

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

Jose Enrique Ojeda Duarte,  
Petitioner,

v.

Warden, in his/her official capacity, as ERO El  
Paso Camp East Montana Detention Center, Et Al.,  
Respondents.

Case No. 3:26-CV-00089-DCG

**PETITIONER'S REPLY**

Petitioner Jose Enrique Ojeda Duarte submits his response to Respondents' reply. In their reply, Respondents assert that Petitioner is an arriving alien, subject to mandatory detention under §1225(b)(2), and Petitioner's detention comports with Due Process. Respondents' arguments are without merit as evidenced by various other District Court decisions, including this Honorable Court. Recently, the Fifth Circuit issued its decision in *Victor Buenrostro-Mendez and Jose Padron Covarrubias v. Pamela Bondi, Et Al*, No. 25-20496 (5<sup>th</sup> Cir, 2026) (consolidated cases) that the non-citizens who entered without inspection are not subject to discretionary detention under 8 U.S.C. §1226(a)), but rather considered applicants for admission and subject to mandatory detention under §1225(b)(2). See *Id.* Petitioner asserts that his case is distinguishable from this recent decision as he challenges his unlawful decision based on the Respondents' failure to meet the statutory and regulatory requirements and his unlawful detention in violation of his Due Process rights.

**I. THURAISSIGIAM IS NOT APPLICABLE TO THE INSTANT CASE, AND PETITIONER SHOULD NOT BE SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225(b)(2)(A).**

In their reply, Respondents cite to *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) to support their position of mandatory detention. However, other courts, including this Honorable Court, have found *Thuraissigiam* is “not preclusive on the facts of this case because (1) Petitioner is not challenging his removal, but rather his detention during removal, and (2) he was not detained at the border on the threshold of initial entry, but rather after living in the United States since August 2025.” See *Vieira v. Anda-Ybarra*, EP-25-CV-00432-DB (W.D. Tex. Oct 16, 2025) (citing to *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020)). Here, the facts are distinguishable from the petitioner in *Thuraissigiam*. Petitioner Ojeda Duarte was apprehended then paroled into the U.S. October 18, 2024. Petitioner already resided in the U.S. for more than a year, applied for asylum, placed in full removal proceedings and obtained employment authorization.

Also, Petitioner Ojeda Duarte does not challenge any commencement not a final order of removal as his case continues to be pending. Petitioner here solely challenges his unlawful detention, after being present in the U.S. for more than a year and continuing to seek the purpose of his parole, asylum relief. *Thuraissigiam* is not applicable because Petitioner solely challenges the basis of his re-detention as it relates to his due process rights. Petitioner Ojeda Duarte continues to pursue the purpose of his parole with his pending asylum claim before the Immigration Court.

**II. PETITIONER’S CONTINUED DETENTION IS UNREASONABLE AND IN VIOLATION OF HIS DUE PROCESS RIGHTS.**

Respondents are incorrect in their argument that Petitioner Ojeda Duarte’s detention comports with Due Process, after a review of the standards set forth under *Mathews v. Eldridge*,

424 U.S. 319 (1976). As for the first factor of a “private interest,” Petitioner’s interest “is the most elemental of liberty interests—the interest in being free from physical detention.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017) (“[T]he private interest at issue here is ‘fundamental’: freedom from imprisonment is at the ‘core of the liberty protected by the Due Process Clause.’” (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992))). Here, it is quite evident that Petitioner’s liberty is a fundamental interest to preserve. Petitioner has lost his liberty and is away from his wife and children and community every day that he is detained.

As to the second element, “risk of erroneous deprivation,” the risk of erroneously depriving noncitizens of their fundamental right to be free from detention under the current procedures—or lack thereof—is obvious and well-documented. See *Hamdi*, 542 U.S. at 530 (“[H]istory and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse[.]”). Here, Petitioner has been forced to remain in detention, with any requests for release being denied arbitrarily by immigration officials. No individualized determination was made for his continued detention; whether he is a flight risk or a threat to the community. “[A]s the period of confinement grows, so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention.” *Velasco Lopez v. Decker*, 978 F.3d 842, 853 (2d Cir. 2020). Finally, the Government cannot legitimately show that “interest” it has as to Petitioner’s continued detention. The three-part test *Mathews* test shows the unlawfulness of Petitioner’s continued detention.

Here, when Respondents first paroled Petitioner, they would have made the determination that he is not a flight risk nor a danger. Yet, when Respondents re-arrested and detained Petitioner recently in 2026, its determination was based solely upon evidence that he “either lack[s]

immigration status” or is otherwise “removable” and failed to articulate any change in circumstances between the time of Petitioner’s initial release in 2024 and his re-detention in 2026. See *Lopez Benitez*, 795 F. Supp. 3d at 495. Petitioner’s continued detention is in violation of his Due Process rights, and the sole remedy would be for either his immediate release.

WHEREFORE, Petitioner respectfully requests that this Honorable Court grant writ of habeas corpus, requiring his immediate release from Respondents’ custody as soon as reasonably possible.

Dated this 7<sup>th</sup> of February, 2026

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 7, 2026 a copy of the foregoing was filed electronically. Service will be made via ECF to registered Counsels by operations of the Court's electronic filing system.

Dated this 7<sup>th</sup> of February, 2026

Respectfully Submitted,

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