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

Miguel Gustavo GONZALEZ BARRETO *Petitioner*,	)	
v.	)	Case No. 5:26-CV-513-XR
Kristi Noem, in her official capacity as Secretary of the U.S. Department of Homeland Security *et al.* *Respondents*	)	

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE REGARDING RECENT FIFTH CIRCUIT DECISION

Petitioner, Miguel Gustavo Gonzalez Barreto, by and through undersigned counsel, files this reply to Respondent's response regarding the Fifth's Circuit's recent decision in *Buenrostro-Mendez v. Bondi*, — F.4th —, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). The Fifth Circuit Court of Appeals recently held that noncitizens who were apprehended within the United States and entered without inspection are deemed "applicants for admission" under 8 U.S.C. § 1225(b)(2)(A), until the conclusion of their removal proceedings.

In his habeas application filed on January 28, 2026, Petitioner argued that (1) he is not an applicant for admission and eligible for release with conditional parole or bond under 8 U.S.C. § 1226(a) and (2) his continued detention violates his right to due process. ECF No. 1. Petitioner also submitted a Motion for Temporary Restraining Orders asking this Court to order his release immediately. ECF No. 2.

The Fifth Circuit's February 6, 2026 Decision in *Buenrostro-Mendez V. Bondi* does not preclude habeas relief on Constitutional and other grounds. Respondent's response completely fails to address Petitioner's second argument, namely the due process violation. Neither does Respondent "note any material factual differences" from prior cases alleging due process violations and this one as ordered by this Court's Order to Show Cause. ECF No. 4. Indeed, this case is materially indistinguishable from several others in which the Western District of Texas has determined that habeas is appropriate when there is a due process violation. See *Lopez-Arevelo v. Ripa*, No. 3:25-cv-337-KC, 2025 WL 2691828, at *1-13 (W.D. Tex. Sept. 22, 2025); *Clemente Ceballos v. Garite*, No. 3:26-cv-00312 (W.D. Tex. Feb. 3, 2026); *Cumbe Lema v. De Anda-Ybarra*, No. 3:26-cv-00249 (W.D. Tex. Jan. 30, 2026). The Western District of Texas has repeatedly found where a noncitizen—like Petitioner— was paroled, it is a violation of procedural due process to re-detain him without an individualized custody determination. See Ex. 1, Petitioner's Parole. Therefore, the court should grant this Petition.

PETITIONER'S CONTINUED DETENTION VIOLATES PROCEDURAL DUE PROCESS

Petitioner's detention, without any individualized review, is unreasonable under the due process test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Alternatively, Petitioner prevails under the multi-factor reasonableness test the Third Circuit adopted in *German Santos v. Warden Pike Correctional Facility*, 965 F.3d 203, 211 (3d Cir. 2020).

To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*. Those factors 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*, 424 U.S. at 335, 96 S.Ct. 893; *see also Hernandez-Fernandez v. Lyons*, 2025 WL 2976923 at *8 (W.D. Tex. Oct.21, 2025).

a. Private Interest

First, Petitioner indisputably has a weighty interest in their liberty, the core private interest at stake here. *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment. . . lies at the heart of the liberty [the Due Process Clause] protects."). Petitioner, who is being held in "incarceration-like conditions," has an overwhelming interest here, regardless of the length of his immigration detention, because "any length of detention implicates the same" fundamental rights. Rajnish v. Jennings, No. 3:20-cv-07819-WHO, 2020 WL 7626414, at *6 (N.D. Cal. Dec. 22, 2020).

Federal courts in Texas have found that noncitizens have a protected liberty interest in their freedom, regardless of citizenship status, when they have spent time living, working, or supporting a family in the interior of the United States. *See, e.g., Lopez Miranda v. Flores*, No. EP-25-CV-584-KC, 2025 WL 3901908, at *3 (W.D. Tex. Dec. 10, 2025); *Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025) (finding noncitizen has protectable liberty interest because he was "living in the United States for over four years and attends his local church"); *Hernandez-Fernandez*, 2025 WL 2976923 at *9 ("Because he spent nearly three years at liberty in the United States, [petitioner] possesses a cognizable interest in his freedom from detention.").

