UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

PHALITA PUN,
Petitioner,

v.

KRISTI NOEM,
Secretary of Homeland Security, et al.,
Respondents.

Civil No.5:26-cv-0534-JKP

PETITIONER'S SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF WRIT OF HABEAS CORPUS

TO THE HONORABLE JUDGE PULLIAM:

Petitioner PHALITA PUN ("Ms. Pun") respectfully submits this supplemental brief in support of her Original Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, filed with the Court on January 26, 2026 (ECF No. 1), and in reply to federal Respondents' supplemental response brief, filed with the Court on February 5 (ECF No. 9), and as ordered by this Court at the hearing conducted via Zoom also on February 5.

Additionally, in the intervening four days, the United States Court of Appeals for the Fifth Circuit issued a published decision on an expedited basis in the case of *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 U.S. App. LEXIS 3899 (5th Cir. Feb. 6, 2026), which may have some bearing on the instant case. Given the nature of the issues presented, the nature of ICE's detention of Ms. Pun amidst her ongoing removal proceedings, and in light of the recent Fifth Circuit decision, Petitioner respectfully requests that the Court set this matter for oral argument at the earliest practicable time—ideally within forty-eight (48) hours.

ARGUMENT

I. Procedural Posture and Scope of This Supplemental Brief.

This Court previously granted Ms. Pun's petition for a writ of habeas corpus after determining that her detention was unlawful and that she could not be detained under 8 U.S.C. § 1225(b). *See* ECF No. 6, Text Order Granting Writ of Habeas Corpus. The Court subsequently stayed that order and requested supplemental briefing addressing (1) Respondents' Amended Answer and (2) whether the action was mooted by the Immigration Judge's bond decision. *See* ECF No. 11, Order Regarding Stay.

This supplemental brief demonstrates that the habeas petition was not mooted, that § 1226(e) does not bar review, and that independent Fourth Amendment and Fifth Amendment Due Process violations continue to warrant habeas relief, notwithstanding the Fifth Circuit's intervening statutory holding in *Buenrostro-Mendez v. Bondi*.

II. The Fifth Circuit's Decision in *Buenrostro-Mendez* Does Not Foreclose Habeas Relief for Constitutional Violations.

The scope of *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. Feb. 6, 2026), was limited to one of statutory interpretation and did not deal with issues of a constitutional dimension. Thus, it is not dispositive to at least some of the claims presented in Petitioner's habeas petition. Specifically, *Buenrostro-Mendez* resolved a discrete question of statutory interpretation concerning bond eligibility under the Immigration and Nationality Act. It did not eliminate habeas jurisdiction, displace constitutional limits on detention authority, or insulate unlawful custody from judicial review.

Indeed, the sole issue before the Fifth Circuit in *Buenrostro-Mendez* was whether noncitizens deemed "applicants for admission" under 8 U.S.C. § 1225(a)(1) are categorically

subject to mandatory detention under § 1225(b)(2), and therefore ineligible for bond under § 1226(a). The court held that they are.

Critically, the panel did *not* decide: (1) whether warrantless interior arrests by ICE violate the Fourth Amendment; (2) whether re-detention after release implicates a protected liberty interest under the Fifth Amendment; (3) whether post-habeas bond hearings must satisfy procedural due process; or (4) whether habeas relief remains available for detention that is unconstitutional, even if statutorily authorized.

Indeed, the Fifth Circuit explicitly framed the case as one involving "statutory interpretation," not constitutional adjudication, and expressly confined its holding to the meaning and interaction of §§ 1225 and 1226. Nothing in the opinion purports to authorize detention obtained through unconstitutional means or to curtail traditional habeas review of constitutional claims.

It is black-letter law that statutory authorization to detain does not immunize detention from constitutional scrutiny. The Supreme Court has repeatedly recognized that habeas corpus remains available to test whether custody violates the Constitution, even where Congress has spoken clearly on detention authority.

Section 1226(e), on which Respondents rely, strips courts of jurisdiction only to review the Attorney General's *discretionary judgment* regarding detention or release. *See* Govt's Supp. Resp. Br., ECF No. 9, at 2. But Section 1226(e) does not bar review of whether detention rests on an unlawful arrest, whether the Government afforded constitutionally required procedures, or whether executive action exceeded constitutional limits.

As the Supreme Court explained in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), jurisdiction-stripping provisions do not preclude courts from addressing "constitutional

challenges" to detention statutes or practices. Likewise, the Fifth Circuit has consistently distinguished between unreviewable discretionary determinations and reviewable constitutional violations.

