

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

Jorge Galvan-Bastard
(Year of Birth 1970 – A )
PETITIONER

V.

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

CIVIL ACTION NO. 5:26-cv-426

**PETITIONER’S REPLY TO RESPONDENT’S RESPONSE TO THE PETITION FOR
WRIT OF HABEAS CORPUS AND MOTION FOR SUMMARY JUDGMENT**

Petitioner Jorge Galvan-Bastard, by and through undersigned counsel, submits this Reply to the Respondents’ Response and Motion for Summary Judgment. As reflected in a growing line of post-*Buenrostro* decisions in this District and within the Fifth Circuit, Respondents’ arguments do not defeat Petitioner’s constitutional claims.

A. *Buenrostro-Mendez* Does Not Foreclose Petitioner’s Due Process Claims

Respondents contend that the Fifth Circuit’s decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), completely forecloses relief. It does not.

Buenrostro-Mendez resolved a single issue: the proper statutory interpretation of 8 U.S.C. § 1225(b)(2) and § 1226(a). The panel held that, as a matter of statutory construction, noncitizens apprehended in the interior who entered without inspection are “applicants for admission” subject to mandatory detention under § 1225(b)(2), and not to bond eligibility under § 1226(a). *Id.* at 498. The court expressly confined its analysis to the “statutory interpretation issue” and remanded “for further proceedings consistent with this opinion.” *Id.* at 508, 510.

Government counsel confirmed at oral argument that no due process claim was before the Fifth Circuit: “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).

In the wake of *Buenrostro*, district courts in this Circuit—including this Court—have consistently held that *Buenrostro* does not control whether detention under § 1225(b)(2), as applied to long-term residents, comports with the Due Process Clause. See, e.g.:

- *Bonilla Chicas v. Warden*, 2026 WL 539475, at *9–10 (S.D. Tex. Feb. 20, 2026) (Saldaña, J.) (granting habeas on due process grounds post-*Buenrostro*, holding that a long-term Salvadoran resident’s detention under § 1225(b)(2) without individualized assessment violated the Fifth Amendment);
- *Lopez-Mejia v. Warden*, 5:26-cv-00160, Dkt. 13 at 2–4 (S.D. Tex. Feb. 23, 2026) (Saldaña, J.) (same, for a former DACA recipient detained under § 1225(b)(2));
- *Quinto-Toto v. Warden of Rio Grande Processing Ctr.*, 5:26-cv-00385, Dkt. 8 at 1–3 (S.D. Tex. Mar. 25, 2026) (Saldaña, J.) (holding that *Buenrostro* “left unresolved” constitutional questions and granting habeas on due process grounds);
- *Sanchez-Garcia v. Warden, Laredo Detention Facility*, 5:26-cv-00334, Dkt. 9 at 2–4 (S.D. Tex. Mar. 18, 2026) (Saldaña, J.) (same);
- *Hassen v. Noem*, 3:26-cv-00048-DB, Dkt. 8 at 4 n.1 (W.D. Tex. Feb. 9, 2026) (“*Buenrostro-Mendez* does not change this case’s outcome on procedural due process grounds.”);
- *Marceau v. Noem*, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026) (holding that *Buenrostro* “has no bearing” on constitutional due process analysis).

This case presents the same basic constitutional question those courts have now repeatedly answered: whether the Government may categorically detain a long-term interior resident under § 1225(b)(2) without any individualized hearing on flight risk and dangerousness. That question is not resolved by *Buenrostro*’s statutory holding and remains properly before this Court.

B. Maldonado-Bautista’s Preclusive Effect Is Beside the Point for Due Process

Respondents devote substantial briefing to arguing that the *Maldonado-Bautista* class action has no preclusive effect in this Court. For the constitutional inquiry, this is beside the point.

This Court and others within the Circuit have routinely assumed, without deciding, that the BIA’s reading in *Matter of Yajure-Hurtado* and the Fifth Circuit’s reading in *Buenrostro* are correct as a matter of statute, yet still held that due process requires a meaningful hearing before the Government may mandatorily detain a long-term resident under § 1225(b)(2). See, e.g.: *Bonilla Chicas*, 2026 WL 539475, at *9–10; *Lopez-Mejia*, 5:26-cv-00160, Dkt. 13 at 2–4; *Quinto-Toto*, 5:26-cv-00385, Dkt. 8 at 2–4; *Sanchez-Garcia*, 5:26-cv-00334, Dkt. 9 at 2–4.

In *Quinto-Toto*, this Court expressly noted that *Buenrostro* resolved the statutory question but “left unresolved other claims brought by petitioners challenging their mandatory detention, including constitutional questions under the Due Process Clause,” and then granted relief solely on due process grounds. 5:26-cv-00385, Dkt. 8 at 1–3. The same approach was followed in *Sanchez-Garcia*. 5:26-cv-00334, Dkt. 9 at 2–4.

Petitioner has preserved his *Maldonado-Bautista* statutory arguments for appellate purposes. But regardless of that case’s preclusive effect, this Court can and should grant relief on independent constitutional grounds, just as it has done repeatedly post-*Buenrostro*.