A person may obtain a liberty interest through their presence in the country, particularly where that presence is with the express permission of the Government. *See Lopez-Arevelo v. Ripa*, No. 3:25-cv-337-KC,2025 WL 2691828, at *1-13 (W.D. Tex. Sept. 22, 2025). Here, Petitioner

was unquestionably paroled. Ex. A. Regardless of whether Petitioner's parole has expired or been terminated, Respondents may not revoke that liberty without an individualized determination of the need to do so. *Id.* at 7-11.

b. Risk of Erroneous Deprivation

Petitioner will suffer the erroneous risk of deprivation of their liberty without an individualized evidentiary hearing. The risk of erroneous deprivation of their liberty is high, as he has been detained since September 30, 2025 without any evaluation of whether the government can justify detention under his individualized circumstances. "[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial." *Diouf*, 634 F.3d at 1092. Conversely, "the probable value of additional procedural safeguards—an individualized evaluation of the justification for his detention—is high, because Respondents have provided virtually no procedural safeguards at all." *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 510347, *3 (N.D. Cal. Jan. 30, 2020) (granting habeas petition for person who had been detained for one year without a bond hearing).

c. Government's Interest

The government's interest is very low in continuing to detain Petitioner without providing any neutral review. *See Mathews*, 424 U.S. at 335. The specific interest at stake here is not the government's ability to continue to detain Petitioner, but rather the government's ability to continue to detain them for months on end without any individualized review. *See Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019); *Henriquez v. Garland*, No. 5:22-CV-00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022). The cost of providing an individualized inquiry is minimal. *See Henriquez*, 2022 WL 2132919, at *5. The government has repeatedly conceded this fact. *See Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal.

2019); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1021 (S.D. Cal. 2019); *Marroquin Ambriz*, 420 F. Supp. 3d at 964.

While the government "has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community," such interest "would be squarely addressed through a bond hearing." *See* Martinez v. Noem, 2025 WL 2598379 at *4 (W.D. Tex. Sep. 8, 2025).

In sum, the *Mathews* factors establish that Petitioner is entitled to an evidentiary hearing before a neutral adjudicator. Unsurprisingly, courts applying these standards have repeatedly held that prolonged detention without a hearing before a neutral adjudicator violates procedural due process for individuals who were held under the same detention statute. *See, e.g., Romero Romero v. Wolf*, No. 20-CV-08031-TSH, 2021 WL 254435, at *2, *5 (N.D. Cal. Jan. 26, 2021) (holding that the petitioner's detention under § 1226(c) of just over one year without a custody hearing was "not compatible with due process" and granting habeas); *Jimenez*, 2020 WL 510347, at *1, *2, *4 (holding that the petitioner's detention under § 1226(c) of just over one year without a custody hearing violated his due process rights and granting habeas); *Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *1, *5 (N.D. Cal. Jan. 25, 2019) (holding that the petitioner's detention under § 1226(c) for just over one year without a custody hearing violates his due process rights and granting habeas). This Court should so hold as well.

Most recently, the United States District Court for the Western District of Texas, El Paso Division, held that even where a petitioner is properly classified as an arriving alien as a matter of statutory construction, and had previously been paroled into the United States and resided in the community, DHS's subsequent re-apprehension without identifying any change in circumstances warranting termination of parole violates the Due Process Clause. The court further held that the

petitioner's constitutional liberty interest exists independently of, and in addition to, the detention provisions of the INA, and therefore cannot be extinguished solely by reliance on statutory detention authority. See *Lopez-Arevalo v. RIPA*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. El Paso Div. 2025).

Under these circumstances, the apprehension or re-apprehension of noncitizens who are seeking asylum and who were previously admitted or paroled into the United States, followed by mandatory detention under 8 U.S.C. §§ 1225(b)(1)(B) and 1225(b)(2)(A) without any individualized determination of flight risk or danger violates the Fifth Amendment's guarantee of due process. This scheme results in prolonged and arbitrary detention and causes irreparable harm, as the loss of liberty and family separation cannot be undone.

BUENROSTRO AS APPLIED TO PETITIONER

Buenrostro-Mendez has no bearing on this Court's determination of whether Petitioner is being detained in violation of his constitutional right to procedural due process. *See Cumbe Lema v. De Anda-Ybarra,* No. EP-26-CV-249-KC, (W.D. Tex. Feb. 9, 2026) (holding that detention under the Government's interpretation of 8 U.S.C. § 1225(b) without an individualized custody determination violates procedural due process).

