UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CLEYVER JULIAN ABRAHAM FARFAN Petitioner, v. KRISTI NOEM, *et al.*, Respondents.	Case No. 5:26-cv-00539-OLG

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS CONSIDERING RECENT FIFTH CIRCUIT PRECEDENT

I. INTRODUCTION

Petitioner Cleyver Julian Abraham Farfan, by and through his attorney of record, Guillermo M. Hernandez, III, respectfully submits this Reply to Respondent's Response to Petition for Writ of Habeas Corpus Considering Recent Fifth Circuit Precedent. In support thereof, Petitioner submits the following:

II. ARGUMENT

A. The Fifth Circuit's Decision in Buenrostro-Mendez does not Foreclose Habeas Relief for Constitutional Violations.

Should this Court accept Respondents' response, the petitioner nevertheless contends that 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.

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).

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.

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 8 USC §§ 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 settled law that statutory detention authority does not insulate custody from constitutional review. Absent a valid suspension of the writ, habeas corpus remains available to test whether detention violates the Constitution, even where Congress has spoken clearly on detention authority. *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *Hamdi v. Rumsfeld*, 542 U.S. 507, 524-25 (2004).

Respondents' reliance on 8 U.S.C. § 1226(e) is misplaced. That provision limits judicial review only of the Attorney General's discretionary judgment to detain or release; it does not preclude review of whether the detention flows from an unlawful arrest, whether constitutionally required procedures were provided, or whether the Government 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.

Mr. Abraham's habeas petition does not ask this Court to reweigh discretionary factors committed to the Executive. Instead, it challenges the lawfulness of his detention based on constitutional defects that 8 U.S.C. § 1226(e) does not shield from review—particularly where the Government has failed to carry out duties mandated by Congress.

Furthermore, *Buenrostro-Mendez* does not sanction detention predicated on unconstitutional conduct. Nothing in that decision authorizes the Government to re-detain a noncitizen after a prior release on recognizance in violation of the Fifth Amendment's Due Process Clause, or to detain a noncitizen following a warrantless arrest that violates the Fourth Amendment. Where detention flows directly from an unconstitutional seizure, habeas relief remains available regardless of the statutory detention framework. Holding otherwise would allow the Government to bootstrap an unconstitutional arrest into purportedly lawful detention simply by invoking 8 U.S.C. § 1225(b), effectively gutting Fourth Amendment protections in the immigration context. The Fifth Circuit has never endorsed such a rule, and *Buenrostro-Mendez* does not do so by implication.

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.

Federal courts have recognized that release from custody confers a protected liberty interest, and the Government may not revoke that liberty without constitutionally adequate procedures.[1]

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 because *Buenrostro-Mendez* involved petitioners who were continuously detained and did not address the due process implications of re-detention after a period of liberty, the Constitution independently requires meaningful process before the Government may deprive Petitioner of his liberty, *See Cleaveland Bd. Of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985), and the absence of such process renders his continued detention unlawful and subject to habeas review.

Respondents' reading of *Buenrostro-Mendez* would produce untenable results: ICE could re-detain individuals previously released into the community without notice or a hearing and then attempt to shield that detention from judicial review under 8 U.S.C. §§ 1225(b) and 1226(e)—effectively reducing § 1226(a) to a vestigial remnant of the detention framework.

That approach would hollow out habeas corpus and permit executive detention to operate largely unchecked by constitutional constraints. Neither *Buenrostro-Mendez* nor any other binding precedent compels—or even suggests—such a drastic departure from settled habeas principles. It would also contradict longstanding precedent recognizing that noncitizens are not outside the

[1] *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."); L*opez Benitez v. Francis*, Civ. No. 5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025).

Constitution's protections. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *see also Trump v. J.G.G.*, 604 U.S. 670, 673 (2025).

Petitioner's habeas petition rests on independent Fourth and Fifth Amendment violations, and *Buenrostro-Mendez* does not foreclose review of those constitutional claims. Accordingly, this Court retains jurisdiction to grant habeas relief. The issue is not Mr. Abraham's statutory bond eligibility under the INA, but whether his continued detention violates the Constitution. On that question, *Buenrostro-Mendez* is not dispositive, and habeas relief remains available.

B. Applying the *Matthews* Factors, Petitioner's Continued Detention Violates the Fifth Amendment's Guarantees of Procedural Due Process.

Even assuming arguendo that Petitioner's detention is statutorily authorized after *Buenrostro-Mendez*, the Constitution independently limits the manner in which the Government may deprive him of liberty. *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. Feb. 6, 2026). The Fifth Amendment prohibits the federal government from depriving any person of liberty without due process of law. The United States Constitution guarantees that no person, including non-citizens, shall be deprived of life, liberty, or property without due process of law. *See Reno v. Flores*, 507 U.S. 292. 301-02 (1993); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886). The Fifth Amendment entitles aliens to due process of law in the context of removal proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025).

