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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

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| ARMANDO JESUS TORRES MEDINA,<br><br>Petitioner,<br><br>v.<br><br>EVAN TJADEN, Acting Field Office Director, Salt Lake City Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE/ERO);<br>JOHN DOE, ICE/ERO Field Agent;<br>KRISTI NOEM, Secretary United States Department of Homeland Security;<br>PAMELA BONDI, U.S. Attorney General,<br><br>Respondents. | **REPLY IN SUPPORT OF WRIT OF HABEAS CORPUS**<br><br>Case No. 2:26-cv-195 JNP |

The government is wrong on the law, and the court should grant relief. But the court doesn't even have to wade into the problematic *Hurtado* analysis of § 1225 because the evidence provided by the government shows that this isn't a *Hurtado* case at all. The record now shows conclusively that Respondents have initiated removal proceedings under § 1229a (INA § 240), so the proper construction of § 1225 is beside the point. Release pending removal under § 1229a is governed by § 1226, which allows Mr. Torres to be released on bond. The court should order Respondents to give him a constitutionally and legally sufficient bond determination and redetermination under § 1226 within seven days.

## ARGUMENT

### *I. The facts of this case take it beyond the reach of* **Buenrostro** *and* **Cisneros.**

The government does not deny, and thus concedes, that detention decisions under the INA "relate to the type of removal proceedings a noncitizen is subjected to." (ECF No. 9 at 9.) The two provisions at issue here—8 U.S.C. § 1225 and § 1226—relate to two distinct forms of removal: "expedited removal" under 8 U.S.C. § 1225(b)(1) and "standard removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a," respectively. Put otherwise, the detention requirements of § 1225 are inapplicable to cases charged under § 1229a, and § 1226 is inapplicable to cases charged under § 1225(b)(1).

Here, the government claims—without offering any evidence to support the claim—that Respondents do not need to give Mr. Torres a bond hearing because he "has been detained under 8 U.S.C. § 1225." (ECF No. 18 at 1; *see also id.* at 2, 6, 8.) However, the government forgets that detention under § 1225 is appropriate only if Mr. Torres is charged with expedited removal under that section. This fact would be evidenced by a written notice on Form I-860 that he was being subjected to "expedited removal" under § 1225 (INA § 235(b)(1)[1]). (*See* Ex. 1.[2])

Not only has the government failed to show that Respondents seek removal under § 1225, but it has actually offered proof that Respondents chose *not* to proceed under § 1225. Instead, the government's evidence shows that Respondents initiated standard removal proceedings under 8 U.S.C. § 1229a (INA § 240) by issuing a Notice to Appear. (ECF No. 18-1.) The Notice to

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[1] The DHS website has a helpful tool that allows us to see the Title 8 code sections of the INA. DHS, "Immigration and Nationality Act" (last visited Mar. 18, 2026), *available at* https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act.

[2] The attached example of form I-860 is available on ICE's website at https://www.ice.gov/doclib/detention/checkin/ER_I_860.pdf (last accessed Mar. 18, 2026).

Appear submitted as the government's Exhibit 1 shows that Respondents have placed Mr. Torres "[i]n removal proceedings under section 240 of the [INA]," which is codified at § 1229a.

The implication of this choice is that the proper construction of § 1225 is *completely irrelevant* to this motion. By placing Mr. Torres in removal proceedings under § 1229a, it doesn't matter what § 1225 requires. This just isn't a § 1225 expedited removal case, notwithstanding the government's efforts to characterize it as such. The refusal by Respondents' agents to make an initial bond determination or offer him a bond redetermination hearing under 1003.19 violates the INA and associated regulations. *See* 8 CFR § 1003.19.

Given this decision, the court does not even need to weigh in on the correctness of *Hurtado, Buenrostro, Tanchez, Cisneros,* or any of the hundreds of cases that have granted relief to similarly situated petitioners. Because Respondents have initiated removal proceedings under § 1226, the interpretation of § 1225 is irrelevant on the facts of this case. The court should direct Respondents and their agents to immediately give Mr. Torres an initial bond determination with the opportunity to seek redetermination by an immigration judge within seven days if they deny him bond under § 1226 at an initial determination.