Buenrostro does not address, and therefore does not foreclose, the argument that an immigrant detained under 8 U.S.C. § 1225 is entitled to a bond hearing at the beginning of their case, or to release, as a matter of constitutional law. Nor does it diminish the long-standing role of habeas corpus as a foundational mechanism for challenging unlawful executive detention. All persons within the United States possess a cognizable, protectable liberty interest in freedom from physical restraint in the most basic constitutional sense, and habeas corpus remains the

fundamental instrument for safeguarding that liberty by ensuring immigration detention is not arbitrary, unlawful, or inconsistent with due process.

Petitioner's constitutional liberty interests exist independently of the detention provisions of the INA. The INA cannot supersede the Constitution of the United States. Accordingly, Respondents' actions in detaining Petitioner in a manner inconsistent with constitutional guarantees are unlawful.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Petitioner has exhausted all administrative remedies to the extent practicable. "[W]hen a petitioner's due process claim does not assert a procedural error correctable by the BIA, it is not subject to an exhaustion requirement." *Lopez de Jesus v. INS*, 312 F.3d 155, 162 n.47 (5th Cir. 2002). Exhaustion is likewise excused where further delay would impose hardship. *Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). Here, requiring additional administrative steps would result in months of continued unlawful detention.

Further administrative exhaustion would be futile. On or about January 13, 2026, Chief Immigration Judge Teresa L. Riley issued nationwide guidance instructing Immigration Judges that *Maldonado Bautista* "is not a nationwide injunction and does not purport to vacate, stay, or enjoin *Yajure Hurtado*." Immigration Judges are directed to treat the BIA's published decision in *Matter of Yajure Hurtado* as binding precedent. EOIR guidance further clarifies that a declaratory judgment is not binding and lacks authority to compel specific agency action. Under these circumstances, no administrative adjudicator within EOIR possesses authority to grant the relief sought.

DHS's discretionary parole authority does not constitute an available or adequate administrative remedy that must be exhausted prior to habeas review. Parole determinations are

committed to agency discretion, are not subject to neutral adjudication, and provide no procedural mechanism to challenge the legality of detention. Courts have consistently recognized that discretionary parole is not a prerequisite to federal habeas corpus relief.

Accordingly, Petitioner has been categorically denied access to any meaningful administrative custody review, and no adequate alternative remedy exists. Exhaustion is therefore either satisfied or excused as futile. A writ of habeas corpus is the only available mechanism to vindicate Petitioner's constitutional, statutory, and regulatory rights and to restore his liberty.

THIS CASE IS DISTINGUISHABLE FROM *BUENROSTRO-MENDEZ*

The Fifth Circuit's decision in Buenrostro-Mendez v. Bondi does not control the outcome here because Petitioner stands in a materially different procedural and constitutional posture. Unlike the petitioner in *Buenrostro-Mendez*, Mr. Gonzalez Barreto was expressly paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A) on February 6, 2023, and thereafter resided lawfully in the community for over one year, applied for Temporary Protected Status, timely filed his asylum application, and was issued valid employment authorization. His liberty was not merely incidental presence following entry without inspection; it was liberty affirmatively granted by the Executive Branch under statutory parole authority.

Critically, *Buenrostro-Mendez* did not analyze the application of the *Mathews v. Eldridge* balancing test to prolonged § 1225 detention following parole, nor did it address whether due process requires an individualized bond determination once a detainee has been living at liberty in the community. This Court retains independent authority under 28 U.S.C. § 2241 to determine whether the manner of detention—regardless of statutory label—comports with the Fifth Amendment. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (recognizing freedom from physical restraint as the core liberty protected by due process).

Here, the constitutional injury arises not merely from statutory classification, but from the Government's revocation of previously granted liberty without neutral review. Once DHS exercised its discretionary parole authority and released Petitioner into the interior of the United States, his liberty interest crystallized independently of the INA's detention provisions. That liberty cannot be extinguished solely by re-labeling him an "applicant for admission" and invoking § 1225(b) without procedural safeguards. Accordingly, even if *Buenrostro-Mendez* governs statutory interpretation, it does not foreclose habeas relief grounded in the Fifth Amendment's guarantee of due process.

CONCLUSION

Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus and order his immediate release. Petitioner's constitutional liberty interests exist independently of the detention provisions of the INA, and the INA cannot supersede the Constitution of the United States. Accordingly, Respondents' continued detention of Petitioner in a manner inconsistent with constitutional guarantees is unlawful and warrants immediate judicial relief.

Dated this 16th of February 2026,

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2026, I electronically filed the foregoing on the Court's CM/ECF system, that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

/s/ Felix L. Galvez
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