UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

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| Onkar Singh Singh,<br>Petitioner | §<br>§ | |
| v. | § | No. 5:26-CV-00541-XR |
| Pamela Bondi, *et. al.*,<br>Respondents | §<br>§ | |

**REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS CONSIDERING RECENT FIFTH CIRCUIT PRECEDENT**

Petitioner, Onkar Singh Singh, timely submits this Reply to Respondents' Response to Petition for Writ of Habeas Corpus Considering Recent Fifth Circuit Precedent submitted on February 11, 2026.[1] ECF No. 6 and 7. This Court's Order for Service, dated February 2, 2026, directed any reply to Respondents' Response be filed within 7 days. ECF No. 2 at 2.

This Court's order directed "Respondents must consider the Court's prior orders addressing [whether 8 U.S.C. § 1225 authorizes Petitioner's detention] and note any material factual differences between those cases and this one." ECF No. 2 at 2. The Court noted its prior decisions in *Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025); *Tinoco Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025). *Id.* Respondents'

[1] Respondents submitted two substantially identical Responses via different AUSAs. Respectfully, Counsel will be citing to ECF No. 7 to avoid confusion.

Response makes no direct citation to the above cases, nor does it factually distinguish those cases from Petitioner's. *See* ECF No. 7 at 2.

**I. Detention Under 8 U.S.C. §§ 1225(b) vs. 1226(a)**

The Response does indeed raise a significant material development in the current legal landscape of Petitioner's statutory claim: the Fifth Circuit's days-old holding in *Buenrostro-Mendez v. Bondi*, --- F.4th ---, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). *See* ECF No. 7 at 1-2. Petitioner acknowledges Fifth Circuit's decision would foreclose this cause of action. However, Petitioner wishes to preserve the statutory claim as the mandate has not issued. The Fifth Circuit's *Buenrostro-Mendez* published opinion and judgment both issued on February 6, 2026; however, the Fifth Circuit's mandate has yet to issue. *Buenrostro-Mendez v. Bondi*, --- F.4th ---, No. 25-20496, Dkt. No. 213 and Dkt. No. 214.

In effect, the case remains in the Fifth Circuit's jurisdiction where it is still subject to panel rehearing, rehearing *en banc*, withdrawal of the opinion, or further appeal to the Supreme Court. *See* FED. R. APP. P. R.41(b); 5TH CIR. R. 41 and I.O.P. 41; Jack Buckley DiSorbo, *Appellate Court Mandates: An Introduction and Proposed Reform*, 22 GEORGETOWN J. L. & PUB. POL'Y 155, 159-60 (2024). *See*, e.g., *Membreno-Rodriguez v. Garland*, 95 F.4th 219 (5th Cir. 2024), *vacated and published opinion withdrawn*, 2024 WL 3507178 (2024). Absent an order from the Fifth Circuit shortening the mandate period, the earliest the mandate can issue is March 30, 2026. *See* FED. R. CIV. P. R. 40(d)(1); 41(b). This issue is being litigated at the appellate level across the country and will likely cause a circuit split. *See e.g.*, *Castanon-Nava*

*v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1060-62 (7th Cir. 2025) (preliminary ruling, but the Seventh Circuit heard oral arguments on the merits on February 3, 2026 and a decision is pending).

**II. Due Process Claim**

Although the panel in *Buenrostro-Mendez* denied the § 1225 statutory claim, it "did not reach the due process question, confining its analysis and holding to statutory interpretation". Duran Aguila, *v. Warden,* No. EP-26-CV-241-KC, Slip Op. at 3 (W.D. Tex. Feb. 9, 2026) (Cardone, J.) (citing *Buenrostro-Mendez,* at *1-10); *see also* Clemente Ceballos v. Garite, No. EP-26-CV-00312-DB (W.D. Tex. Feb. 10, 2026) (Briones, J). In fact, the Government conceded that the only issue before the panel was the statutory question and not the due process claim. *See* Duran Aguila, *v. Warden,* No. EP-26-CV-241-KC, Slip Op. at 3 - 4 (W.D. Tex. Feb. 9, 2026) (citing *Buenrostro-Mendez* oral argument). The panel ordered the case be remanded to Senior U.S. District Judge Rosenthal for consideration of the due process claim, which the district court did not reach in the first instance. *Id.* at *3; *see also Rahimi v. Thompson,* No. SA-25-CV-1338-OLG, Dkt. No. 13 at *4 (W.D. Tex. Dec. 4, 2025) (declining to address petitioner's asserted due process violations because the Court agreed with the statutory argument); *Buenrostro-Mendez v. Bondi,* No. H-25-cv-3726, 2025 WL 2886346, at *3 n.4 (S.D. Tex. Oct. 7, 2025).

