

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

Lorena Barroso Aguirre,

Petitioner,

v.

TODD M. LYONS, in his official capacity as
Acting Director, Immigration and Customs
Enforcement, U.S. Department of Homeland
Security;

WARDEN of Camp East Montana Detention
Center, in his official capacity;

JOEL GARCIA in his official capacity as
Field Office Director of the ICE El Paso Field
Office of Enforcement and Removal
Operations, U.S. Immigration and Customs
Enforcement; U.S. Department of Homeland
Security;

KRISTI NOEM, in her official capacity as
Secretary, U.S. Department of Homeland
Security; and

PAMELA JO BONDI, in her official capacity
as Attorney General of the United States;

Respondents.

Case No. 3:26-cv-00091-LS

SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF PETITION FOR WRIT OF
HABEAS CORPUS

INTRODUCTION

The Court ordered Petitioner to provide supplemental briefing by February 12, 2026, to address “(1) whether he or she was arrested ‘on a warrant issued by the Attorney General’; (2) if not, how he or she is eligible for bond under 8 U.S.C. § 1226; and (3) if not eligible for a bond for want of an Attorney General-issued warrant, how habeas relief is available at all.” Upon

information and belief, Petitioner was detained outside her place of employment by a Customs and Border Protection task force. Although the detention appeared to be targeted—suggesting the possible existence of an arrest warrant—Counsel cannot state with certainty whether a warrant existed.

On February 6, 2026, the Fifth Circuit decided *Buenrostro v. Bondi*, ---F.4th---, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). Accordingly, Petitioner hereby submits the arguments required in the supplemental briefing, and further submits the following arguments in support of this Petition in light of *Buenrostro*.

**BUENROSTRO IS DISPOSITIVE OF PETITIONER'S STATUTORY CLAIMS
CONCERNING DETENTION AUTHORITY, BUT IT DOES NOT RESOLVE OR
FORECLOSE PETITIONER'S DUE PROCESS CLAIM.**

Petitioner brought this action asserting four claims: (1) violation of 8 U.S.C. § 1226(a) (unlawful denial of release on bond); (2) violation of the bond regulations, 8 C.F.R. §§ 236.1 and 1003.19; (3) violation of 8 U.S.C. § 1225(b)(2); and (4) violation of the Fifth Amendment's Due Process Clause.

The Fifth Circuit's recent decision in *Buenrostro* resolves Petitioner's statutory claims and reaches a conclusion contrary to Petitioner's position. *Buenrostro*, 2026 WL 323330, at *4–8. Unless *Buenrostro* is stayed or reversed on appeal, this Court is required to dismiss Petitioner's three statutory claims.

The Court asked Petitioner to address whether, “if not eligible for a bond for want of an Attorney General-issued warrant, how habeas relief is available at all.” Petitioner submits that her Due Process claim survives *Buenrostro*, and that viable habeas relief remains available in the form of release. *Buenrostro* neither decides nor disposes of Petitioner's Due Process claim. The decision does not address due process, except for a passing observation that the Supreme Court's

decision in *Zadvydas v. Davis*, 533 U.S. 701 (2001), does not apply to individuals in pending removal proceedings, but instead to individuals subject to a final order of removal.

After *Buenrostro*, several judges in this District have granted habeas petitions strictly on a due process cause of action. As Judge Cardone explained:

The Court's conclusion is not changed by the Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi*. Marceau argues that her detention without an opportunity for a meaningful individualized custody determination is unlawful on both statutory grounds, as well as constitutional due process grounds. . . . [T]he *Buenrostro-Mendez* court did not reach the due process question, confining its analysis and holding to statutory interpretation. And the case was remanded to the district court, not for dismissal, but "for further proceedings consistent with this opinion." Presumably, those further proceedings will entail consideration of *Buenrostro-Mendez's* due process claim, which the district court declined to reach in the first instance. Indeed, the Government's counsel stated it bluntly during oral argument: "We have one issue before the Court now: the statutory question. . . . There's not, in other words, a due process claim here." In sum, *Buenrostro-Mendez* has no bearing on this Court's determination of whether *Marceau* is being detained in violation of her constitutional right to procedural due process.