To be clear, Ms. Pun's habeas petition does not ask this Court to second-guess discretionary weighing of factors reserved to the Executive. Rather, it challenges the *lawfulness of the detention itself*, based on constitutional defects that § 1226(e) cannot shield from review, especially where the Executive refuses to perform the duties mandated to it by Congress.

Furthermore, *Buenrostro-Mendez* does not sanction detention following unconstitutional seizures. Indeed, nothing in *Buenrostro-Mendez* suggests that the Government may detain a noncitizen following a warrantless interior arrest that violates the Fourth Amendment. The panel assumed lawful apprehension and lawful custody as predicates to its statutory analysis. Where detention flows directly from an unconstitutional seizure, habeas relief remains appropriate regardless of the underlying detention statute.

To hold otherwise would permit the Government to bootstrap unconstitutional arrests into lawful detention merely by invoking § 1225(b), a result that would eviscerate Fourth Amendment protections in the immigration context. The Fifth Circuit has never endorsed such a rule, and *Buenrostro-Mendez* does not do so implicitly.

Equally important, *Buenrostro-Mendez* does not extinguish Due Process protections once liberty has been granted. Indeed, *Buenrostro-Mendez* does not address the distinct due process problem presented when ICE re-detains an individual who has already been released into the community under parole, supervision, or recognizance.

As this Court is well aware, federal courts have broadly recognized that release from custody confers a protected liberty interest. *See, e.g., Hernandez-Fernandez v. Lyons*, No. 5:25-

cv-773-JKP, 2025 U.S. App. LEXIS 206751 (W.D. Tex. Oct. 21, 2025); *Lopez-Arevelo v. Ripa*, 3:25-cv-337-KC, 2025 U.S. App. LEXIS 188232 (W.D. Tex. Sept. 21, 2025) ("Respondents fail to contend with the liberty interests created by the fact that the Petitioner[ ] in this case [was] released on recognizance prior to the manifestation of [the government's § 1225] interpretation."); *Lopez Benitez v. Francis*, Civ. No. 5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025). Once that liberty interest exists, the Government may not revoke it without constitutionally adequate procedures.

This is especially true where, as here, "the decision to release [the noncitizen] on his own recognizance . . . years ago, in and of itself, 'reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.'" *See Hernandez-Fernandez v. Lyons*, 2025 U.S. App. LEXIS 206751, at *21-22. And to be clear, *Buenrostro-Mendez* involved petitioners who were detained continuously, but it did not consider the constitutional implications of re-detention following a period of liberty.

Accordingly, even if Ms. Pun's detention is nominally authorized by statute after *Buenrostro-Mendez*, the Constitution independently requires that the Government afford meaningful process before depriving her of liberty. The absence of such process renders continued detention unlawful and fully subject to habeas review.

Finally, Petitioner would respectfully contend that adopting a broad reading of *Buenrostro-Mendez*, as Respondents will likely request, would have sweeping and untenable consequences. Under such a theory, ICE could:

1. Conduct warrantless home arrests;
2. Re-detain individuals previously released into the community without notice or hearing;
3. Provide perfunctory post-hoc bond hearings that deny release categorically; and

4. Insulate all of the above from judicial review by invoking §§ 1225(b) and 1226(e), effectively reducing § 1226(a) into the vestigial tail of the immigration detention schema.

That result would reduce habeas corpus to a nullity and permit executive detention to proceed unchecked by constitutional constraints. Neither *Buenrostro-Mendez* nor any other binding precedent compels—or even suggests—such a departure from settled habeas principles.

However, this Court retains authority to grant habeas relief on constitutional grounds, at least in this case. Because Ms. Pun's habeas petition rests on independent Fourth Amendment and Fifth Amendment violations, and because *Buenrostro-Mendez* does not foreclose review of those claims, this Court retains both jurisdiction and authority to grant relief.

Simply put, the question before the Court is not whether Ms. Pun is statutorily eligible for bond under the INA as interpreted by the Fifth Circuit. The question is whether she may continue to be detained in violation of the Constitution. On that question, *Buenrostro-Mendez* is not dispositive—and habeas relief remains available.

Ms. Pun is prepared to present argument and evidence by in-person appearance or, if the Court prefers, by videoconference. Should the Court require live testimony, Petitioner requests to be produced at the hearing.

