

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

SEGUNDO TIXI-TIXI

Petitioner

V.

Case No. 3:26-cv-00457-LS

Agency File



WARDEN, et. al.;

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PETITIONER'S REPLY

Petitioner submits this reply to Respondents' response to the Court's Order to Show Cause. Respondents focus almost entirely on statutory interpretation, arguing that under *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), Petitioner is subject to mandatory detention under 8 U.S.C. §1225(b)(2). Even if Respondents' statutory interpretation were correct, however, their response fails to address the central constitutional problem presented here: the re-detention of an individual who previously lived at liberty in the United States for years after posting bond.

I. Respondents' Statement of Facts Omits the Prior Bond Release

Respondents' factual narrative omits a critical aspect of this case. (Resp't's Resp. at 3-4). While Respondents note that an immigration judge denied bond on December 17, 2025, for lack of jurisdiction, they fail to acknowledge that Petitioner was previously released from immigration custody in 2019 after posting a \$5,000 immigration bond. Petitioner complied with those conditions and lived at liberty in the United States for approximately six years before being re-detained in August 2025.

The December 2025 bond proceeding did not review custody on the merits. Instead, the immigration judge concluded that he lacked jurisdiction because the Government classified Petitioner as subject to mandatory detention under §1225(b)(2). By omitting the prior bond release and years of compliance, Respondents present an incomplete factual picture that obscures the constitutional question presented here: whether the Government may re-detain a person who previously posted bond and lived in the community for years without any meaningful custody determination.

II. Petitioner's Due Process Claim Was Raised in the Petition

Respondents incorrectly assert that Petitioner has “pivoted” to a procedural due process claim. (Resp’t’s Resp. at 2). The petition itself alleged that continued civil detention without a meaningful custody determination violates the Fifth Amendment. See Petition ¶¶ 4, 53–57. Petitioner has therefore not raised a new theory; he has provided an additional argument to the statutory arguments by further explaining the constitutional concerns raised by their interpretation of the detention framework.

Respondents also mischaracterize Petitioner’s claim as substantive rather than procedural due process. (Resp’t’s Resp. at 3). Petitioner does not challenge Congress’s authority to detain noncitizens. Rather, he challenges the absence of any procedure before the Government re-imposes civil detention on a person previously released on bond who lived at liberty for years. That is a procedural due process claim governed by *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Respondents’ argument that due process does not require procedures to adjudicate “immaterial facts” similarly mischaracterizes Petitioner’s claim. Petitioner does not argue that the Court must override Congress’s detention authority by requiring bond determinations in every

§1225 case. Rather, he challenges the absence of any procedural safeguard before the Government re-imposes civil detention on an individual who was previously released on bond and lived at liberty in the community for years.

III. Respondents' Authorities Do Not Resolve the Constitutional Question

Respondents rely heavily on *Connecticut Department of Public Safety v. Doe* to argue that a bond hearing would be a “bootless exercise.” (Resp’t’s Resp. at 12). That reliance is misplaced. In *Connecticut Department of Public Safety*, the statute required registration solely based on the fact of a prior conviction, and the plaintiff sought a hearing on present dangerousness—a factor the statute did not consider. *Connecticut Department of Public Safety*, 538 U.S. 1 (2003).

This case is fundamentally different. Petitioner does not seek a hearing to prove a fact Congress deemed irrelevant; he challenges the constitutionality of being deprived of liberty without any individualized determination of detention after the Government previously released him on bond and he lived at liberty for approximately six years.

Respondents’ reliance on *Wekesa v. United States Attorney General*, No. 22-10260, 2022 WL 17175818 (5th Cir. Nov. 22, 2022), is likewise misplaced. (Resp’t’s Resp. at 13). That case involved mandatory detention under §1226(c) and a petitioner who remained continuously detained. Here, by contrast, Petitioner was released on bond, lived in the community for years, and was later re-detained without any new custody determination.

IV. Immigration Due Process Principles Recognize the Significance of Established Ties

The Supreme Court has long distinguished between exclusion decisions involving individuals seeking admission and the treatment of persons physically present in the United States.

See *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Petitioner was released on bond and lived in the United States for approximately six years while his immigration proceedings remained pending. He is therefore not a person “standing at the threshold of entry.” The cases cited by Respondents—including *Thuraissigiam*, *Mezei*, *Nishimura Ekiu*, and *Kaplan*—concern individuals detained during the initial exclusion process, circumstances far removed from the present case where the Government released Petitioner on bond and permitted him to live freely in the community for years. (Resp’t’s Resp. at 15-16).

V. The Mathews Framework Demonstrates That the Current Procedures Are Constitutionally Inadequate

The adequacy of procedures used to deprive a person of liberty is evaluated under *Mathews v. Eldridge*. First, the private liberty interest at stake is extremely strong. Petitioner was previously released by the Government and lived freely in the United States for years before being re-detained.

Second, the risk of erroneous deprivation is substantial. ICE re-detained Petitioner without providing any meaningful opportunity to contest whether detention remained necessary, despite the Government’s prior determination that release on bond was appropriate.

Third, the Government’s interests do not outweigh the need for procedural safeguards. Requiring the Government to justify continued detention before a neutral decisionmaker imposes only a minimal administrative burden and is consistent with established immigration custody practices.

Importantly, Petitioner does not ask the Court to invalidate §1225(b)(2) or to order his immediate release. At minimum, due process requires only a neutral determination as to whether continued detention is necessary or whether the previously posted bond remains sufficient to ensure Petitioner’s appearance.

VI. Re-Detention After Years of Liberty Raises Serious Constitutional Concerns

Respondents argue that individuals who have not been formally admitted may be treated “as if stopped at the border.” The cases they cite, however, involve individuals detained during the initial exclusion process. Petitioner challenges something fundamentally different: the Government’s decision to re-impose incarceration after previously releasing him on bond and allowing him to live at liberty in the United States for approximately six years. Extending the entry-fiction doctrine to justify incarceration under these circumstances would permit the Government to imprison individuals who have already demonstrated years of compliance without any procedural safeguard. In 2019, immigration authorities released Petitioner after accepting a \$5,000 bond as a financial guarantee of his compliance. Petitioner honored that obligation for approximately six years. The Constitutional concern arises from the Government’s attempt to disregard that prior custody determination and re-impose incarceration without any individualized review.

Conclusion

Petitioner is not an individual detained immediately upon entry and held continuously since that time. He is a person whom the Government previously released after posting bond and who lived at liberty in the United States for approximately six years. The Government now seeks to incarcerate him again without any individualized determination that detention is necessary. At minimum, due process requires a neutral determination as to whether the previously posted bond remains sufficient to ensure Petitioner’s appearance.

The Constitution does not permit the Government to disregard an existing bond and re-impose civil detention without any meaningful procedural safeguard.

Dated: March 11, 2026

/s/Bonnie Smerdon

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CERTIFICATE OF SERVICE

I, Bonnie Smerdon, certify that on March 11, 2026, I electronically filed the foregoing
REPLY TO RESPONSE with the Clerk of the Court of the United States District Court for the
Western District of Texas using the CM/ECF system. Notice of this filing was automatically
generated and transmitted by the CM/ECF system to all registered CM/ECF users in this case.

Dated: March 10, 2026

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