C. Petitioner States a Valid Procedural Due Process Claim Governed by Mathews; Demore Does Not Bar Relief

Respondents argue that Petitioner’s procedural due process challenge is “really” a substantive claim and that *Demore v. Kim* forecloses relief. Both premises are incorrect and have been rejected by multiple courts in this Circuit, including this Court.

1. This is a procedural due process claim

Petitioner does not assert a free-standing substantive right to bond, nor does he contend that § 1225(b)(2) is facially invalid in all applications. Rather, he challenges the adequacy of the procedures used to deprive him of his liberty: the absence of any individualized custody hearing before a neutral adjudicator in light of his twenty years of residence, lack of criminal record, deep family ties, and prior release.

As this Court has already recognized, noncitizens who have established a presence in the United States “have a protected liberty interest and a right to freedom from detention by virtue of establishing a presence in the United States.” *Bonilla Chicas*, 2026 WL 539475, at *6–7; *Quinto-Toto*, 5:26-cv-00385, Dkt. 8 at 3; *Sanchez-Garcia*, 5:26-cv-00334, Dkt. 9 at 3–4. That core liberty interest triggers procedural due process protections beyond what Congress has chosen to write into § 1225.

Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts evaluate: (1) the private interest affected; (2) the risk of erroneous deprivation under existing procedures and the probable value of additional safeguards; and (3) the Government’s interest and the burden of additional procedures.

Courts in this Circuit applying *Mathews* to materially identical facts have uniformly concluded that detaining long-term residents under § 1225(b)(2) without an individualized hearing violates procedural due process. See *Bonilla Chicas*, 2026 WL 539475, at *21–24; *Lopez-Mejia*, 5:26-cv-00160, Dkt. 13 at 2–4; *Quinto-Toto*, Dkt. 8 at 3–4; *Sanchez-Garcia*, Dkt. 9 at 3–5; *Zamora v. Bondi*, SA-26-CA-00447-XR, Dkt. 11 at 22–24; *Canizalez-Arias v. Bondi*, SA-26-CA-00451-XR, Dkt. 9 at 22–24; *Dieng v. Noem*, SA-26-CA-00223-XR, Dkt. 7 at 23–25; *Soriano-Altamirano v. Lyons*, SA-26-CA-00607-XR, Dkt. 11 at 22–24; *Sosnava-Rodriguez v. Ortega*, 1:26-cv-00273-RP, Dkt. 14 at 3–5.

Those opinions—now numerous—address and reject the same “procedural versus substantive” reframing and the same reliance on *Connecticut Dep’t of Public Safety v. Doe*, *Reno v. Flores*, and *Duarte v. City of Lewisville* that Respondents advance here. See, e.g., Quinto-Toto, Dkt. 8 at 2–4; Sanchez-Garcia, Dkt. 9 at 2–4.

2. Demore does not foreclose Petitioner’s as-applied procedural challenge

Demore considered a facial challenge to § 1226(c)’s mandatory detention scheme for a narrow class of noncitizens with specified criminal convictions. 538 U.S. at 513–14. Its holding rested heavily on the existence of detailed Congressional findings about the specific dangers and flight risks posed by criminal aliens deportable under § 1226(c) and the assumption that such detention is generally brief in duration. *Id.* at 518–21, 529–30.

None of those premises holds here. Section 1225(b)(2) sweeps in broad categories of noncitizens, including long-term residents with no criminal history, and Congress made no comparable findings justifying mandatory, no-bond detention for this class. Petitioner’s twenty years of residence, family ties, and lack of criminal record bear no resemblance to the criminal-alien context *Demore* addressed.

Moreover, the Supreme Court itself has since clarified that as-applied constitutional challenges remain available even in the face of facially valid detention statutes. In *Johnson v. Arteaga-Martinez*, the Government conceded that “as-applied constitutional challenges remain available to address ‘exceptional’ cases” in the immigration detention context. 596 U.S. 573, 583 (2022). *Jennings v. Rodriguez* similarly left the due process question for lower courts, while rejecting only a statutory-avoidance reading. 583 U.S. 281, 312 (2018).

District courts in this Circuit—faced with virtually identical facts—have held that *Demore* does not bar as-applied procedural due process challenges to § 1225(b)(2). See *Bonilla Chicas*, 2026 WL 539475, at *15–18; *Zamora*, Dkt. 11 at 19–22; *Canizalez-Arias*, Dkt. 9 at 19–22; *Dieng*, Dkt. 7 at 19–22; *Soriano-Altamirano*, Dkt. 11 at 19–22.

Petitioner’s claim fits squarely within that framework. He does not dispute that “detention during removal proceedings” may be permissible in some circumstances. He contends that, in light of his particular liberty interest and the absence of any individualized assessment, the Government’s application of § 1225(b)(2) to him violates procedural due process.

