UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

EULALIO MONTERROZA BONILLA	§	
	§	
Petitioner,	§	
	§	
VS.	§	**5:26-CV-00517-OLG**
	§	
PAMELA JO BONDI, et al.,	§	
	§	
Respondents.	§	

Petitioner's Reply to the Respondents' Response to Petitioner's Writ of Habeas Corpus

Contrary to the government's response, the Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi*, ---- F.4th ----, 2026 WL 323330 (5th Cir. Feb. 6, 2026) does not require denial of Eulalio Monterroza Bonilla's habeas petition. The Fifth Circuit in *Buenrostro-Mendez* limited its analysis and holding to statutory interpretation. *Id.* at *1-10. *Buenrostro-Mendez* did not address the due process claims raised by Buenrostro-Mendez and does not preclude review of the similar due process claims raised by Monterroza Bonillla. Moreover, the Fifth Circuit remanded Buenrostro-Mendez to the district court, not for dismissal, but "for further proceedings consistent with this opinion." *Id.* at *10. Those proceedings will most likely include consideration of Buenrostro-Mendez' due process claim, which the district court declined to reach in the first instance. *See Buenrostro-Mendez v. Bondi*, No. 25-cv-3726, 2025 WL 2886346, at *3 n.4 (S.D. Tex. Oct. 7, 2025). Additionally, during oral argument counsel for the United States noted clearly: "We have one issue before the Court now: the statutory question. . . . There's not, in other words, a due process claim here." Oral Argument, *Buenrostro-Mendez v. Bondi*, No. 25-20496, at 44:56–

45:11 (5th Cir. Feb. 3, 2026).[1] Thus, *Buenrostro-Mendez* does not preclude this Court from considering whether Monterroza Bonilla is being detained in violation of his constitutional right to due process and likewise does not preclude his claim for relief under the Administrative Procedure Act.

Monterroza Bonilla has been a resident of the United States since his arrival in 2007. He has developed numerous ties to the United States, including marrying a United States citizen and fathering a United States citizen child. He has also pursued lawful immigration processes, including an immediate relative visa petition and provisional unlawful presence waiver. In December 2025, the Department of Homeland Security ("DHS") detained the Petitioner after a local arrest and he continues to remain detained. Following his detention, Petitioner's spouse passed away from cancer. Petitioner challenges the government's application of 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention provision as being in violation of his due process rights and in violation of the Administrative Procedure Act.

I. The Petitioner should not be required to exhaust administrative remedies.

Forcing Monterroza-Bonilla to await resolution from the Executive Office for Immigration Review ("EOIR") would be an exercise in futility. In *Matter of Yahure Hurtado*, 29 I&N Dec. 216 (BIA 2025) the Board decided its answer to Monterroza-Bonilla's question. The Board's decision dictates that an immigration judge does not have the authority to entertain Monterroza Bonilla's bond request "because aliens who are present in the United States without admission are applicants for admission as defined under section . . . 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." 29 I&N Dec. at 220. The Board's decision in *Matter of Yahure Hurtado* is binding on the immigration courts. Moreover, the Petitioner raises constitutional

[1] Available at https://www.ca5.uscourts.gov/OralArgRecordings/25/25-20496_2-3-2026.mp3.

due process claims that "neither [an] Immigration Judge nor th[e] Board may rule on." *Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1035 (BIA 1999). Any attempt to exhaust through administrative remedies would not change the result, and is therefore futile. *See INS v. St. Cyr*, 533 U.S. 289, 314-15 (2001) (finding that federal court retain habeas power to decide pure questions of statutory interpretation when the agency lacks authority to grant the relief sought); *McCarthy v. Madigan*, 503 U.S. 140, 147-48 (1992) (prudential exhaustion excused where administrative body is shown to have predetermined the legal issue). Furthermore, each additional day of detention under the wrong statutory regime inflicts irreparable harm to the Petitioner's liberty interests. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Accordingly, Monterroza-Bonilla should not be required to exhaust administrative remedies as the Board has foreclosed relief by its own precedent.

II. The Petitioner has a liberty interest in his freedom from detention and raises a colorable claim that his substantive and procedural due process rights were violated.

