

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JONATHAN ADOLFO GARCIA-CHAN,

Petitioner,

v.

Civ. No. 5:26-cv-00406

PAMELA JO BONDI,
United States Attorney General;

KRISTI LYNN NOEM,
Secretary of Homeland Security;

SYLVESTER M. ORTEGA,
San Antonio Acting Field Office Director
For Detention and Removal, U.S.
Immigration and Customs Enforcement;
and,

BOBBY THOMPSON,
Warden, South Texas ICE Processing Center;

in their official capacities;

Respondents.

**PETITIONER'S REPLY IN SUPPORT OF HIS
PETITION FOR A WRIT OF HABEAS CORPUS**

Petitioner, through undersigned counsel, files this his reply to in support of his petition for a writ of habeas corpus. Petitioner submits that he remains eligible for bond notwithstanding the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496 consolidated with No. 25-40701, 2026 WL 323330 (5th Cir. Feb. 6, 2026). As argued below, Petitioner remains eligible for bond under 8 U.S.C. § 1226(a) because Respondents elected to detain him under that statute.

Alternatively, because the Department of Homeland Security (DHS) concluded that he was an unaccompanied minor at the time of his entry, the DHS could not invoke the mandatory provision in § 1225(b)(2)(A). Lastly, the Court should also grant habeas relief to Petitioner on his constitutional claim. In support of this reply, Petitioner states as follows:

I. The Fifth Circuit’s decision in *Buenrostro* does not render the Petitioner subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) because Respondents Noem and Ortega that provision was not invoked as a basis for his detention.

In *Buenrostro*, the Fifth Circuit considered two petitioners who were detained under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A). *See Buenrostro*, 2026 WL 323330 at *3 (“DHS commenced removal proceedings under 8 U.S.C. § 1229a against both petitioners, directing that they be detained under 8 U.S.C. § 1225(b)(2)(A) for the duration of those proceedings.”). By stark contrast, DHS issued an arrest warrant to Petitioner and directed that he be detained under 8 U.S.C. § 1226. *See* ECF Dkt. No. 1-2 (Exh. A to *Pet. for Writ of Habeas Corpus*). This DHS election has consequences—mandatory detention for the petitioners in *Buenrostro* but bond eligibility for the Petitioner in this case.

The *Buenrostro* Court explained that §§ 1226 and 1225 have overlapping authority to detain non-citizens who entered the country without inspection. “It is true that § 1226 applies to aliens in the United States. That it does so, however, does not preclude § 1225 from also applying to such aliens. As the government acknowledges, the two provisions overlap.” *See Buenrostro*, 2026 WL 323330 at *7. Therefore, when there is overlapping authority, the Court must first identify which statute the DHS is utilizing to detain the noncitizen. Different immigration detention statutes create different detention regimes. *See Jennings v. Rodriguez*, 583 U.S. 281 (2018) (explaining the different immigration detention statutes). Congress plainly stated that § 1226’s detention authority is triggered “[o]n a warrant issued by the Attorney General, an alien

may be arrested and detained....” By contrast, § 1225(b)(2)(A) contains no warrant requirement. When, as here, Respondent arrest Petitioner on a warrant issued by the Attorney General, then plainly § 1226(a) is the only statute that governs the non-citizen’s detention.

Nor does the mandatory nature of § 1225(b)(2) preclude a bond hearing for noncitizen’s detained under § 1226(a). First, the *Buenrostro* Court explained that the government’s interpretation of the statutes, which the court adopted, “does not render portions of § 1226 superfluous.” *Buenrostro*, 2026 WL 323330 at *7. Thus, since § 1226 is not superfluous and, in part, covers noncitizens who entered the country without inspection, its provisions allowing bond for individuals who entered the country without inspection has some applicability. To find otherwise would render § 1226’s provisions allowing for bond for noncitizens who entered without inspection a nullity and run contrary to *Buenrostro*’s find that the statute is not superfluous.

Second, although *Buenrostro* makes clear that the DHS’s “full enforcement authority” under § 1225(b)(2) extends to all noncitizens who enter the country without inspection, the DHS is under no obligation to use all its authority. As the Fifth Circuit stated: “that prior Administrations decided to use less than their full enforcement authority under § 1225(b)(2) does not mean they lacked authority to do more.” *Id.* at *8. For decades, the DHS opted not to use its full detention authority under § 1225(b)(2) in favor of its § 1226 authority and consequent bond eligibility. The prior Administrations’ decisions to not use all its detention authority demonstrates that the agency is not mandated to use its full enforcement authority under § 1225(b)(2). And regardless of the scope of DHS’s authority under § 1225(b)(2), the DHS in this case in fact invoked § 1226 by issuing a warrant under that statute. The legality of the detention must therefore be assessed under § 1226.