***II.* Hurtado *is wrong.***

The government urges the court to rule that a noncitizen in the interior who has been in the United States for years without inspection is an "applicant for admission" such that detention is mandatory under 8 U.S.C. § 1225(b)(2)(A). (ECF No. 18 at 2.) The government's rationale is essentially a long quotation of *Buenrostro* and *Cisneros* that is punctuated by characterizations of the contrary view as "creative reimagin[ing] or 'rewrit[ing]' the law to dictate a preferred result." (ECF No. 18 at 3, 8-16.)

The government's characterizations of the contrary view are surprising, given its concession that the analysis it relies on was the result of an internal memo promulgated by the

Trump administration that went against the widely accepted application of thirty-year old laws. (*Compare* ECF No. 9 at 12-13 *with* ECF No. 18 at 9 (both discussing *Hurtado* and DHS Interim Guidance that was "leaked" to the immigration bar.) Time does not allow for an extensive critique of the constitutional problems attendant to a decision by a court that is fully within the executive branch, but it's not hard to see how decisions in removal cases—prosecuted by DOJ attorneys, decided by DOJ judges, and appealed to a DOJ appellate panel—risk serious due process violations. *See e.g.,* Margi O'Herron, "The Immigration Court System, Explained," *Brennan Center for Justice* (June 24, 2025);[3] Eshani Pandya, "It's Time to Fix the Immigration Court System," *American Immigration Council* (Jan. 8, 2021).[4] And there is growing evidence that immigration judges are being coerced into denying bond out of fear they will be fired if they rule in favor of noncitizens. *See, e.g.,* Ximena Bustillo and Anusha Mathur, "The DOJ has been firing judges with immigrant defense backgrounds," *NPR* (Nov. 6, 2025) (reporting that "Judges who have had only immigration defense experience make up about 26% of the overall judges who remain on the bench, but 44% of judges fired in 2025");[5] Eric Katz, "'Climate of fear': Immigration judges say functioning of their court system is in jeopardy due to Trump's firings," *Government Executive* (Nov. 14, 2025).[6]

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[3] Available at https://www.brennancenter.org/our-work/research-reports/immigration-court-system-explained (last accessed Mar. 18, 2026).

[4] Available at https://www.americanimmigrationcouncil.org/blog/fix-immigration-court-system/ (last accessed Mar. 18, 2026).

[5] Available at https://www.npr.org/2025/11/06/g-s1-96437/trump-immigration-judges-fired (last accessed Mar. 18, 2026).

[6] Available at https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-system-jeopardy-due-trumps-firings/409544/ (last accessed Mar. 18, 2026).

The sheer volume of cases that have rejected this theory makes it a gross understatement to say that *Cisneros* and *Buenrostro* "went against the grain" or to describe this volume as "several cases from other jurisdictions." (*See* ECF No. 18 at 18.) In reality, the number of decisions that have rejected the government's theory *vastly* outweighs the number of courts that have accepted it. *See, e.g.*, Kyle Cheney, "Hundreds of judges reject Trump's mandatory detention policy, with no end in sight," *Politico* (Jan. 5, 2006) (reporting that, as of the beginning of this year, Judges have ruled against the administration in *more than 1,600 cases*" (emphasis added)).[7] There is no need to find and read all of these cases—*Tanchez* and *Bautista* are two excellent examples. They articulate the analysis that govern here—not because those cases are binding precedent, but because their legal analysis is superior.

The government ignores that *Buenrostro* itself was the outcome of a divided panel. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 508 (5th Cir. 2026) (Douglas, J., dissenting). Judge Douglas's dissent articulates the analysis that should have prevailed. And just this morning, Judge Barlow ruled from the bench that ICE must give similarly situated petitioners "a bond hearing under 8 U.S.C. § 1226(a) within 7 days." *Kohistani v. Leyva*, 2:26-cv-86 DBB, ECF No. 18 (D. Utah Mar. 18, 2026).