III. Applying the *Mathews* Factors, Ms. Pun's Continued Detention Violates the Fifth Amendment's Guarantee of Procedural Due Process.

Even if this Court assumes arguendo that Ms. Pun's detention is statutorily authorized after *Buenrostro-Mendez*, the Constitution independently constrains the manner in which the Government may deprive her of liberty. The Fifth Amendment prohibits the federal government from depriving any person of liberty without due process of law. That protection extends to noncitizens physically present in the United States.

Where, as here, the Government has previously released an individual into the community and later seeks to re-detain her, procedural due process requires an individualized assessment consistent with the framework articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

A. Ms. Pun Possessed a Protected Liberty Interest in Continued Freedom.

The threshold question under *Mathews* is whether the challenged government action implicates a protected liberty interest. It does.

Ms. Pun had been living openly in the community under ICE supervision for an extended period. She possessed employment authorization, a valid Texas driver's license, stable housing, and a consistent record of compliance with government reporting requirements. By permitting Ms. Pun to live and work freely in the community, the Government affirmatively conferred liberty upon her.

Federal courts have repeatedly recognized that release from immigration detention—whether through parole, an order of supervision, or recognizance—creates a cognizable liberty interest protected by the Fifth Amendment. Once liberty has been granted, it may not be withdrawn arbitrarily or without constitutionally adequate procedures.

Accordingly, ICE's decision to re-detain Ms. Pun triggered the full protections of procedural due process.

B. Application of the *Mathews v. Eldridge* Factors Demonstrates a Due Process Violation.

Under the *Mathews* framework, the Court must balance three factors: (1) the private interest affected; (2) the risk of erroneous deprivation and the probable value of additional safeguards; and (3) the Government's interest. For the reasons that follow, each factor weighs decisively in Ms. Pun's favor.

1. The Private Interest at Stake Is Fundamental.

The private interest affected here is physical liberty. Few interests are more fundamental. Detention in an immigration facility imposes severe restraints on freedom of movement, family life, employment, and personal autonomy.

Ms. Pun's interest is particularly strong because she had already been living freely in the community, demonstrating stability, compliance, and integration. Re-detention represents not merely a continuation of custody, but a revocation of liberty *already* conferred.

This factor weighs heavily in favor of robust procedural protections.

2. The Risk of Erroneous Deprivation Is Substantial—and Additional Safeguards Have High Probative Value.

The risk of erroneous deprivation in Ms. Pun's case is not hypothetical; it is concrete and well-documented. In this case, ICE re-detained Ms. Pun without any pre-deprivation hearing, neutral adjudicator, or opportunity to contest the basis for custody. The subsequent bond hearing failed to cure that defect. Instead, the Immigration Judge issued a conclusory denial based on a generalized "flight risk" finding, stating that "no amount of bond" could ensure appearance.

As demonstrated by the affidavits submitted in support of this brief, such language is not unique to Ms. Pun's case. *See* Ex. 1, Affidavit of John Michael Bray (with attachments); *see* Ex. 2, Affidavit of Robert Anthony Wagner; *see* Ex. 3, Affidavit of Guillermo Hernandez. Immigration judges have repeatedly relied on nearly identical formulations to deny bond following federal habeas intervention, even where respondents present substantial equities favoring release. Strikingly, one such alien who was denied bond following a habeas grant ultimately prevailed in his removal case. *See* Ex. 4. This pattern materially increases the risk that liberty is being deprived through rote or predetermined outcomes rather than individualized adjudication.

Additional procedural safeguards—such as a meaningful pre-deprivation hearing, a requirement to consider graduated conditions of release, and a reasoned explanation tethered to record evidence—would substantially reduce the risk of error. These safeguards are neither novel nor burdensome; they are standard features of due process in other contexts involving deprivation of liberty.

This factor weighs strongly in Ms. Pun's favor.

3. The Government's Interest Is Limited and Does Not Justify the Procedures Used.

The Government's asserted interest is ensuring appearance at removal proceedings and effectuating immigration enforcement. Those interests are legitimate but not absolute.

Here, the Government had already determined that Ms. Pun could be safely managed in the community. She complied with supervision, maintained lawful employment, and presented no evidence of danger or absconding. The Government has not articulated any new or emergent circumstance justifying summary re-detention.

Moreover, the administrative burden of providing meaningful process is minimal. Immigration courts routinely impose conditions of release, higher bond amounts, and reporting requirements to mitigate flight risk. The Government's interest does not extend to detaining individuals simply because detention is administratively convenient.