Application of § 1225(b)(2)(A)'s mandatory detention provision under the circumstances of the instant case violates the Petitioner's procedural and substantive due process rights because it precludes him from receiving an individualized bond hearing as to whether he should be released on bond. As noted by the Supreme Court:

> The Fifth Amendment's Due Process Clause forbids the Government to "depriv[e]" any "person . . . of . . . liberty . . . without due process of law." Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause protects. *See Foucha v. Louisiana*, 504 U. S. 71, 80 (1992).

Zadvydas, 533 U.S. 678, 690. In this regard, the Petitioner challenges the statutory framework relied upon by the government to detain him mandatorily, and his challenge is not precluded by 8 U.S.C. § 1226(e). *Demore v. Kim*, 538 U.S. 510, 517 (2003). Section 1226(e) does not block challenges to "the extent of the Government's detention authority under the 'statutory framework'

as a whole." *Jennings v. Rodriguez*, 138 S.Ct. 830, 841 (2018). Additionally, "[s]ection 1226(e) contains no explicit provision barring habeas review." *Demore*, 538 U.S. at 517. Therefore, Petitioner raises a colorable claim that application of section 1225(b)(2)(A)'s mandatory detention provision violates his due process rights.

A. *Thuraissigiam* does not bar Monterroza Bonilla's due process challenge.

Moreover, the Supreme Court's decision in *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S.Ct. 1959 (2020) does not limit this Court's review of Petitioner's claim that application of § 1225(b)(2)(A)'s mandatory detention provision deprives him of due process. ECF No. 8 at 10. The sweeping statements made in *Thuraissigiam* must be read in context. The noncitizen in *Thuraissigiam* was detained under § 1225, and an asylum officer determined he did not establish a credible fear of persecution, so he was placed in expedited removal proceedings. *Id.* at 140. He attempted to challenge this negative credible fear finding through a writ of habeas corpus, in which he requested another "opportunity to apply for asylum and other applicable forms of relief." *Id.* at 114–15.

This is an important distinction. Thuraissigiam challenged the denial of his asylum claim while Monterroza Bonilla challenges his detention in immigration custody. *See id.* The Court limited its analysis in *Thuraissigiam* on the scope of habeas relief in noting that such relief could not provide another "opportunity to remain lawfully in the United States." *Id.* at 117–20. It was in this context that the Court determined "an alien in [his] position has only those rights regarding admission that Congress has provided by statute." *Id.* at 140. The Court did not address whether noncitizens mandatorily detained under § 1225(b) have a constitutional due process right to challenge their detention. In *Jennings*, as well, the Supreme Court expressly left open the constitutional due process question and remanded the case with instructions for the lower courts

to consider the constitutional issue in the first instance. *Id.* at 312. Four years later, the Government conceded before the Supreme Court "that as-applied constitutional challenges remain available to address 'exceptional' cases" in the context of immigration detention. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 583 (2022). Once more, the Court declined to consider the constitutional questions, instead deciding to "leave them for the lower courts to consider in the first instance." *Id.* (citing *Jennings*, 583 U.S. at 312).

Thuraissigiam is also distinct in that it turned on the principle that "an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause" than those set by Congress. 591 U.S. at 107. Notably, Thuraissigiam was stopped by Border Patrol "within twenty-five yards of the border," immediately detained, and never released. *Id.* at 114. Here, however, Monterroza Bonilla entered the United States almost twenty years ago yet he was not apprehended by DHS for removal proceedings until recently. "The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas*, 533 U.S. at 693. This distinction turns on place and not the status of the noncitizen. Indeed, "once an alien enters the country, the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent. *Id.* (internal citations omitted). Insofar as Monterroza Bonilla has resided in the United States and developed significant ties to the community since 2007, his due process challenge to his detention is not foreclosed by *Thuraissigiam*.

B. The *Matthews* test

To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976). Pursuant to *Matthews*, courts weight the following factors:

> First, the private interest that will be affected by the official action; second, 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 finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Matthews, 424 U.S. at 335. Monterroza Bonilla addresses the *Matthews* factors in turn.