Marceau v. Noem, No. EP-26-CV-237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026) (internal citations omitted). Judge Cardone ultimately granted habeas relief on procedural due process grounds. *Id.* See also *Hassen v. Noem*, EP-26-CP-00048-DB (W.D. Tex. filed Feb. 9, 2026), at *4 n.1 ("*Buenrostro-Mendez* does not change this case's outcome on procedural due process grounds."). That noncitizens are entitled "to due process of law in the context of removal proceedings" is "well established." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (per curiam) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

Here, Petitioner has lived in the United States for eighteen years and has no criminal record. The due process violation is apparent where Respondents seek to detain her in jail-like conditions without any opportunity to obtain review of her detention before a neutral decisionmaker. The Court should apply the familiar three-factor balancing test to Petitioner's due process claim. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

First, the private interest is substantial. “The Fifth Amendment entitles noncitizens to due process of law in the context of removal proceedings,” and “the interest in being free from physical detention by government” is “the most elemental of liberty interests.” See *Lopez-Arevalo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *10 (W.D. Tex. Sep. 12, 2025) (quoting *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *2 (W.D. Tex. Oct. 21, 2025), and *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Courts have likewise recognized that, where petitioners have established a life in the United States—albeit without authorization—they possess a strong liberty interest in freedom from detention. *Martinez*, 2025 WL 2965859, at *4; see also *Cruz-Reyes v. Bondi*, No. 5:26-CV-60, 2026 WL 332315, at *7 (S.D. Tex. Feb. 3, 2026).

Second, the risk of erroneous deprivation is high absent an individualized custody determination. Immigration detention is designed to mitigate flight risk and danger to the community. See *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006). “Without an individualized determination, it cannot be said that detention is warranted in [Petitioner’s] case.” *Martinez*, 2025 WL 2965859, at *4. Here, the immigration court (and, by extension, the BIA) failed to provide the individualized assessments necessary to satisfy due process and mitigate the risk of erroneous deprivation—assessments typically provided in a standard § 1226(a) bond hearing. See *Lopez-Arevalo*, 2025 WL 2688541, at *12 (citing *Espinoza v. Kaiser*, No. 25-cv-1101, 2025 WL 2581185, at *10 (E.D. Cal. Sept. 5, 2025)); see also *Hyppolite v. Noem*, 2025 WL 2829511, at *13 (E.D.N.Y. Oct. 6, 2025); *Cruz-Reyes*, 2026 WL 332315, at *7.

Third, the government’s interests are adequately protected by a custody hearing and do not outweigh Petitioner’s liberty interest. As the *Lopez-Arevalo* court explained, the government’s core interests—ensuring appearance at proceedings and protecting the

community—are properly addressed through a custody determination. *Lopez-Arevalo*, 2025 WL 2688541, at *11. Nor can the government plausibly claim undue administrative burden when it is simply being asked to provide a procedure it routinely provided in cases of this nature for decades. *Id.* at *12; *see also Cruz-Reyes*, 2026 WL 332315, at *7. Finally, Petitioner’s “constitutional interest in [her] liberty exists above and apart from the INA.” *Martinez*, 2025 WL 2965859, at *4.

Accordingly, all three *Mathews* factors weigh in Petitioner’s favor, and the Court should grant the present Petition on the third cause of action for violation of due process.

Dated this 12th day of February of 2026.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on February 12, 2026, I filed the foregoing using the CM/ECF system. I further certify that all participants in this matter are registered CM/ECF users and will be served by means of the CM/ECF system.

Respectfully submitted,

/s/Brenda M. Villalpando
Brenda M. Villalpando

Counsel for Petitioner