Further, once DHS invokes its detention authority—under either §§ 1225(b)(2) or 1226—

it is bound by it. “It’s ‘a simple but fundamental rule . . . that a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency.’ That means we look to what the agency said, not what it might have said.” *DISH Network Corp. v. NLRB*, 953 F.3d 370, 379-380 (5th Cir. 2020) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)). Applying this rule to the Petitioner’s case, the agency *might* have invoked its full enforcement authority under § 1225(b)(2) but instead chose its detention authority under § 1226. The government cannot cancel the § 1226 warrant and retroactively reclassify Petitioner’s detention under § 1225(b)(2) simply to obtain a better litigation position. Nothing in *Buenrostro* authorizes such post hoc recharacterization, and longstanding administrative law principles foreclose it.

In sum, because DHS arrested Petitioner on a warrant issued under 8 U.S.C. § 1226(a), his detention is governed by that statute, which entitles him to a bond hearing. Respondents’ refusal to provide such a hearing renders his detention unlawful, and habeas relief is therefore warranted.

II. Because the DHS determined that Petitioner was an unaccompanied minor, the DHS could only detain Petitioner under § 1226(a).

Children are different and our laws, including the Immigration and Nationality Act (INA), treats immigrant children differently. Federal law, the settlement agreement in *Flores v. Reno*, and federal regulations require that the DHS release and transfer custody of unaccompanied minors it encounters in the United States. Thus, the DHS never exercises its detention authority under § 1225 to detain unaccompanied children and they remain subject to § 1226(a). When the DHS detained Petitioner, it could not apply § 1225 to Petitioner. Rather, § 1226(a) controls Petitioner’s detention subsequent to his entry.

The Trafficking Victims Protection Reauthorization Act (“TVPRA”) mandates that “any unaccompanied child sought to be removed by the Department of Homeland Security . . . shall be

(i) placed in removal proceedings under section 240 of the Immigration and Nationality Act; (ii) eligible for relief under section under section 240B of [the INA]; and (iii) provided with access to counsel in accordance with subsection (c)(5);” and (iii) placed in the least restrictive setting that is in the child’s best interests including in an Unaccompanied Refugee Minor program if the child cannot be released to suitable family member. 8 U.S.C. § 1232(a)(5)(D) (emphasis added) and (c)(2)(A). Release therefore is the preferred option.

The TVPRA also sets forth procedural requirements that “[w]ithin 48 hours of the apprehension of [an unaccompanied minor] . . . the child shall immediately be transferred to the Secretary of Health and Human Services.” 8 U.S.C. §1232(a)(4). “[E]xcept in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services (“HHS”) not later than 72 hours after determining that such child is an unaccompanied alien child.” 8 U.S.C. § 1232(b)(3).

Once transferred to HHS, “[c]onsistent with section 279 of Title 6, and except as otherwise provided under subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services.” 8 U.S.C. § 1232(b)(1).

The Fifth Circuit has enforced these procedural requirements of the TVPRA as mandatory. *See Velasquez-Castillo v. Garland*, 91 F.4th 358, 363 (5th Cir. 2024) (alterations in original) (finding that “[t]he TVPRA provides that ‘[a]ny unaccompanied [noncitizen] child sought to be removed by the Department of Homeland Security ... shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act.’ Indeed, this Court has referred to TVPRA proceedings as ‘mandatory.’”); accord *Susan Kettlewell, et al. v. Kristi Noem, et al.*, 2025 WL 2733309, at *5 (D.

Ariz. Sept. 25, 2025) (collecting cases and finding that “[i]n other district courts, there is also agreement that the procedural protections provided to unaccompanied alien children by the TVPRA are mandatory.”).

Federal regulations require that “[a]ll UACs apprehended by DHS, except those who are [from contiguous countries], will be transferred to ORR [the Office of Refugee Resettlement] for care, custody, and placement in accordance with 6 U.S.C. § 279 and 8 U.S.C. 1232.” 8 C.F.R. § 236.3(f).

Thus, because the TVPRA requires DHS to transfer unaccompanied children to HHS, the DHS *never* exercises its detention authority under § 1225(b)(1) or (b)(2) over unaccompanied minor but rather detains and transfers unaccompanied children under § 1226(a).

III. Petitioner’s detention violates his due process rights under the Fifth Amendment.

The Fifth Circuit did not address the due process question in *Buenrostro*. Indeed, at oral argument, government counsel limited the issue before court to “the statutory question,” stating that: “[t]here’s not, in other words, a due process claim here.”¹ Because the Fifth Circuit addressed only the statutory issue, it did not foreclose any constitutional challenge. As such, this Court should consider the Petitioner’s constitutional due process claim and find that her detention violates the Fifth Amendment. *See, e.g., Cumbe Lema v. De Anda-Ybarra, et al.*, No. 3:26-cv-00249-KC (W.D. Tex. Feb. 9, 2026) (recognizing that *Buenrostro-Mendez* does not foreclose a due process claim and granting habeas relief); *Hassen v. Noem, et al.*, No. 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026) (same).

¹ Oral Argument, *Buenrostro-Mendez v. Bondi*, No. 25-20496, at 44:56–45:11 (5th Cir. Feb. 3, 2026), https://www.ca5.uscourts.gov/OralArgRecordings/25/25-20496_2-3-2026.mp3.

