

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

Edgar Reynaldo Hernandez Vite

(Year of Birth )

PETITIONER

V.

Warden, Rio Grande Detention Center;
Field Office Director,
U.S. Immigration and Customs Enforcement,
San Antonio Field Office;
U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT;
KRISTI NOEM, Secretary of the
U.S. Department of Homeland Security; and
PAM BONDI, Attorney General of the
United States,

CIVIL ACTION NO. 5:26-cv-325

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS AND IN OPPOSITION TO RESPONDENTS' MOTION FOR SUMMARY
JUDGMENT

Petitioner Edgar Reynaldo Hernandez Vite submits this reply in support of his petition for writ of habeas corpus and in opposition to Respondents' motion for summary judgment.

I. Buenrostro decides a statutory question only; it does not resolve Petitioner's constitutional and APA claims

Respondents' central argument is that *Buenrostro Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026), "requires" denial of this petition. It does not.

Buenrostro addressed a single issue: whether, as a matter of statutory interpretation, certain noncitizens arrested in the interior are detained under 8 U.S.C. § 1225(b)(2) rather than § 1226. *Id.* at *1–9. The court expressly confined itself to that statutory question, rejected the BIA's *M-S*-framework, and then "remanded for further proceedings" rather than ordering dismissal. *Id.* at *10. The panel did not decide, and did not purport to decide, whether the government's application of § 1225(b)(2) to long-term interior residents without bond hearings violates the Due Process Clause or the APA.

District courts in this Circuit have repeatedly recognized this limitation and have rejected the same argument Respondents make here—that *Buenrostro* silently foreclosed all post-remand constitutional challenges. See, e.g., *Denis Duran Aguila v. Warden*, No. EP-26-CV-241-KC, slip op. at 3–4 (W.D. Tex. Feb. 14, 2026) (holding that *Buenrostro* “has no bearing” on whether the petitioner “is being detained in violation of his constitutional right to procedural due process” and granting habeas relief); *Jesus Lopez Mejia v. Warden*, No. 5:26-cv-00160, slip op. at 3 (S.D. Tex. Laredo Div. Feb. 24, 2026) (explaining that *Buenrostro* “was limited to the statutory interpretation question and did not address the arguments raised about the constitutionality of Petitioner’s detention”); *Hermelinda Soriano Altamirano v. Noem*, No. SA-26-CA-00607-XR, slip op. at 5–7 (W.D. Tex. Feb. 26, 2026) (holding that *Buenrostro* “does not decide whether habeas petitioners are being detained in violation of their constitutional right to procedural due process” and ordering release). Those courts have faithfully implemented *Buenrostro*’s statutory holding while still vindicating detainees’ constitutional rights under *Mathews* and the APA. This Court should do the same.

II. Petitioner’s procedural due process claim is properly analyzed under *Mathews*; *Demore* does not control

Respondents argue that any “procedural” claim is really a forbidden “substantive” challenge because § 1225(b)(2)(A) mandates detention. From that premise, they contend *Mathews v. Eldridge* does not apply.

That argument has now been squarely rejected by multiple courts confronting the post-July 8, 2025 policy. Those courts have applied *Mathews* and found that the government’s categorical denial of bond hearings to § 1225(b)(2) interior detainees violates procedural due process, notwithstanding the statutory text. See, e.g., *Lopez Mejia*, slip op. at 3–4 (applying *Mathews* and concluding that “the Due Process Clause requires an individualized determination of whether Petitioner’s detention is necessary to reasonably assure his appearance and the safety of the community” and ordering immediate release); *Bonilla Chicas v. Warden*, No. 5:26-cv-00131, slip op. at 9–11, 22–23 (S.D. Tex. Laredo Div. Feb. 12, 2026) (holding that continued detention under § 1225(b)(2) without a bond hearing violates procedural due process as applied and ordering release with safeguards); *Soriano Altamirano*, slip op. at 5–7 (applying *Mathews* and granting habeas relief).

Respondents’ reliance on *Connecticut Dep’t of Public Safety v. Doe* is misplaced. That case concerned whether due process required a hearing on current dangerousness under a statute that made current dangerousness irrelevant to the registration duty. 538 U.S. at 7–8. Here, in contrast, the very basis on which Respondents purport to justify Petitioner’s detention is risk of flight and danger—yet they refuse to provide any process to determine those facts before a neutral arbiter. The inquiry Petitioner seeks goes to the heart of whether his ongoing detention is justified; it is not “of no consequence” to the scheme.

Nor does *Demore v. Kim* control. *Demore* upheld mandatory detention under § 1226(c) for a narrow class of criminal aliens based on assumptions of relatively short detention and a particular legislative record. 538 U.S. at 529–31. *Demore* repeatedly emphasized that most such detentions lasted only “a brief period” and that the statute targeted individuals with certain serious criminal convictions. *Id.* at 529–30. Petitioner is not a § 1226(c) detainee; he has no criminal history at all.

He is a crime victim and U-visa applicant with U.S. citizen stepchildren. *Demore* did not address, much less bless, the indefinite detention of long-term, non-criminal interior residents under § 1225(b)(2) with no individualized custody hearing.

As the Western District of Texas recently explained, “the Government’s argument that *Demore* forecloses due process challenges to detention under Section 1225(b)(2) ignores the critical factual and statutory differences between *Demore* and this case.” *Duran Aguila*, slip op. at 4–5. That reasoning applies with equal force here.