The Response focuses on the effect *Thuraissigiam* and the "entry fiction" would have on Petitioner's claim. *See* ECF No. 7 at 12-14 (citing *Canales Melgar,* SA-25-CV-01571-XR, at *7 (W.D. Tex. Dec. 23, 2025). Respectfully, the "entry fiction limits

a noncitizen in such circumstances to 'only those rights regarding *admission* that Congress has provided by statute.'" *Rodriguez v. Lyons,* No. 1:25-CV-02001-KES-SAB, 2026 WL 303482, at *11-12 (E.D. Cal. Feb. 4, 2026) (quoting *Dep't of Homeland Sec. v. Thuraissigiam,* 591 U.S. 103, 139 (2020)) (emphasis in original). Petitioner is not challenging the admission process or creating a novel way to remain in the United States after a final order of removal. *See Hernandez-Fernandez v. Lyons*, No. 5:25-CV-773-JKP, 2025 WL 2976923, Slip Op. at *13-14 (W.D. Tex. Oct. 21, 2025). Petitioner's challenge is based on a revocation of liberty and seeks to be released from custody while his removal proceedings are ongoing as the Respondent's previously determined. *Id.* at *14. "[H]umanitarian parole can establish the same kinds of liberty interests described in *Morrisey* [*v. Brewer*, 408 U.S. 471, 482 (1972))]." *Mahib Dieng v. Hermosillo,* No. 2:26-CV-00190-LK, at *11-12 (W.D. Wash. Feb. 13, 2026) (citing *Flores Torres v.* Hermosillo, No. 2:25-CV-02687-LK, 2026 WL 145715, at *5 (W.D. Wash. Jan. 20, 2026) (collecting cases)).

Petitioner's re-detention without a meaningful individualized custody determination is a violation of his procedural due process rights. *See Marceau v. Noem,* No. 3:26-CV-237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026); *Hassen v. Noem,* No. 3:26-CV-48-DB, at *4 n.1 (W.D. Tex. Feb. 9, 2026); *Lopez-Arevalo v. Ripa,* 801 F. Supp. 3d. 668 (W.D. Tex. 2025). Petitioner has "'established connections in the United States by virtue of living in the country for a substantial period acquire[s] a liberty interest in being free from government detention without due process of law." *Garcia Balbuena v. Garcia*, No. 3:26-CV-90-DB, at *2-3 (W.D. Tex.

Feb. 13, 2026) (citing *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 104 (2020)).

To Petitioner's knowledge, no ICE official advised him of the reasons why his paroled would not be renewed, any reason to take him into custody, nor did Petitioner ever receive any individualized determination to revoke any previous order of parole. *See* G.R.R. v. Hermosillo, No. 2:26-CV-97-GJL, Slip Op. at *6 (W.D. Wash. Feb. 12, 2026) (finding that Respondents acknowledge that pre-detention hearings are required in various forms of release such as 8 C.F.R. § 236.1(c)(9) revocation of an order of release on recognizance). Nor was there any other valid reason to arrest him. *See, e.g.,Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1143-44; *Savane v. Francis*, 801 F. Supp. 3d 483, 493 (S.D.N.Y. 2025); *Ramirez-Bibiano v. LaRose*, No. 25-CV-3429 JLS (SBC), 2025 WL 3632748, at *4 (S.D. Cal. Dec. 15, 2025); *Villanueva Moreno v. Albarran*, No. 1:25-CV-01821-DAD-SCR (HC), 2025 WL 3640678, at *3 (E.D. Cal. Dec. 16, 2025); *Mata Velasquez*, 794 F. Supp. 3d at 154-55; *see also Nat'l Auto Dealers Ass'n v. Fed. Trade Comm'n*, 127 F.4th 549, 553 (5th Cir. 2025) ("It is a given of administrative law that agencies must follow their own regulations." (citations omitted)); *Am. Stewards of Liberty v. Dep't of the Interior*, 370 F. Supp. 3d 711, 725 (W.D. Tex. 2019) ("Agency action that disregards applicable law is arbitrary and capricious, and must be set aside." (citations omitted)).