D. Mandatory Detention Without Any Individualized Hearing Also Violates Substantive Due Process as Applied

Respondents further assert that civil detention pending removal is categorically constitutional. But the Supreme Court has made clear that civil immigration detention is permissible only insofar as it serves a legitimate, non-punitive regulatory purpose—ensuring appearance at proceedings and protecting the community from danger—and is not excessive in relation to that purpose. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Foucha v. Louisiana*, 504 U.S. 71, 80, 82 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997); *United States v. Salerno*, 481 U.S. 739, 746–47 (1987).

Here, Petitioner has no criminal record, has lived in the United States for roughly two decades, and has deep family and community ties. There has been no individualized finding that he is a danger or a flight risk. Detaining him indefinitely under a blanket mandatory-detention policy, without any opportunity to demonstrate that he can safely be released, does not reasonably relate to ensuring his appearance or protecting the public. It functions instead as a form of retribution or general deterrence—purposes the Supreme Court has repeatedly held are impermissible bases for civil confinement. See *Hendricks*, 521 U.S. at 372–73; *Salerno*, 481 U.S. at 747.

Numerous courts have recognized that when detention becomes punitive in this way, it violates substantive due process. See, e.g., *Zamora*, Dkt. 11 at 16–19; *Canizalez-Arias*, Dkt. 9 at 16–19; *Dieng*, Dkt. 7 at 16–19; *Soriano-Altamirano*, Dkt. 11 at 16–19.

E. Respondents’ Actions Also Violate the Accardi Doctrine

Respondents contend that the *Accardi* doctrine has no role to play once § 1225(b)(2) is construed to cover Petitioner. That misstates *Accardi* and ignores what actually happened here.

Under *Accardi* and its progeny, an agency must follow its own binding regulations, especially those that confer procedural protections on individuals. See *United States v. Caceres*, 440 U.S. 741, 751–52 (1979); *Gov’t of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970). Where DHS has promulgated regulations limiting warrantless arrests or prescribing procedures for revoking release and re-detaining noncitizens, it must comply with those rules.

Here:

- ICE effected Petitioner’s arrest in the interior without a warrant, despite 8 C.F.R. § 287.8(c)(2)(i), which permits an at-large, warrantless civil arrest only if the officer has reason to believe the person is in violation of immigration law and “is likely to escape before a warrant can be obtained.” Petitioner had lived openly at a known address for many years, with no record of evasion. Respondents have identified no factual basis for believing he was “likely to escape” before obtaining a warrant.
- For nearly three decades, DHS and EOIR treated long-term interior residents like Petitioner, in § 240 proceedings, as detained under § 1226(a) and therefore subject to the bond and custody-redetermination procedures in 8 C.F.R. §§ 1003.19 and 1236.1. The abrupt *Lyons/Yajure* reclassification of such individuals as § 1225(b)(2) “applicants for admission,” without rulemaking and in tension with those regulations, raises serious *Accardi* concerns.

Courts have repeatedly held that the Government’s failure to follow its own detention and revocation regulations may warrant release. See *Villanueva v. Tate*, 2025 WL 2774610, at *7 (S.D. Tex. Sept. 26, 2025) (collecting cases); *Gonzalez v. Joyce*, 2025 WL 2961626, at *5 (S.D.N.Y. Oct. 19, 2025); *Valdez v. Joyce*, 803 F. Supp. 3d 213, 219 (S.D.N.Y. 2025).

Because the Court can and should grant the Petition on due process grounds, it need not definitively resolve all Accardi questions here. But those violations underscore the arbitrariness of Petitioner's re-detention and further support the conclusion that his custody is unlawful.

F. The Court Need Not Reach the APA Claim

Respondents argue that Petitioner has no APA remedy because there is no "final agency action" and because habeas provides an adequate alternative. Petitioner maintains that the Lyons/*Yajure* reclassification constitutes reviewable agency action that is arbitrary, capricious, and contrary to law. However, as several courts have recognized, once a petitioner is entitled to habeas relief on constitutional grounds, it is unnecessary to decide APA claims. See, e.g., *Bonilla Chicas*, 2026 WL 539475, at *24; *Zamora*, Dkt. 11 at 3 n.3.

Because Petitioner is entitled to immediate release under the Fifth Amendment, this Court need not reach his APA claim.

G. Equal Access to Justice Act (EAJA) Fees

Respondents correctly note that, under current Fifth Circuit precedent, EAJA does not authorize attorney's fees in § 2241 habeas proceedings. See *Barco v. Witte*, 65 F.4th 782, 785 (5th Cir. 2023). Petitioner acknowledges that EAJA fees are not presently available here and raises the issue only to preserve it. This has no bearing on his entitlement to habeas relief.

CONCLUSION

For the foregoing reasons, and consistent with the growing consensus of district courts within this Circuit in the wake of *Buenrostro*—including *Bonilla Chicas*, *Lopez-Mejia*, *Quinto-Toto*, and *Sanchez-Garcia* in this Division—Petitioner respectfully requests that this Court:

1. Deny Respondents' Motion for Summary Judgment;
2. Grant the Petition for Writ of Habeas Corpus; and
3. Order Petitioner's immediate release from immigration custody under reasonable conditions of supervision, or, in the alternative, order Respondents to provide him with a prompt, individualized custody redetermination hearing before an Immigration Judge that complies with due process.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th 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