

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

Jose Javier SUAREZ MENDOZA,	)	
Petitioner,	)	Civil Action No. 3:26-CV-00165-LS
v.	)	
	)	
Pamela Jo Bondi, et al.	)	
Respondents.	)	

PETITIONER’S SUPPLEMENTAL BRIEF

On January 30, 2026, this Court ordered Petitioner to address three issues: “(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.”

On February 6, 2026, the Fifth Circuit Court of Appeals issued their decision in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496, 25-40701, 2026 WL 323330 (5th Cir. Feb. 6, 2026), holding that noncitizens present in the United States without being admitted or paroled—including those apprehended years after entry, like Petitioner—are “applicants for admission” under 8 U.S.C. § 1225(a)(1) and are subject to mandatory detention under § 1225(b)(2)(A) pending removal proceedings under § 1229a.

Due to the intervening precedent in *Buenrostro-Mendez*, Petitioner concedes that—according to *Buenrostro-Mendez*—his detention occurs pursuant to § 1225(b)(2)(A) and he is ineligible for bond under § 1226. However, in response to the Court’s third question, Petitioner answers as follows: even considering *Buenrostro-Mendez*, Petitioner is eligible for habeas relief as his continued detention without an individualized custody determination hearing is a violation of his right to due process as a person living within—and arrested within—the United States.

I. THE DUE PROCESS CLAUSE APPLIES TO PETITIONER.

In *Buenrostro-Mendez*, 2026 WL 323330, the Fifth Circuit did not resolve—and expressly did not reach—the independent constitutional claim raised in this Petition. In fact, *Buenrostro-Mendez* remanded the matter to the district court “for further proceedings consistent with [that] opinion.” *Id.* at *10. As Judge Cardone recently stated: “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.” *Monge Escoto v. Bondi*, No. EP-26-CV-283-KC, at *2 (W.D. Tex. Feb. 12, 2026). As such, “*Buenrostro-Mendez* has no bearing on this Court’s determination of whether [a habeas petitioner] is being detained in violation of [his] constitutional right to procedural due process.” *Marceau v. Noem*, No. 3:26-CV-237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026).

It is well established “that the Fifth Amendment entitles [noncitizens] to due process of law.” *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2004). Petitioner maintains that his ongoing and potentially indefinite detention without an individualized custody determination violates his right to due process, as recognized post-*Buenrostro-Mendez* by judges within this Court. *See id.*; *see also Rodriguez Flores v. Bondi*, No. EP-26-CV-00338-DB (Feb. 11, 2026).

There is a well-established “distinction between a[noncitizen] who has effected an entry into the United States and one who has never entered [that] runs throughout immigration law.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). “[O]nce a[noncitizen] enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including [noncitizens], *whether their presence here is lawful, unlawful, temporary, or permanent.*” *Id.* (collecting cases) (emphasis added). Petitioner’s manner of entry does not affect the amount of due process he is owed as a constitutional right as a person within the United States. *See id.* As other judges in this Court have recognized, “[e]ven in *Thuraissigiam*, the core point of

the Court's analysis in rejecting an as-applied challenge rested on the fact that as an individual who was on the initial threshold of entry, he wasn't entitled to more due process than that afforded by statute." *Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526, at *3 (W.D. Tex. Nov. 20, 2025). Thus, "[p]recedent and logic tell us that those individuals who have established ties in the country are protected by constitutional procedural due process." *Id.* As such, Petitioner is protected by constitutional procedural due process.

II. SUBJECTING PETITIONER TO MANDATORY DETENTION UNDER § 1225(b)(2) IS A VIOLATION OF HIS RIGHT TO DUE PROCESS.

Given his multi-decade residence and presence in the United States, the Due Process Clause clearly applies to Petitioner, even though his presence may have been unlawful. *See Zadvydas*, 533 U.S. at 678. As such, this Court must decide how much procedural process Petitioner is due. *See Zafra*, 2025 WL 329526, at *3.

To answer this question, the Court must conduct the balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). "[I]dentification of the specific dictates of due process generally requires consideration of three distinct 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.

Id. at 335. All three factors weigh in Petitioner's favor.

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. "[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission, such as petitioner, and those who are within the United States after an entry, *irrespective of its legality*." *Leng May Ma v. Barber*, 357 U.S. 185,

187 (1958) (emphasis added). The Supreme Court has expressly noted that “additional rights and privileges” apply to those within the United States as opposed to those “on the threshold of initial entry.” *Id.* In the instant case, Petitioner has lived in the United States since early 2004—for twenty-two years. He lives in Texas with his wife and children, who rely on him both emotionally and financially. Thus, he clearly “possesses a strong liberty interest in his freedom from detention because he has established a life here—albeit without authorization.” *See Zafra*, 2025 WL 3239526, at *4 (collecting cases). This Court should find that Petitioner “possess a cognizable interest in his freedom from detention that deserves great weight and gravity.” *Id.*

Second, applying § 1225(b)(2) mandatory detention to an individual who has lived within the United States for decades “creates a substantial risk of erroneous deprivation of Petitioner’s interest in being free from arbitrary confinement pending resolution of his removal proceedings.” *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *7 (W.D. Tex. Oct. 16, 2025). The record establishes that Petitioner has no criminal history in his twenty-two years in the United States. He has strong ties to the community and simply wishes to continue supporting his family—both emotionally and financially—while he fights his case in removal proceedings. Thus, subjecting him to mandatory detention without determining whether he poses a danger to the community or a flight risk carries an enormously high risk of erroneous deprivation of Petitioner’s liberty interests. *See id.* Through simple safeguards—a custody redetermination hearing—an immigration judge can review Petitioner’s situation to determine, based on his specific circumstances, “whether continued detention is necessary to ensure presence at removal hearings and safety for the community.” *See id.* Thus, this analysis weighs in Petitioner’s favor.

Finally, Petitioner admits that the government has “an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community.” *Lopez-Arevelo v.*

Ripz, 801 F. Supp. 668, 687 (W.D. Tex. 2025). Notably, providing Petitioner a bond hearing does not infringe upon the government's interest, as an immigration judge will consider those precise factors in determining whether Petitioner merits release. Additionally, any fiscal or administrative burden the government may face by providing such a hearing must be considered in the context of the government's decades-long practice of affording individuals like Petitioner with such a hearing until last year. *See Vieira*, 2025 WL 2937880, at *6. Furthermore, releasing individuals from detention would actually pose a fiscal benefit to the government, who assumes the costs of their detention and care while detained. Thus, the final *Mathews* factor also weighs in Petitioner's favor.

As such, all three *Mathews* factors favor Petitioner. As such, this Court should find that § 1225(b)(2) as applied to Petitioner violates his Fifth Amendment Due Process Rights.

III. CONCLUSION

In conclusion, this Court should determine that Petitioner is clearly eligible for habeas release as his continued detention is a violation of his right to due process. This Court should order his immediate release or, in the alternative, a bond hearing where "the government shall bear the burden of justifying Petitioner's continued detention during the pendency of his removal proceedings by clear and convincing evidence." *Vieira*, 2025 WL 2937880, at *7 (collecting cases issuing similar relief).

Dated: February 13, 2026

/s/ Michelle Perez
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of February, 2026, a copy of the foregoing Petitioner's Supplemental Brief was served electronically on all parties and counsel receiving service via CM/ECF in this case.

Dated: February 13, 2026

/s/ Michelle Perez
Michelle Perez, Esq.