

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

OCANA-CASTILLO, FELIPE

Petitioner,

v.

MARY DE ANDA-YBARRA, Field Office
Director, EL Paso Field Office, Immigration
and Customs Enforcement, in his official
capacity;

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

PAMELA BONDI, U.S. Attorney General, in
her official capacity;

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

WARDEN ERO El Paso Camp East Montana,
in his official capacity,

Respondents.

Case No. 3:26-CV-00107-LS

**REPLY IN SUPPORT OF PETITION
FOR A WRIT OF HABEAS CORPUS**

INTRODUCTION

The Fifth Circuit's 2-1 panel decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496, --- F.4th ---- 2026 WL 323330 (5th Cir. Feb. 6, 2026) adopts a position that roughly 92% of federal district judges who ruled on the question rejected. The dissent (Judge Douglas) catalogs these figures in footnote 15, citing a habeas tracker maintained by the Innovation Law Lab as of January 26, 2026. The majority opinion even acknowledges "350 district court decisions" went against the government (Slip Op. at 6). *See Barco Mercado v. Francis*, No. 25-cv-6582, --- F. Supp. 3d ----, 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025) (listing 350 decisions that found for the habeas petitioner). Footnote 15 of the dissent provides the most detailed accounting: within the Fifth Circuit alone, **29 district judges** ruled for the petitioners, with only **6** ruling for the government. Across **105 cases** for petitioners versus **31** for the government. Nationally, the ratio is even more lopsided - 350+ to roughly 27.

As of now, there remains the likelihood of a petition for rehearing or remand. The divided panel's 2-1 opinion could therefore change. Until the mandate issues, the divided panel's decision is not considered the final judgment of the court. Respondent wrongly cites *Acute Care Ambul. Serv., L.L.C. v. Azar II*, No. 7:20-CV-00217, 2020 WL 7640206, at *13 (S.D. Tex. Dec. 3, 2020) as rejecting the argument that a Fifth Circuit decision is not controlling because "the mandate has yet to issue, and thus not properly relied upon as precedent." Instead, the *Acute Care* court sidestepped that issue and decided it could rely on the case the 5th Circuit affirmed because it also originated in the Southern District and was thus persuasive authority.

In the meantime, this Court should follow precedent from its own district. *See e.g., Granados v. Noem*, No. SA-25-CA-01464, 2025 WL 3296314, at *6 (W.D. Tex. Nov. 26, 2025)

(observing that, when similar petitioners were detained, they “w[ere] not seeking entry, much less ‘lawful entry . . . after inspection and authorization’” (quoting 8 U.S.C. § 1101(a)(13)(A))).

Even if the 5th Circuit’s 2-1 panel decision is deemed binding precedent, or a mandate issues, the *Buenrostro-Mendez* decision does not eliminate constitutional due process protections. Procedural due process - ensuring that detainees receive individualized review and meaningful hearings - continues to provide a viable path for challenging an individual’s mandatory detention without a bond hearing. As more fully set forth below, this Court should grant Mr. Ocana-Castillo’s habeas petition and order that he receive a bond hearing or is immediately released.

PETITIONER IS ENTITLED TO PROCEDURAL DUE PROCESS

I. Factual Background

Petitioner, Felipe Ocana-Castillo has lived in the United States for 27 years. On November 17, 2025 Petitioner was stopped and arrested by LaPorte County, Indiana police for an outstanding warrant for minor traffic violations that have now been dismissed. On November 22, 2025, Mr. Ocana-Castillo was transferred to ICE custody. Mr. Ocana-Castillo has been a hard-working family man since arriving in the United States in 1998. He has been married for 36 years to Daniela, and they have raised three children, [REDACTED]. Mr. Ocana-Castillo has tirelessly and consistently provided for his family, while also nurturing his wife through significant health issues, including Type-2 diabetes, making her unable to work. Mr. Ocana-Castillo is also a devoted grandfather to three children born to his daughter [REDACTED], and two born to his [REDACTED]. Daughter [REDACTED] is currently a student enrolled at [REDACTED] pursuing a nursing career, with her father as the sole source of support. Mr. Ocana-Castillo has deep roots in the Pilsen neighborhood of Chicago. He has many close friends and extended family members, and he has been a dependable and reliable member of his community. He is a dedicated and

diligent worker, most recently with a construction company where he has been employed for almost 10 years.