The regulations provide if the "removal order cannot be executed within a reasonable time, the alien *shall again be released on parole*" unless "the public interest requires that the alien continue in custody". 8 C.F.R. § 212.5(e)(2). Here, in

granting Petitioner parole, DHS determined that he did not present a security or flight risk. 8 U.S.C. § 212.5(b); *see also Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 24 (2020) ("An agency must defend its actions based on the reasons it gave when it acted."); *Lopez Arevalo v. Ripa.* No. EP-25-CV-337-KC, 2025 WL 2691828, *29-30 (W.D. Tex. Sept. 21, 2025); Rodriguez-Acurio v. Almodovar, Case No. 25-CV-06065-NJC, 2025 WL 3314420, Slip Op. at *66. (E.D.N.Y. Nov. 28, 2025) (finding that DHS violated petitioner's procedural due process rights, ordering release to "remedy the core constitutional violation at issue here" since a bond hearing would be futile, and enjoining future detention pursuant to 1225(b)). In fact, Petitioner had now proven he was even less of a flight risk by having attended his ICE check-in appointments, attending his immigration court hearings, and had filed his asylum application as relief from possible removal. Furthermore, Petitioner has never presented any security risk as he has not been arrested or convicted of a crime. As such there were no changed circumstances to warrant re-detaining Petitioner and revoking his liberty interest. *See also Hernandez-Fernandez v. Lyons*, No. 5:25-CV-773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Lopez-Arevalo v. Ripa*, 801 F. Supp. 3d 668 (W.D. Tex. 2025); Vieira v. DeAnda-Ybarra, No. EP-25-CV-00432-DB, 2025 WL 2937880, 2025 U.S. Dist. LEXIS 203930, at * 17-18 (W.D. Tex. Oct. 16, 2025);Jacobo Ramirez v. Noem, No. 2:25-CV-02136-RFB-MDC, 2025 WL 3270137 (D. Dev. Nov. 24, 2025).

**A. *Mathews* Test**

A claim of a violation of procedural due process rights requires this Court to apply the *Mathews v. Eldridge*, 424 U.S. 319 (1976), three-part test. *See Rodriguez-Rodriguez v. Field Office Director,* No. 3:26-CV-337-KC, at *4 (W.D. Tex. Feb. 13, 2026) (collecting cases); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025). "The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time." *M.S.L. v. Bostock*, No. 25-CV-1204, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025) (citing *Mathews*, 424 U.S. at 348).

**1. Private Interest**

Petitioner's interest in freedom from detention is the most element of liberty interests, and regardless of the statutory interpretation of § 1225(b), Petitioner was released on parole before this novel statutory interpretation. *See Hernandez-Fernandez v. Lyons*, No. 5:25-CV-773-JKP, 2025 WL 2976923 at *15-16 (W.D. Tex. Oct. 21, 2025). Like in the criminal context, "due process requires a pre-deprivation hearing before the revocation of parole" and Petitioner has a protected interest in his continued liberty. *Id.* at *16 (citation omitted). Part 2)