Accordingly, the Government's interest does not outweigh Ms. Pun's liberty interest or justify the procedures employed.

C. A Post-Hoc, Conclusory Bond Hearing Does Not Satisfy Due Process.

Respondents contend that any due process concerns were cured by the Immigration Judge's bond hearing. That contention fails.

Due process is not satisfied by a hearing "in name only." Where a proceeding is conducted in a manner that predictably results in detention regardless of evidence—through categorical "no amount of bond" findings untethered to individualized analysis—it does not meaningfully protect against erroneous deprivation. Such ostensibly disobedience by EOIR, which is itself an executive branch agency, also raises serious questions of separation of powers.

For this reason, such hearings do not mitigate the constitutional harm of re-detention without pre-deprivation process and cannot moot a habeas petition challenging unlawful custody.

D. The Due Process Violation Is Independently Remediable Through Habeas Relief.

Because Ms. Pun's continued detention violates procedural due process, this Court may grant habeas relief irrespective of the statutory detention framework. Section 1226(e) does not bar review of constitutional claims, and habeas corpus remains the appropriate vehicle to remedy unlawful restraint on liberty. Absent judicial intervention, Ms. Pun faces indefinite detention without meaningful process—precisely the scenario the Due Process Clause and the Great Writ were designed to prevent.

CONCLUSION & PRAYER

The Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi* resolved a narrow question of statutory interpretation regarding bond eligibility under the INA, and even then, it remains non-final, as the case parties have declared the intention to file a motion for rehearing *en banc*. It did not—and could not—authorize detention obtained or maintained in violation of the Constitution. Nor did it strip this Court of its historic habeas authority to remedy unlawful custody where executive action exceeds constitutional limits. Here, Ms. Pun's continued detention rests on multiple, independent constitutional defects that remain fully cognizable under 28 U.S.C. § 2241.

First, Ms. Pun was seized at or near her residence without a judicial warrant and without exigent circumstances, in violation of the Fourth Amendment. That unlawful seizure directly precipitated her detention. Habeas relief has long been available where custody flows from an unconstitutional arrest, and § 1226(e) does not bar review of such claims because they do not challenge discretionary judgment, but the legality of the seizure itself.

Second, even assuming arguendo that Ms. Pun's detention falls within the statutory framework addressed in *Buenrostro-Mendez*, the Government violated her Fifth Amendment right to procedural due process by re-detaining her after she had been living freely in the community under government supervision, without any pre-deprivation process. Once the Government confers liberty—through parole, supervision, or release—it may not withdraw that liberty without constitutionally adequate procedures. No such procedures were afforded here.

Third, the subsequent bond hearing did not cure these constitutional violations. The Immigration Judge's conclusory finding that Ms. Pun was "such a high flight risk that no amount of bond would ensure appearance" reflects the very pattern this Court identified at the February 5 hearing: a formal proceeding that gives the appearance of compliance with federal habeas relief while functionally preserving detention. Such a hearing does not provide meaningful process, does not mitigate the risk of erroneous deprivation, and cannot moot a habeas petition challenging unconstitutional custody.

Critically, Ms. Pun does not ask this Court to reweigh evidence or substitute its judgment for that of an immigration judge. She asks only that the Court enforce constitutional boundaries and prevent continued detention that rests on an unlawful arrest, the absence of pre-deprivation process, and a post-hoc bond determination that fails to satisfy due process.

Under these circumstances, habeas relief remains appropriate and necessary. To hold otherwise would permit executive agencies to nullify federal habeas rulings through perfunctory proceedings, thereby reducing constitutional review to a hollow formality. The Suspension Clause and the Due Process Clause do not tolerate such a result.

For these reasons, Petitioner respectfully requests that the Court take the following actions: (i) lift the stay, (ii) reinstate the February 4, 2026, Order granting the writ of habeas corpus, and (iii) order Ms. Pun's immediate release under appropriate conditions, or, in the alternative, grant such further relief as justice and the Constitution require.

DATE: February 9, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this day, I served a true and correct copy of the above and foregoing *Petitioner's Supplemental Reply Brief in Support of Habeas Petition*, as well as any and all attachments thereto, on Counsel for Respondents by serving the same by filing the same using the Court's CM/ECF system and via email to the U.S. Attorney's Office for the Western District of Texas to the following email address:

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