It is beside the point that the Ninth Circuit has stayed the effect of a nationwide class action in the *Bautista* case. (*See* ECF No. 18 at 18-19, n.23.) The result of that stay is that petitioners around the country, like Mr. Torres, must now bring these claims one case at a time, but it doesn't change the force of the analysis that drove the outcome there. The extensive analysis in *Bautista* should leave no doubt that Respondents' legal analysis lacks merit.

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[7] Available at https://www.politico.com/news/2026/01/05/trump-administration-immigrants-mandatory-detention-00709494 (last accessed Mar. 18, 2026).

Respondents violated the INA and governing regulations by (a) denying him an initial custody determination under 8 U.S.C. § 1225, and (b) denying him the ability to seek bond redetermination by an immigration judge. The court should direct Respondents to correct these errors within seven days.

***III. Detention without the possibility of release violates Due Process.***

The government does little to analyze Mr. Torres's Due Process claim, arguing only that because § 1225 precludes release, there can be no due process right to vindicate. (ECF No. 18 at 19-21.) This argument, however, ignores the proposition that the starting proposition as a legal matter is *liberty*, and the government's ability to *deprive* a person of his liberty is constrained by the Due Process clause as described by *Mathews v. Eldridge*, 424 U.S. 319 (1976). (*See* ECF No. 9 at 17-18.) The government makes no effort to weigh a noncitizen's liberty interest against the minimal burden imposed on the government by requiring Respondents to give a noncitizen a bond hearing.

Even before *Buenrostro*, some district courts within the Fifth Circuit granted habeas petitions for similarly situated petitioners solely on procedural due process grounds, analyzed under *Mathews*. *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.).

Since *Buenrostro*, district courts in the Fifth Circuit have acknowledged that *Buenrostro* speaks only to the statutory construction and says nothing about what Due Process requires. These courts have granted relief on constitutional grounds. *See, e.g., Clemente Ceballos v. Garite,* No. 26-cv-00312, 2026 WL 446509, at *2 n.2 (W.D. Tex. Feb. 10, 2026) (Briones, J.)

(holding Buenrostro does not change the procedural due process analysis and collecting cases); *Cumbe Lema v. De Anda-Ybarra*, No. 26-cv-249, ECF No. 7 (W.D. Tex. Feb. 9, 2026) (Cardone, J.) (similar).

Moreover, detention serves no purpose for noncitizens who are neither a danger to the community nor a flight risk based on strong ties to the community and/or pathways to immigration relief, coupled with no or limited criminal history. *See, e.g., Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed."); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (the only lawful purposes of immigration detention is to prevent flight risk and danger to the community); *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 likely to prevail on substantive due process claim).

The deprivation of liberty under § 1225 (if such is allowed and/or required) implicates the Due Process clause. Even if it is required by statute, that statute must survive scrutiny under the balancing test in *Mathews*. At a minimum, due process requires that noncitizens like Mr. Torres—who have extended time in the United States, are contributing members of the community (he owns his own mechanic shop), and have no or limited criminal history—must be given at least *the chance* to seek release on bond after a hearing.

This is especially true for a noncitizen who has a path to residency, as Mr. Torres does through his pending asylum application. He fears returning to his homeland. It would be unconscionable to allow ICE to detain him without a bond determination, forcing him to choose between prolonged detention here or returning to a country where he fears for his life.

## CONCLUSION

For the reasons stated here and in Mr. Torres's amended petition (ECF No. 9), the court should grant his petition and order Respondents to give him a legal and constitutionally sufficient opportunity to seek bond. This must be done initially by ICE agents, unconstrained by § 1225, and if bond is denied by agents, he must be given the opportunity to have a legally and constitutionally sufficient bond hearing within 7 days of this court's order.

DATED this 18th day of March 2026.

*/s/ Benjamin C. McMurray*
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