANO-HERNANDEZ, ARIANA,	)	
A#[redacted]	)	**Case No. 3:26-cv-00435-LS**
Petitioner,	)	
	)	**PETITION FOR WRIT OF**
v.	)	**HABEAS CORPUS**
	)	
Mary de Anda-Ybarra Acting/Director of El Paso Field Office, U.S. Immigration and Customs Enforcement; Warden, El Paso Processing Service Center; Kristi Noem Secretary of the U.S. Department of Homeland Security; and Pamela Bondi, Attorney General of the United States, in their official capacities,	)	
	)	
Respondents.	)	
	)	

BRIEF IN REPLY TO RESPONDENTS RESPONSE TO PETITION

INTRODUCTION

1. Petitioner Ariana Montano Hernandez brings this Response to the Government's Response to the Petition for Writ of Habeas Corpus and Motion for Summary Judgement.
2. Petitioner filed a Petition for Writ of Habeas Corpus alleging that mandatory detention was illegal under 8 USC § 1226 and a violation of Due Process.

3. Respondents replied in opposition.
4. Petitioner now files this timely response.
5. It appears the facts of entry are not in dispute. Petitioner entered the U.S., subsequently detained, released, and detained again. Petitioner was charged as an "alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General."
6. However, Petitioner was not labeled as an arriving alien. (*See Dkt. 1 at pg. 21, I-862 NTA and Exhibit 1 of Petition).*
7. The Government argues this makes Petitioner subject to mandatory detention under 8 USC § 1225(b)(2).

APPLICABLE LAW

8. 8 USC § 1225(b)(2) is the mandatory detention provision of the old INA. 1225 is titled **"Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"** This title will matter below. It states that Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title. (Emphasis added).
9. 8 USC § 1226 allows for release of an alien pending a decision on their removability. It states (a)ARREST, DETENTION, AND RELEASE "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such

decision, the Attorney General—**(1)**may continue to detain the arrested alien; and **(2)**may release the alien on—**(A)**bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or **(B)**conditional parole."

ARGUMENT I DUE PROCESS

10. Respondents are correct in asserting that Petitioner will bring the constitutional right to due process claim because the *Buenrostro-Mendez* court did not reach the due process question, confining its analysis and holding to statutory interpretation. See generally Buenrostro-Mendez, 2026 WL 323330, at *1–10.

11. Indeed, the Government's counsel stated it bluntly during oral argument: "We have one issue before the Court now: the statutory question. . . . There's not, in other words, a due process claim here." Oral Argument, *Buenrostro-Mendez v. Bondi*, No. 25-20496, 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.

12. There have been numerous District Courts within the 5th Circuit post *Buenrostro*, whose Order was filed on February 6, 2026, that have found Petitioners entitled to a bond hearing on due process grounds.

13. These decisions ordering bond were granted even following the 5th Circuit in *Buenrostro*.

14. In *Hassen v. Noem*, No EP-26-CV-00048-DB (W.D. Tex. Feb. 9, 2026), the Court stated that *"Because the Government released Petitioner 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."* At p. 3 of 5. (See Exhibit A)

15. *Marceau v. Noem*, No. EP-26-CV-237-K.C. (W.D. Tex. Feb. 9, 2026) found *"The Court's conclusion is not changed by the Fifth Circuit's recent decision in Buenrostro-Mendez v. Bondi, --- F.4th ----, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026)."* At p. 3 of 5. This case involved someone who was initially detained and then released into the U.S. and subsequently detained. *"However, as explained at length in Lopez-Arevelo, a person may obtain a liberty interest through their presence in the country, particularly where that presence is with the express permission of the Government. Lopez-Arevelo, 801 F. Supp. 3d at 685–86. And even if Respondents' contention that Marceau is an "arriving alien" is correct as a matter of statutory construction, Marceau's constitutional interest in her liberty exists above and apart from the Immigration and Nationality Act and attendant regulations. See A.A.R.P. v. Trump, 605 U.S. 91, 94 (2025). Here, Marceau was paroled and released into the country, where she has been living at liberty for over two years. Regardless of whether Marceau's parole has expired or been terminated, Respondents may not revoke that liberty without an individualized determination of the need to do so. See Lopez Arevelo, 2025 WL 2691828, at *7–11."* At p. 2 of 5. (See Exhibit B)

16. Same due process conclusion was reached in *Clemente Ceballos v. Garite*, 3:26-cv-00312-DB (W.D. Tex. Feb 10, 2026) "*Petitioner's case, as alleged, is materially indistinguishable from other cases in which this Court has found procedural due process violations. See Vieira v. De Anda-Ybarra, No. EP-25-CV- 00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025)."* At p. 2 of 4. (See Exhibit C)