**2. Risk of Erroneous Deprivation**

Without some form of pre-deprivation hearing, Petitioner would not have an opportunity to address any change in circumstances as to danger or flight risk, violations of the release conditions, or otherwise have an individualized assessment to warrant his re-detention despite the government's generalized interest in ensuring

noncitizens appear for their hearings or endanger the community. *Id.* Significantly, the government's interest in this case seems diminished given that they had previously released Petitioner on parole after determining he was not a danger to the community or flight risk. *See* Vieira v. DeAnda-Ybarra, No. EP-25-CV-00432-DB, 2025 WL 2937880, 2025 U.S. Dist. LEXIS 203930, at * 17-18 (W.D. Tex. Oct. 16, 2025). Even if Petitioner were to request a bond hearing, the IJ would be required to decline to exercise jurisdiction because of *Yajure-Hurtado*. *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-773-JKP, 2025 WL 2976923, at *17 (W.D. Tex. Oct. 21, 2025). Any appeal of the denial of jurisdiction would be an exercise in futility given the Board's decision in *Yajure-Hurtado*. *Id.* As such, there is a substantial risk of erroneous deprivation of Petitioner's private rights. *Id.* at *16-17. The available alternative is a bond hearing where Petitioner could address the concerns of danger and risk of flight, and there are no significant burdens in having a bond hearing where the agency has been doing so frequently over the past 30 years. *See Lopez-Arevalo v. Ripa*, 801 F. Supp. 3d 668 (W.D. Tex. 2025); Vieira v. DeAnda-Ybarra, No. EP-25-CV-00432-DB, 2025 WL 2937880, 2025 U.S. Dist. LEXIS 203930, at * 17-18 (W.D. Tex. Oct. 16, 2025). Part

**3. Government's Interest**

There is no doubt the Government has a generalized interest in ensuring noncitizens appear to removal hearings and do not endanger the community. But the government has already made an individualized determination over a year ago that Petitioner was not a risk of flight or danger to the community when it released him

on parole. *See Hernandez-Fernandez v. Lyons*, No. 5:25-CV-773-JKP, 2025 WL 2976923, Slip. Op. at *17-18 (W.D. Tex. Oct. 21, 2025). And there is nothing in the record that indicates a change in those circumstances, and if there were any changes in those concerns, a bond hearing would provide an opportunity to address them. *Id.* Conducting a bond hearing for Petitioner and other likes him would not overly burden the Government given that IJs have been conducting routine bond hearings for almost 30 years and would impose a minimal cost. *Id.* at *18. *See also Buenrostro-Mendez v. Bondi*, --- F.4th --, 2026 WL 323330, at *17 (5th Cir. Feb. 6, 2026).

## III. *Maldonado Bautista v. Santacruz* Class Membership

As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond pursuant to 8 U.S.C. § 1226(a). *See* Cruz-Reyes v. Bondi, No. 5:26-CV-60-DS, 2026 U.S. Dist. LEXIS 27758, at *11-12 (S.D. Tex. Feb. 3, 2026). As such he is entitled to the declaratory relief provided by way of his class membership. *Id.* at *11 (citing two Southern District of California cases, one where Respondents conceded a class member was considered detained under § 1226(a) pursuant to the final judgment in *Maldonado Bautista*, and crafting an injunctive remedy for petitioner as a result of his class membership and violation of due process by ordering immediate release).

Federal Respondents are parties to *Maldonado Bautista* and bound by the District Court's declaratory judgement, which has the full "force and effect of a final judgement." 28 U.S.C. § 2201(a). "A final judgment in a class action is binding on all class members in subsequent decisions under the basic principles of res judicata

and collateral estoppel." Cruz-Reyes v. Bondi, No. 5:26-CV-60, 2026 U.S. Dist. LEXIS 27758, at *11 (S.D. Tex. 2026) (citing *Cooper v. Fed. Rsrv. Bank of Richmond*, 467 U.S. 867, 874, 104 S. Ct. 2794, 81 L. Ed. 2d 718 (1984) ("A judgment in favor of either side is conclusive in a subsequent action between them on any issue actually litigated and determined, if its determination was essential to that judgment.").

Respectfully submitted by:

**/s/ Eric M. Bernal**

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