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).

Prior to the Fifth Circuit Court of Appeals issuing the decision in *Buenrostro-Mendez*, district courts within Texas have granted habeas petitions based on procedural due process

grounds.[2] Furthermore, since the Fifth Circuit issued its decision in *Buenrostro-Mendez*, district courts have continued to grant habeas petitions on procedural due process grounds.[3]

i. Mr. Abraham Possessed a Protected Liberty Interest in Continued Freedom.

Under *Mathews*, the threshold question is whether the challenged government action implicates a protected liberty interest. Here, it does.

After his initial detention and processing, Mr. Abraham was released from ICE custody on a Form I-220A (Order of Release on Recognizance) and directed to appear in immigration court and report to ICE as required. Since his release, he has lived and worked continuously in the United States. By authorizing him to reside and work in the community, the Government affirmatively conferred a protected liberty interest.

Federal courts have recognized that release from immigration detention—whether through parole, an order of supervision, or release on recognizance—creates a cognizable liberty interest protected by the Fifth Amendment.[4] Once the Government grants liberty, it cannot withdraw it

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[2] *See* Martinez v. Noem, No. 3:25-cv430-KC, 2025 WL 2965859, at *1–5 (W.D. Tex. Oct. 21, 2025) (Cardone, J.) (granting habeas on procedural due process grounds alone); *see also Zafra v. Noem*, No. EP-25-cv-00541-DB, 2025 WL 3239526, at *3 (W.D. Tex. Nov. 20, 2025) (Briones, J.); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025) (Pullman, J.), *Cruz-Reyes v. Bondi*, No. 5:26-CV-60, 2026 WL 332315 (S.D. Tex. Feb. 3, 2026) (Saldana, J.) (granting statutory claim and ordering release on due process grounds, although does not say she would reach same conclusion if detention was under 1225(b)).

[3] *See Maya-Contreras v. Warden, ERO El Paso East Montana Camp, et al.*, No. 3:26-cv-00290-DB (W.D. Tex. Feb. 9, 2026) (Briones, J.) (holding *Buenrostro-Mendez* does not change the outcome on procedural due process grounds because the court had already accepted without deciding respondents' statutory interpretation in its due process analysis); *see also Clemente Ceballos v. Garite*, No. 3:26-cv-00312-DB (W.D. Tex. Feb. 10, 2026) (Briones, J.), *Cumbe Lema v. De Anda-Ybarra*, No. EP-26-CV-249-KC (W.D. Tex. Feb. 9, 2026) (Cardone, J.) (expressly noting that statutory lane is foreclosed by *Buenrostro* but granting relief on procedural due process grounds).

[4] *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (a parolee retains substantial liberty interests, and revocation inflicts a "grievous loss"); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (freedom from government custody lies at the core of the liberty protected by the Due Process Clause, and indefinite detention raises serious constitutional concerns); *Zongbo Zhu v. Genalo*, 798 F. Supp. 3d 400 (N. Y. S. D. 2025); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (Cal. S. D. 2025).

arbitrarily or without constitutionally adequate procedures. Accordingly, ICE's decision to re-detain Mr. Abraham triggered the full protections of procedural due process.

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

Under the framework established by *Mathews v. Eldridge*, 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. *Mathews v. Eldridge*, 424 U.S. 319, 347-348 (1976). For the reasons below, each factor weighs decisively in Mr. Abraham's favor.

1. The Private Interest at Stake Is Fundamental

The private interest at stake is physical liberty, one of the most fundamental interests protected by due process. Immigration detention sharply restricts freedom of movement, family life, employment, and personal autonomy.

That interest is especially weighty here because Petitioner lived in the community under an Order of Release on Recognizance, demonstrating stability, compliance, and integration. His re-detention is not a continuation of custody; it is the revocation of previously granted liberty, which strongly supports meaningful procedural protections.

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

The risk of erroneous deprivation here is not speculative—it is concrete and well documented. ICE re-detained Mr. Abraham without any pre-deprivation hearing, neutral adjudicator, or meaningful opportunity to contest the basis for custody. That is especially troubling because he was released on November 18, 2024, on an Order of Release on Recognizance, and was re-detained on or about September 25, 2025 at a routine check-in appointment, without any allegation that he violated the conditions of his release.