17. *Buenrostro* was again directly addressed in *Ayala Aguirre v. Bondi*, No. EP-26-CV-346-KC (W.D. Tex. Feb. 18, 2026) *"The Buenrostro-Mendez court did not reach the due process question, confining its analysis and holding to statutory*

*interpretation. See generally Buenrostro-Mendez, 2026 WL 323330, at *1–10."* At p. 2 of 7. (See Exhibit D) *"As to Ayala Aguirre's requested relief—immediate release or a bond hearing— Buenrostro-Mendez does not change the Court's analysis of the appropriate remedy either. In Lopez-Arevelo, the Court found that the appropriate remedy for a procedural due process violation was 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. Lopez-Arevelo, 801 F. Supp. 3d at 687 (collecting cases). The Court reached this conclusion, not because the statute requires a bond hearing, but because the petitioner's due process rights "[were] violated because he [was] detained without a bond hearing that accords with due process." Id. And this Court has further explained that, in ordering the Government to provide an immigration habeas petitioner with a bond hearing, it "provides Respondents a final opportunity to give [the petitioner] the process to which he is entitled under the Constitution." Lala Barros, 2025 WL 3154059, at *5 n.1. "If they do so, then there is no longer a violation. Id."* At p. 5 of 7. Emphasis added. (See Exhibit D).

18. In *Bonilla Chicas v. Warden*, 5:26-cv-00131 (S.D. Tex. Feb. 20, 2026), the Petitioner was placed in immigration proceedings, served with a Notice to Appear, and subsequently released on his own recognizance due to not meeting DHS's priority criteria. He was later arrested by ICE while working. This Court also found that *"Buenrostro-Mendez Does Not Foreclose Petitioner's Due Process Claim."* p. 10 of 26. (See Exhibit E). This is a section heading with a well written analysis on both Buenrostro and procedural due process. *"The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving any person of "life, liberty, or property, without due process*

of law." U.S. Const. amend. V. "[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, 533 U.S. at 693. It requires "at a minimum . . . that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 313 (1950). That noncitizens are entitled "to due process of law in the context of removal proceedings" is "well established." Trump v. J.G.G., 604 U.S. 670, 673 (2025) (per curiam) (quoting Reno v. Flores, 507 U.S. 292, 306 (1993)) (citation modified)." See p. 11 of 26, *Id.*

19. The Court ordered the immediate release of the Petitioner because his detention violated his rights under the Due Process Clause of the Fifth Amendment in *Lopez Mejia v Warden Webb County*, 5:26-cv-00160 (S.D. Tex. Feb. 23 2026). When finding Petitioner should be afforded constitutional due process rights, the Court stated *"This conclusion is further supported by the growing number of district courts that have likewise found that mandatory detention of noncitizens who have established a presence in the United States violates their procedural due process rights. See, e.g., Vieira v. De Anda-Ybarra, 2025 WL 2937880, at *7 (W.D. Tex. Oct. 16, 2025); Lopez-Arevelo v. Ripa, 801 F. Supp. 3d 668, 687 (W.D. Tex. 2025) (collecting cases); Hernandez-Fernandez v. Lyons, 2025 WL 2976923, at *7 (W.D. Tex. Oct. 21, 2025); Marceau v. Noem et al., 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026); Clemente Ceballos v. Garite, 3:26-cv-00312-DB, at *3 n. 2 (W.D. Tex. Feb 10, 2026)."* See p. 3 of 4. (Exhibit F).

20. Respondents have not identified any material differences between this case and *Buenrostro.*

21. Thus, "*Buenrostro* should have no bearing on this Court's determination of whether [a habeas petitioner] is being detained in violation of his constitutional right to procedural due process." *Id.* at *2 (citation omitted).

22. It follows that the same result is warranted here.

ARGUMENT II STATUTORY LANGUAGE

23. If Petitioner is subject to mandatory detention, how did DHS release Petitioner after detention upon entering the country?

24. Petitioner does not dispute that § 1225(b) imposes mandatory detention for covered "applicants for admission." *Jennings*[1] confirms the statute mandates detention until the relevant screening/removal proceedings conclude.

25. There is a crucial distinction between Petitioner in this case and the Petitioners in *Buenrostro v. Bondi, No. 25-20496, 2026 WL 323330.*

26. In *Buenrostro* the individuals entered the U.S. illegally and remained undetected in the U.S. for 24 and 16 years respectively.

27. In this case, Petitioner was apprehended shortly after entering into the U.S., taken into ICE custody, processed, and then released.

28. This means that at some point, DHS determined the Petitioner was not a threat and processed them into the U.S.

29. This matters because § 1225(b) itself does not create a general discretionary-release program. If Petitioner truly fell under § 1225(b), then DHS's authority to release

[1] Jennings v. Rodriguez, 583 U.S. ___ (2018)

Petitioner would have had to come from parole under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A) (urgent humanitarian reasons or significant public benefit), not from "bond-style" discretionary release on own recognizance. (See *Jennings*).

