

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

YAN CARLOS PAYANENE OROZCO,

Petitioner,

v.

FIELD OFFICE DIRECTOR OF
ENFORCEMENT AND REMOVAL
OPERATIONS, San Antonio Field Office,
Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, U.S. Department of
Homeland Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; PAMELA BONDI,
U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW; WARDEN
OF EL VALLE DETENTION CENTER,

Respondents.

Case No. 1:26-cv-00111

**PETITIONER'S REPLY TO
RESPONDENT'S RESPONSE**

TO THE HONORABLE JUDGE OF SAID COURT,

COMES NOW, Petitioner, YAN CARLOS PAYANENE OROZCO, by and through undersigned counsel, LORENA VILLALON, and respectfully submits this Reply to Respondents' Response, pursuant to the Court's Order for Additional Briefing. Petitioner addresses Respondents' assertion that his detention is authorized under INA § 235(b)(1), clarifies the mechanism by which he was released after apprehension, and explains why his current detention violates the Due Process Clause of the Fifth Amendment. In support thereof, Petitioner states as follows:

RELEVANT FACTS AND PROCEDURAL HISTORY

1. Petitioner entered the United States on or about August 22, 2022 and was apprehended by immigration authorities upon entry. He was initially processed under INA § 235(b)(1) and placed in expedited removal proceedings. Petitioner subsequently received a positive credible fear determination, rendering him statutorily eligible to pursue asylum in full removal proceedings under INA § 240.
2. On September 4, 2025, DHS issued Petitioner a Notice to Appear ("NTA"), indicating DHS's intent to place Petitioner into removal proceedings before the Immigration Court. After issuance of the NTA, DHS released Petitioner from immigration detention and placed him under ICE supervision.
3. DHS failed to file the NTA with EOIR, and as a result, removal proceedings never commenced. However, Petitioner remained compliant with ICE supervision and continued to report as required.

4. On October 3, 2025, Petitioner appeared for a routine ICE check-in appointment, demonstrating full compliance with supervision. At that appointment, ICE re-detained Petitioner without notice, hearing, or any individualized custody determination. DHS thereafter issued Petitioner a new NTA, effectively attempting to reset the procedural posture of the case. The issuance of a new NTA confirms that DHS was not continuing a single, uninterrupted expedited removal detention scheme, but instead attempting to restart proceedings after release.
5. At no point prior to re-detention did DHS allege that Petitioner posed a flight risk or danger to the community.
6. Petitioner remains detained without access to a bond hearing or any constitutionally adequate review of his custody.

LEGAL ARGUMENT

I. DHS's Discretionary Release Terminated Any Claim of Mandatory Detention

7. Respondents contend that Petitioner is subject to mandatory detention under INA §§ 235(b)(1)(A)(ii) and 235(b)(1)(B)(ii). That contention fails because DHS affirmatively released Petitioner from custody after his credible fear determination and issuance of an NTA.
8. Mandatory detention under INA § 235(b)(1) is a custodial statute tied to detention pending expedited removal. Once DHS exercises discretion to release an individual from custody, the statutory basis for mandatory detention is extinguished. Nothing in INA § 235(b)(1) authorizes DHS to pause detention, release a noncitizen into the community, and later re-impose mandatory detention without process.

9. Additionally, the Fifth Circuit has upheld mandatory detention only where detention is continuous and incident to the triggering event. See *Garcia v. Holder*, 638 F.3d 511, 520 (5th Cir. 2011); *Demore v. Kim*, 538 U.S. 510 (2003). Here, detention was neither continuous nor incident to entry. DHS's discretionary release severed any claim of ongoing mandatory detention.

II. DHS'S Failure to File the September 4, 2025 NTA Undermines Its Detention Authority

10. Although DHS issued an NTA on September 4, 2025, it never filed that NTA with EOIR. Under 8 C.F.R. § 1003.14, removal proceedings commence only upon filing of the NTA with the Immigration Court. Because DHS failed to do so, Petitioner had no active proceedings and no forum in which to seek custody redetermination.
11. Due process does not permit DHS to detain an individual while simultaneously failing to initiate the proceedings that justify such detention. The Fifth Circuit has recognized the importance of procedural compliance in the exercise of immigration authority. See *Pierre-Paul v. Barr*, 930 F.3d 684, 691 (5th Cir. 2019).
12. DHS cannot benefit from its own procedural failure to withhold access to the Immigration Court and then rely on that failure to justify continued detention.

III. Petitioner's October 3, 2025 Re-Detention Was Not Authorized By INA § 235(b)(1)

13. Petitioner's re-detention occurred more than three years after entry, after discretionary release, and while Petitioner was fully compliant with ICE supervision. Re-detention at a routine check-in appointment was not incident to arrival, not connected to expedited removal, and not justified by any individualized determination of flight risk or danger.
14. Therefore, Respondents' reliance on INA § 235(b)(1) is misplaced because:

- a. INA § 235(b)(1) governs detention pending expedited removal, not re-detention after release;
- b. DHS had already exercised discretion to release Petitioner, terminating mandatory detention authority;
- c. The statute provides no mechanism to re-impose mandatory detention after release; and
- d. DHS issued a new NTA, confirming that it was not continuing an uninterrupted expedited-removal detention scheme.
- e. At minimum, once DHS re-detained Petitioner after release, due process required an individualized custody determination.

IV. Fifth Circuit Authority Confirms That Petitioner's Detention Violates Due Process

15. The Fifth Circuit has long recognized that civil immigration detention is subject to constitutional limits. In *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), the Supreme Court held that detention must bear a reasonable relation to its non-punitive purpose. The Fifth Circuit continues to apply this principle. See *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006).
16. Although *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), foreclosed statutory bond hearings, it preserved constitutional habeas challenges. The Fifth Circuit recognizes habeas jurisdiction over immigration custody challenges. See *Pierre v. United States*, 525 F.3d 933, 936 (5th Cir. 2008).
17. Petitioner's detention, after release, compliance, and DHS's failure to commence proceedings, is no longer reasonably related to ensuring appearance or effectuating removal and has become arbitrary and punitive, in violation of the Fifth Amendment.

V. Maldonado Bautista Is Not Petitioner's Sole Basis for Relief

18. Petitioner acknowledges that he was apprehended upon entry and therefore may not fall within the Bond Eligible Class defined in Maldonado Bautista. However, Petitioner's habeas claim does not depend solely on that decision.
19. Rather, Petitioner challenges the constitutionality of re-detention following discretionary release, procedural breakdown, and denial of any custody review. This Court retains jurisdiction to grant relief on due-process grounds independent of class membership.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Declare that his detention is NOT authorized under INA § 235(b)(1);
2. Declare that his current detention violates the Due Process Clause of the Fifth Amendment; and
3. Order Petitioner's release under reasonable conditions of supervision or, in the alternative, order Respondents to provide Petitioner with a prompt, constitutionally adequate custody hearing before an Immigration Judge.

DATED this 2nd day of February 2026.

Respectfully submitted,

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