Under *Mathews*, Petitioner’s ongoing detention without a bond hearing or comparable individualized process violates procedural due process for the reasons set out in the petition and in the post-*Buenrostro* decisions cited above.

III. Petitioner’s substantive due process and Accardi claims are properly pled and not foreclosed

Respondents’ substantive due process argument consists largely of citing general statements that “detention during removal proceedings is a constitutionally permissible part of the deportation process” and that Congress has broad immigration authority. Petitioner does not dispute that detention may play a role in removal. The question here is narrower: whether this particular regime—categorically denying any bond hearing to long-term, non-criminal, interior residents like Mr. Hernandez, regardless of their individual circumstances—comports with due process.

Even if this Court views Petitioner’s challenge as partly “substantive,” the same district courts that have applied *Mathews* have also rejected the government’s attempt to treat *Demore* and similar cases as a blanket approval of all forms of pre-removal detention. See, e.g., *Soriano Altamirano*, slip op. at 6–7; *Bonilla Chicas*, slip op. at 9–11.

As for *Accardi*, Respondents say Petitioner must show and has not shown “substantial prejudice.” But the prejudice is obvious and ongoing: as a direct result of EOIR’s de facto refusal to exercise its traditional § 236(a) bond authority over § 1225(b)(2) detainees, Petitioner has been entirely barred from even asking an Immigration Judge to consider bond. That is substantial prejudice by any measure. *Maldonado-Bautista* documents precisely how the July 8, 2025 policy and *Yajure Hurtado* led IJs to refuse bond hearings contrary to longstanding practice. EOIR has never amended its regulations to strip bond authority in this way; it has instead allowed a fundamental change in practice to occur by policy and adjudicatory fiat, in violation of *Accardi*.

IV. *Maldonado-Bautista* is persuasive authority; Petitioner does not rely on it as binding res judicata

Respondents devote many pages to arguing that *Maldonado-Bautista v. Santacruz* does not bind this Court as a matter of preclusion doctrine. Petitioner is not arguing otherwise. He relies on *Maldonado-Bautista* as persuasive authority and as factual context demonstrating how DHS’s July 8, 2025 policy has been applied to long-term interior residents, just like Mr. Hernandez, and how another federal court analyzed the legality of that practice.

The government's discussion of *Mendoza*, *Moitie*, and the Ninth Circuit's stay is therefore largely beside the point. Petitioner does not ask this Court to treat *Maldonado-Bautista* as res judicata. He asks the Court to recognize that its reasoning is consistent with, and in many respects anticipates, the due process and APA analysis that courts in this Circuit have now adopted post-*Buenrostro* in *Bonilla Chicas*, *Lopez Mejia*, *Soriano Altamirano*, *Duran Aguila*, and others.

V. The APA claim is properly before the Court

Respondents argue there is no APA jurisdiction because: (1) habeas provides an “adequate remedy,” and (2) detention is not “final agency action.” Neither argument is persuasive in this posture.

First, habeas and APA remedies here are complementary, not mutually exclusive. Habeas provides the mechanism to secure release from unlawful custody; the APA provides the standard to assess the lawfulness of the underlying policy and its implementation. Courts regularly consider APA theories in tandem with habeas claims in immigration-detention cases. At a minimum, the APA claims reinforce Petitioner's due process arguments and the Court's determination that the July 8, 2025 policy is arbitrary, capricious, and contrary to law.

Second, the July 8, 2025 policy itself—DHS's nationwide reinterpretation of § 1225(b)(2) to sweep in long-term interior residents and categorically deny them access to § 236(a) bond hearings—is “final agency action.” It marks the consummation of DHS's decision-making process on who is treated as an “applicant for admission,” and it carries concrete legal consequences for thousands of detainees, including Petitioner. Respondents focus narrowly on “detention pending a decision on removal,” but Petitioner challenges the policy framework governing who is treated as an “applicant for admission” and denied bond, not simply the day-to-day fact of being detained.

In any event, even if the Court were to find APA jurisdiction uncertain, that would not justify summary judgment in Respondents' favor given the independent and sufficient due process grounds for granting habeas relief.

VI. EAJA fees are not at issue

Respondents are correct that *Barco v. Witte* holds EAJA does not authorize attorney's fees for successful § 2241 motions. Petitioner does not press an EAJA claim here; that issue does not bear on whether the Court should grant the writ and order his release or a constitutionally adequate bond hearing.

VII. Summary judgment standard

Respondents seek summary judgment under Rule 56. The material facts relevant to detention are not in dispute: Petitioner's manner and date of entry, his current detention under § 1225(b)(2) at Rio Grande, his lack of criminal history, his victimization and U-visa petition, his family ties, and the absence of any individualized bond hearing. The only real dispute is legal—whether those facts, under the Fifth Amendment and the APA, entitle him to relief. On the current record and in light of the controlling and persuasive authorities above, they do.

CONCLUSION

For these reasons, and for those set forth in the petition and supporting memorandum, Petitioner respectfully requests that the Court:

1. Deny Respondents' motion for summary judgment;
2. Grant the petition for writ of habeas corpus; and
3. Order his immediate release under reasonable conditions of supervision, or, in the alternative, order a prompt individualized bond hearing before an Immigration Judge at which the government bears the burden of justifying detention by clear and convincing evidence and the IJ must consider less restrictive alternatives.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record who are registered Filing Users.

/s/ Jorge G. Trevino

JORGE G. TREVINO