30. So the case reduces to a straightforward statutory syllogism:

    a. If Petitioner was detained under § 1225(b), then detention was mandatory unless DHS granted parole under § 1182(d)(5)(A).

    b. But, DHS did release Petitioner.

    c. Either (a) DHS paroled Petitioner under § 1182(d)(5)(A), or (b) DHS treated Petitioner as falling outside § 1225(b) and instead under a § 1226-type custody framework.

31. Either way, DHS cannot have it both ways: it cannot argue "§ 1225(b) mandatory detention controls" while relying on a release mechanism that exists only if DHS actually used parole (or treated Petitioner as § 1226).

32. This isn't counsel's invention; the Supreme Court itself describes the statutory architecture this way. In *Jennings v. Rodriguez*, the Court explains that §§ 1225(b)(1) and (b)(2) "most naturally" mandate detention of applicants for admission until the relevant process concludes, and that temporary release for applicants for admission is by parole under § 1182(d)(5)(A) (and the implementing regulations).

33. Here, DHS's own conduct of releasing Petitioner from custody after arrival means one of two things is true:

    a. If DHS released Petitioner pursuant to parole under § 1182(d)(5)(A), which there is no documentation reflecting.

b. If DHS did not grant parole under § 1182(d)(5)(A) (and the paperwork reflects instead an conditional parole/recognizance-type release), then DHS necessarily treated Petitioner as governed by a § 1226 custody framework, which carries a bond-hearing mechanism for release. DHS cannot retroactively re-label the same custody posture as § 1225(b) mandatory detention to avoid bond.

34. Accordingly, the Court should reject Respondents' attempt to impose § 1225(b) mandatory detention where DHS's own release decision indicates conditional parole when Petitioner was released with an I220A release on own recognizance and therefore § 1226 custody controls (requiring bond-hearing eligibility).

ARGUMENT III PLAIN READING

35. Petitioner also realledges its previous argument on plain language of § 1225 not having release from detention language while § 1226 directly addresses the conditional parole that this Petitioner received after crossing the border.

36. Well-established principles of statutory construction require courts to give meaning to each phrase in a statute rather than construing the statute in a way that renders parts of it superfluous. See, e.g., TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant") (cleaned up); United States ex rel. Polansky v. Exec. Health Res., Inc., 599 U.S. 419, 432 (2023) ("every clause and word of a statute should have meaning") (cleaned up).

37. The respondents' interpretation of § 1225(b) would make certain portions of it superfluous. As one court has recently explained: *If, as Respondents argue, § 1225(b)(2)(A) were intended to apply to all "applicant[s] for admission," there would be no need to include the phrase "seeking admission" in the statute. That is, rather than stating that mandatory detention is required for any "applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted," § 1225(b)(2)(A), the statute would instead provide for mandatory detention for any "applicant for admission, if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.*" Lopez Benitez v. Francis, No. 25-CIV-5937(DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025) (emphasis and strike-through in original); see also Castanon-Nava v. US. Dep 't of Homeland Security, No. 25-3050, 2025 WL 3552514, at *8-9 (7th Cir. Dec. 11, 2025) (rejecting the respondents' proffered construction of§ 1225(b)(2)(A) as "violating one of the cardinal rules of statutory construction").

38. Respondent's argument violates this well-established principle.

ARGUMENT IV TITLE OF STATUTES

39. Courts may consider the titles of statutes when interpreting their provisions. See, e.g., Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc., 554 U.S. 33, 47 (2008) ("[S]tatutory titles and section headings are tools available for the resolution of a doubt about the meaning of a statute." (quoting Porter v. Nuss le, 534 U.S. 516, 528 (2002))); see also United States v. Moore, 71 F.4th 392, 397 (5th Cir. 2023).

40. Here, the title of § 1225 states that it applies to the "expedited removal of inadmissible arriving aliens."

41. DHS, in its own charging documents, had the ability to classify this Petitioner as an arriving alien. See the unchecked box one on the face of Petitioners I-862 Notice to Appear. (See Exhibit A in original petition). Even DHS did not consider Petitioner as an arriving alien!

42. In contrast, the title of § 1226 states that it applies to the "apprehension" of noncitizens who are already present in the country.

43. These titles contradict the respondents' argument that § 1225 applies to noncitizens who have been present in the country for years and instead support the government's longstanding interpretation that § 1225 applies to noncitizens intercepted at the border while § 1226 applies to noncitizens apprehended away from the border years after they entered.

Wherefore we ask this Honorable Court to grant Petitioner's original Habeas Petition.

DATED March 7, 2026.

Respectfully submitted,

/S/ John Dutton

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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Reply Brief and all attachments using the CM/ECF system.

/S/ John Dutton, Attorney for Petitioner

Executed on March 7, 2026