II. Petitioner has Fifth Amendment Due Process rights.

Buenrostro-Mendez has no bearing on this Court's determination of whether Mr. Ocana-Castillo is being detained in violation of his constitutional right to procedural due process, as the Fifth Circuit did not reach the constitutional claims raised by the Petitioners. *See, e.g., Berting Marceau v. Noem*, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026) (Cardone, J.) ("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"); *Hassen v. Noem*, 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026) (Briones, J.) (Noting that *Buenrostro-Mendez v. Bondi* "does not change the case's outcome on procedural due process grounds"). Noncitizens are entitled to due process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment - from government custody, detention, or other forms of physical restraint - lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Noncitizens like Mr. Ocana-Castillo who have "established connections" in the United States by virtue of living in the country for a substantial period acquire a liberty interest in being free from government detention without due process of law. *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020).

To determine whether civil detention violates a noncitizen's Fifth Amendment due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts weigh the following three factors: 1) "the private interest that will be affected by the official action;" 2) "the risk of an erroneous deprivation of such interest through the procedures

used, and the probable value, if any, of additional or substitute procedural safeguards;” and 3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” 424 U.S. at 335.

Respondents argue that “Petitioner is receiving or has received due process afforded through removal proceedings in immigration court,” wrongly citing *Thuraissigiam* for the proposition that Petitioner has no constitutional rights, but only those “protections set forth by statute in the INA.” The *Thuraissigiam* Court does not and could not support such a contention.

As noted in the opening Petition, Mr. Ocana-Castillo meets all three *Mathews* factors. As to the first *Mathews* factor, “[t]he interest in being free from physical detention” is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004). Petitioner has been detained for three months at the Camp East Montana Detention Facility in conditions that are indistinguishable from criminal incarceration. This detention prevents him from seeing his family, prevents him from working to support himself and his family, and deprives him of any privacy and freedom of movement. He has lived, worked, and established a community over the 27 years he has lived in the United States. *See Martinez v. Noem*, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025) (Cardone, J.) (collecting cases holding that “because the petitioners established a life here—albeit without authorization—they possessed a strong liberty interest in their freedom from detention”).

As to the second *Mathews* factor, to protect against arbitrary detention and to ensure the right to liberty, due process requires “adequate procedural protections” that test whether the government’s asserted justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (citation modified). Where, as here, “there has been no individualized explanation of any

kind of [Petitioner's] detention," the risk of erroneous deprivation is high. *See Santiago v. Noem*, 2025 WL 2792588, at *12 (W.D. Tex. Oct. 2, 2025) (Cardone, J.). This is particularly true because Petitioner has no criminal history outside of minor traffic infractions and he has strong ties to his family and community in the United States, greatly reducing the possibility that he is dangerous and/or a flight risk. *See Singh v. Andrews*, 803 F. Supp. 3d 1035 (E.D. Cal. 2025) (Finding the risk of erroneously depriving him of his freedom is high if the IJ fails to assess his risk of flight or dangerousness).

As to the third *Mathews* factor, the government's interest in maintaining the current procedure is minimal here. Any government interest in public safety or ensuring that Petitioner attends future immigration proceedings would be satisfied through the application of procedures such as those prescribed by § 1226(a) and its implementing regulations—i.e., a bond redetermination hearing where an immigration judge will consider Petitioner's individualized facts and circumstances to determine whether he is a danger to the community or a flight risk.

Petitioner's case, as alleged, is materially indistinguishable from other cases like *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025) in which this Court has found procedural due process violations. Courts in this District have granted habeas petitions on due process grounds after *Buenrostro-Mendez*. *See, Cumbe Lema v. De Anda-Ybarra*, 3:26-cv-249-KC (W.D. Tex. Feb. 9, 2026); *Hassen v. Noem*, 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026); *Singh v. Taylor*, 3:26-cv-00155-DB, 2026 WL 360913 (W.D. Tex. Feb. 9, 2026); *Aguila v. Warden, ERO El Paso Camp East Montana*, 3:26-cv-00088-KC (W.D. Tex. Feb. 9, 2026). Respondent cites numerous cases outside of this District for support for its position. Those cases represent a minority view, and none are availing.

Petitioner has a fundamental interest in liberty and being free from official restraint. Respondents' detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

DATED this 23rd day of February, 2026

Respectfully submitted,
Frederic C. Goodwill, II

Attorneys for Petitioner

VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Reply in Support of Petition for Habeas Corpus are true and correct.

Executed this 23rd day of February, 2026.

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