Additional safeguards—such as a meaningful pre-deprivation hearing, consideration of graduated conditions of release, and a reasoned decision grounded in record evidence—would materially reduce the risk of error. These protections are neither novel nor unduly burdensome; they are routine features of due process when the Government seeks to revoke a person's liberty. Accordingly, this factor weighs strongly in Petitioner's favor.

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

The Government's interests, ensuring appearance at removal proceedings and enforcing the immigration laws, are legitimate, but not absolute. Here, the Government has already determined Mr. Abraham could be managed safely in the community. He has complied with supervision, maintained lawful employment, and there is no evidence of danger or flight risk, nor has the Government identified any new circumstance justifying summary re-detention. Providing meaningful process would impose little burden; immigration courts routinely mitigate risk through graduated conditions, including bond and reporting requirements. The Government's interest does not extend to detaining individuals merely for administrative convenience. Accordingly, it does not outweigh Mr. Abraham's liberty interest or justify the procedures employed.

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

Because Petitioner's continued detention violates procedural due process, this Court may grant habeas relief irrespective of the statutory detention framework. 8 USC § 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, Petitioner faces indefinite detention without meaningful process—precisely the scenario the Due Process Clause and the Great Writ were designed to prevent.

C. The Fifth Circuit's Decision in *Buenrostro-Mendez* is distinguished from Petitioner's circumstances.

Buenrostro-Mendez is a statutory-interpretation decision addressing the interaction between 8 U.S.C. §§ 1225 and 1226 for purposes of bond eligibility; it does not resolve the constitutional question presented here. *See generally Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. Feb. 6, 2026). In any event, Petitioner's posture is materially different, he has lived in the United States since he was eight years old. He was adopted by U.S. citizen parents and eventually granted Deferred Action for Childhood Arrivals (DACA). Petitioner came into immigration custody as the result of a misdemeanor assault plea. Petitioner was turned over to ICE custody, placed in INA § 240 proceedings by an NTA on November 18, 2024, and released on an I-220A Order of Release on Recognizance. That sequence, detention, formal placement into § 240 proceedings, and an affirmative grant of liberty before later re-detention was not before the Fifth Circuit, and *Buenrostro-Mendez* did not address the due process implications of re-detaining someone after a period of community release without adequate safeguards. Accordingly, *Buenrostro-Mendez* cannot be treated as dispositive of the constitutionality of Petitioner's current detention.

D. Respondents' Reliance on *Thuraissigiam* Misconstrues the Entry Fiction and Does Not Foreclose Due Process Limits Where Petitioner Has a Protected Liberty Interest.

Respondents argue that Petitioner's due process claims fail because he is receiving process in immigration court and, as an "applicant for admission," his constitutional protections are limited to those Congress provided in the INA under *Dept' of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), with *Zadvydas v. Davis*, 533 U.S. 678 (2001), inapplicable under Fifth Circuit precedent. But that argument overreads *Thuraissigiam* and conflates admission procedures with detention.

The entry fiction only limits procedural due process rights "***regarding admission***," not with respect to detention. *Id.* at 140 (emphasis added). Noncitizens detained in the interior with

established ties retain a protected liberty interest that must be safeguarded through individualized process. *See, e.g.*, *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668 (W.D. Tex. 2025).

In *Thuraissigiam*, the respondent "never lived in, or been lawfully admitted to, the United States" and was placed directly into expedited removal proceedings under INA § 235(b)(1). *Thuraissigiam*, 591 U.S. at 109, 150. The Court reasoned that an alien detained shortly after unlawful entry cannot be said to have "effected an entry" and therefore has only those procedural due process rights "regarding admission" that Congress provided by statute. *Id.* at 140 (citing *Zadvydas*, 533 U.S. at 693). By contrast, Mr. Abraham has lived in the United States since DHS released him on May 27, 2022, and thus has a protected liberty interest under the Fifth Amendment—an issue not presented in *Thuraissigiam*.

Mr. Abraham's habeas petition does not ask this Court to reweigh discretionary executive factors or revisit a statutory eligibility determination. It challenges the lawfulness of his detention based on constitutional defects—claims that 8 U.S.C. § 1226(e) does not shield from judicial review, particularly where the Government has failed to carry out duties mandated by Congress.

III. CONCLUSION AND PRAYER

For the foregoing reasons, Petitioner respectfully requests that the Court dismiss Respondents' untimely Response and grant the Petition. Petitioner requests immediate release or such other habeas relief as the Court deems just and proper.

[*signature on following page*]

DATE: February 17, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2026, a true copy of the above Petitioner's Reply to Respondents' Response to the Petition for Writ of Habeas Corpus Considering Recent Fifth Circuit Precedent was filed via the Court's CM/ECF and that a copy will be sent automatically to all counsel of record.

DATE: February 16, 2026.

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