1. Private Interest

Monterroza Bonilla has a significant private interest in being free from detention. The loss of physical liberty—"from government custody, detention, or other forms of physical restraint"—is irreparable harm per se. *Zadvydas*, 533 U.S. at 690. Moreover, "[t]he interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Despite his lengthy residence in the United States and family ties, Monterroza Bonilla has been detained by DHS for months without the possibility of a bond hearing. The first factor supports Monterroza Bonilla's due process claim.

2. Risk of Erroneous Deprivation

The second factor requires the Court to "assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Günaydin v. Trump*, No. 25-cv-01151 (JMB/DLM), 2025 WL 1459154, at *8 (D. Minn. May 21, 2025) (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)). In the immigration context detention must rest on a valid statutory foundation and bear a reasonable relationship to the statute's purpose. *See Zadvydas*, 533 U.S. at 690. The only recognized purposes for civil immigration detention are to ensure appearance at future proceedings and to protect the community from danger. *Id.* The government's application of § 1225(b)'s mandatory detention provision unnecessarily results in his continued detention without an individualized assessment of

dangerousness or flight risk. There are certainly alternative procedures available, such as a bond hearing before a neutral adjudicator in accordance with 8 U.S.C. § 1226(a), such as the ones that occurred for decades prior to July 2025. This would allow Monterroza Bonilla an opportunity to be heard and receive a meaningful evaluation of whether he is a danger or likely to abscond. Denying Monterroza Bonilla of such an individualized hearing deprives him of substantive and procedural due process.

3. Government's Interest

Turning to the final factor, the Court weighs the private interests at stake and the risk of erroneous deprivation of those interests against the Respondents' interests. *Matthews*, 424 U.S. at 335. The Petitioner does not disregard the government's interest in enforcing the immigration laws. This interest, however, should not outweigh Monterroza Bonilla's liberty interest. Subjecting him to mandatory detention without an opportunity for an independent, neutral assessment as to whether he is a danger or flight risk because of the manner in which he entered the United States despite his lengthy residence, family ties, and ties to the community defies due process.

III. This Court may review Petitioner's APA claims under *Bennett v. Spear*.

The Government's threshold objection rests on a category mistake. Petitioner does not seek release under the Administrative Procedure Act ("APA"). Release is sought under 28 U.S.C. § 2241. The APA counts—Counts Three through Five—challenge discrete, final agency action and request the remedies Congress prescribed in 5 U.S.C. § 706: vacatur, declaratory relief, and remand. The only question for APA reviewability is whether Petitioner challenges a discrete, final agency action with legal consequences. He does: the agency's precedential rule in *Matter of Yajure Hurtado* that foreclosed Petitioner's eligibility to request custody redetermination in front of an immigration judge.

Under *Bennett v. Spear*, agency action is final and reviewable when it marks the "consummation" of the agency's decision-making process and when "legal consequences will flow." 520 U.S. 154, 177–78 (1997). *Yajure Hurtado* satisfies both prongs. It is precedential and thus the agency's definitive resolution of the bond-jurisdiction question. The legal consequence is immediate: it forecloses bond adjudication categorically. When the agency extinguished bond jurisdiction, "legal consequences" followed for Petitioner. *Bennett*, 520 U.S. at 177–78. Therefore, contrary to the government's position, Petitioner's APA claims are reviewable.

The Government invokes *Preiser v. Rodriguez*, 411 U.S. 475 (1973), but *Preiser* merely holds that habeas is the proper vehicle for immediate release. Petitioner does not seek release under the APA; he seeks vacatur and remand under § 706. Habeas can remedy confinement, but it cannot set aside an unlawful agency rule. If the Court concludes the APA claims should not proceed within the habeas docket, the proper course is not dismissal but severance under Federal Rule of Civil Procedure 21. Severance preserves judicial economy while allowing the APA claims to proceed as a parallel civil action under 28 U.S.C. § 1331 and 5 U.S.C. § 702.