Petitioner has lived in the United States for over 5 years. He does not stand at “the threshold of initial entry.” Petitioner has a constitutional right to an individual assessment whether he is a flight or danger for Respondents to continue to detain him pending his removal proceedings.

The Due Process Clause guarantees all persons in the United States the right to “life, liberty, or property, without due process of law. . . .” U.S. Const. amend. V. Noncitizens living in the United States, even when their presence is temporary or unlawful, enjoy the protections of the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”). “Freedom from imprisonment—from government custody, detention or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. at 695 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

If the Court concludes that the Due Process Clause applies, then it must employ the three-prong test in *Mathews v. Eldridge*, 424 U.S. 319 (1976) to determine whether a civil detention violates a detainee’s due process rights. *Addington v. Texas*, 441 U.S. 418, 426 (1979) The three factors courts must consider are: (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.” *Mathews v. Eldridge*, 424 U.S. at 333.

The private interest involved here is of the highest order: freedom from governmental detention. *Zadvydas v. Davis*, 533 U.S. at 695. “[L]iberty is the norm” in our society “and detention

prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Supreme Court has counseled courts to be “careful not to minimize the importance and fundamental nature” of a person’s liberty rights. *Foucha v. Louisiana*, 504 U.S. at 80.

Thus, notwithstanding his unlawful status in this country, Petitioner has a liberty interest in remaining free from detention. A noncitizen’s detention pending their removal proceedings is indistinguishable from criminal incarceration, whether pretrial or after adjudication of guilt. They are behind bars and not free to leave the facility. Their meals and sleeping times are fixed. They can only spend a few hours per day outside in the sun. Their ability to see their family is strictly limited. They are guarded by officers authorized to employ any amount of physical force necessary for the occasion. These are Petitioner’s conditions of confinement and thus, there can be no doubt that he is significantly deprived of his liberty.

The second *Mathews* factor, that is the risk of an erroneous deprivation of a person’s liberty interest under the present procedures and the probable value of additional or substitute procedures, weighs in favor of Petitioner. The instant proceedings are civil, not criminal. More than money is at stake; a person’s freedom hangs in the balance.

Under current procedures, Respondents have not made an individualized assessment that Petitioner is a flight risk or danger. Thus, the risk that Petitioner will be wrongfully deprived of his liberty is high. A hearing reduces such risk.

The last factor is the Government’s interest and the administrative burdens of additional or substitute procedures. Petitioner does not dispute that Respondents have legitimate interests in ensuring that the immigration laws are enforced, that noncitizens appear for their removal

proceedings, and in the execution of removal orders. But these interests do not support placing the burden solely on Petitioner.

Respondents already provide immigration custody hearings and so the cost is minimal. Such hearings do not delay the removal process. There is no legitimate governmental interest in detention for its own sake.

Federal district courts in Texas, and in the Western District, have concluded that the due process analysis outlined above applies when the DHS denies a bond hearing to noncitizens, even when detained under § 1225. *See, e.g., Cumbe Lema v. De Anda-Ybarra, et al.*, No. 3:26-cv-00249-KC (W.D. Tex. Feb. 9, 2026) (recognizing that *Buenrostro-Mendez* does not foreclose a due process claim and granting habeas relief); *Hassen v. Noem, et al.*, No. 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026) (same); *Santiago v. Noem*, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025) (concluding that mandatory detention without bond violated procedural due process); *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025) (same); *Parada-Hernandez v. Johnson*, 2025 WL 3465958 (N.D. Tex. Oct. 29, 2025), *report and recommendation adopted* 2025 WL 3462682 (N.D. Tex. Dec. 2, 2025) (same); *Rojas v. Noem*, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025) (same); *De Leon Hernandez v. Bondi*, 2025 WL 3217037 (W.D. La. Nov. 18, 2025) (same); *Lopez-Arevelo v. Ripa*, 2025 U.S. Dist. LEXIS 188232, 2025 WL 2691828 (W.D. Tex. Sept. 21, 2025).²

² Respondents' argument that the instant petition should be dismissed because Petitioner did not exhaust his administrative remedies lack merit. The Chief Immigration Judge has instructed immigration judges that they are bound by *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), and immigration judges are consistently denying bond hearing to noncitizens like Petitioner. Further, neither the immigration judge nor the Board of Immigration Appeals have authority to rule on constitutional issues such as Petitioner's due process arguments. *Matter of G-K-*, 26 I. & N. Dec. 88, 96-97 (BIA 2013) (holding that BIA lacked jurisdiction to address respondent's vagueness challenge).

Conclusion

For the foregoing reasons, habeas relief remains available, and the Court should grant the Petition for Writ of Habeas Corpus.

Dated: February 17, 2026

Respectfully submitted,

/s/ Javier N. Maldonado

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to opposing counsel who is a registered member of this Court's CM/ECF system.

/s/ Javier N. Maldonado
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