A. *Buenrostro-Mendez* confirms the existence of a reviewable agency pivot.

Ironically, *Buenrostro-Mendez v. Bondi* confirms—not undermines—the existence of a reviewable agency pivot. There, the court acknowledged that DHS "began detaining" certain long-present noncitizens under § 1225(b)(2) pursuant to a revised interpretation contrary to almost 30 years of practice. *Id.* at *2–*3. The panel noted the shift prompted "well over a thousand" habeas petitions challenging the new detention theory. *Id.* at *3. The implementation of a distinct and operative change in detention policy is precisely the kind of consummated agency action from which legal consequences flow. *Bennett*, 520 U.S. at 177–78. Importantly, *Buenrostro-Mendez* does not hold that the underlying agency action is insulated from APA review. *Buenrostro-*

Mendez did not directly address the APA claims of the Petitioner in that case nor state that such claims were impermissibly included in the habeas petition.

B. The agency actions are arbitrary and capricious as-applied against petitioner.

Because the BIA's action is a final agency action, it must survive the "arbitrary and capricious" test. An agency action is deficient if the agency "entirely failed to consider an important aspect of the problem." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). And when an agency shifts a longstanding policy that has "engendered serious reliance interests," it would be "arbitrary or capricious to ignore such matters." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (explaining that that an agency changing position must acknowledge the change, show it is permissible under the statute, and give a reasoned explanation for the new course of action).

Here the Board supplies the key admissions. In footnote 6, it concedes that "for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection," and adds that it does "not recall either DHS or its predecessor... previously raising the current issue." 29 I&N Dec. 225 n.6. The Board further noted that its own 1997 regulatory commentary reflected the understanding that such individuals "will be eligible for bond and bond redetermination." *Id.* (quoting 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997)). The Board thus acknowledged reliance on a settled practice and a complete pivot. Confronting the reliance and disruption generated by a policy reversal is not optional; it is a required step of reasoned decision making. *See Department of Homeland Security v. Regents of the University of California*,591 U.S. 1, 30 (2020). The Board failed to do so. Section 706(2) does not permit the Board to announce a categorical rule without addressing the reliance and disruption generated by its policy reversal.

C. The agency's "new rule" should not be applied retroactively under the APA.

The Supreme Court has long held that "retroactivity is not favored in the law," and absent a clear statement, new rules and new legal consequences apply prospectively. That presumption applies with special force where the Government seeks to impose a new disability—categorical no-bond detention—on a past, completed entry and years of settled interior residence that occurred under a different detention framework. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994) (fair notice/reliance/settled expectations); *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (agencies lack authority to promulgate retroactive rules without express congressional authorization).

The Fifth Circuit's decision in *Monteon-Camargo v. Barr* illustrates why such agency action should apply prospectively. There, the BIA "drastically chang[ed] the landscape" by announcing a broader, new rule of general applicability and then attempted to apply it to predicate conduct that occurred prior to the rule change. The Fifth Circuit rejected that effort because retroactive application would compromise "familiar due process considerations of fair notice, reasonable reliance, and settled expectations." 918 F.3d 423, 430–31 (5th Cir. 2019) (quoting *Landgraf v. USI Film Prods* at 270). Even a valid new rule cannot automatically be applied to old facts when doing so imposes a new and harsher legal consequence on completed conduct.

D. The Court need not set aside the policy; as-applied relief is appropriate.

Finally, the Court need not invalidate *Yajure Hurtado* across the board to decide this case. By setting aside the application of *Yajure Hurtado* to this Petitioner and remanding the matter for a bond hearing, the Court satisfies the APA's command to "set aside" unlawful agency action while respecting the Fifth Circuit's recent statutory interpretation in *Buenrostro-Mendez*. This narrow disposition corrects the agency's procedural failure to consider Petitioner's specific reliance

interests without rewriting detention policy at large. Such a narrow disposition resolves this case without purporting to rewrite immigration detention policy nationwide. *See* 5 U.S.C. § 706(2)(A).

IV. CONCLUSION

For the foregoing reasons, the Court retains jurisdiction over Petitioner's due process claims and it would be futile for the Petitioner to exhaust administrative remedies. Additionally, the Board's decision in *Yajure Hurtado* constitutes arbitrary and capricious agency action and should not be applied retroactively. For these reasons, the Court should grant relief to Petitioner.

Date: February 16, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2026, a copy of the foregoing "Petitioner's Reply to the Respondents' Response to Petitioner's Writ of Habeas Corpus," has been delivered to the Respondents' counsel of record via ECF electronic filing.

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