UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

KHANIF ANISI,

Petitioner,

-against-

TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement (ICE); MARCOS CHARLES, in his official capacity as Acting Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; ALEJANDRO N. MAYORKAS, Secretary, U.S. Department of Homeland Security; KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; and PAM BONDI, in her official capacity as Attorney General of the United States, the WARDEN of KARNES COUNTY IMMIGRATION PROCESSING CENTER, in their official capacity as custodian of petitioner, THE WARDEN OF THE FACILITY WHERE PETITIONER IS CURRENTLY DETAINED, in his or her official capacity as custodian of Petitioner

Case No.:SA-26-CV-542-OLG

Respondents.

PETITIONER'S REPLY TO FEDERAL RESPONDENTS' RESPONSE/OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

This reply is respectfully submitted in response to Federal Respondents' ("Respondents") Response/Opposition to Petitioner's Petition for Writ of Habeas Corpus ("Opposition"). In their Opposition, Federal Respondents argue that Petitioner is not entitled to release or a bond hearing and request that the Court deny the petition without an evidentiary hearing.

As a general matter, Respondents argue the petition must be denied because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and the Fifth Circuit's recently published decision in *Buenrostro-Mendez v. Bondi* holds that noncitizens who entered without admission remain "applicants for admission" and must be detained without bond until removal proceedings conclude. Respondents contend this binding precedent forecloses Petitioner's statutory arguments. Respondents further assert that the petition should be dismissed for failure to exhaust administrative remedies, arguing that Petitioner must first pursue relief before the immigration court and the BIA and that district courts lack jurisdiction to review discretionary custody determinations or unexhausted claims. For the following reasons, it is respectfully submitted that the Court should deny Respondents' opposition and grant the relief requested in the Petition.

ARGUMENT

As an initial matter, Petitioner concedes that, in light of the recent decision in *Buenrostro-Mendez*, Petitioner, as of the date of this reply, is not entitled to release or to a bond hearing based on a purely statutory argument that his detention is governed by 8 U.S.C. § 1226 rather than § 1225.

However, it is respectfully submitted that Petitioner is still entitled to release, or at a minimum to an individualized bond hearing, based on independent constitutional due process

grounds. As a threshold matter, the Fifth Circuit's decision in *Buenrostro-Mendez* does not require denial of the Petition in the instant matter because it addressed a materially different question. To wit, the panel's analysis in *Buenrostro-Mendez* was confined to the **statutory framework** governing detention under 8 U.S.C. §§ 1225 and 1226 and whether those provisions themselves independently entitle a detainee to a bond hearing. While the Fifth Circuit concluded that the statute does not require such a hearing, it **did not** hold that detention without adequate procedural safeguards is constitutional, nor did it foreclose habeas review based on independent constitutional claims grounded in the Fifth Amendment's Due Process Clause.

It is respectfully submitted that Petitioner's habeas claims in this matter do not rest solely on statutory interpretation (1225 vs 1226). As set forth in the Petition, Petitioner asserts that his continued detention, without a meaningful individualized custody determination and without constitutionally sufficient procedural protections, violates the Fifth Amendment. Even assuming *arguendo*, that detention is authorized by statute in the first instance under *Buenrostro-Mendez*, due process imposes independent limits on the duration and, importantly, manner of that detention. Critically, *Buenrostro-Mendez* did not address, much less resolve, that constitutional question.

It is further submitted that subsequent recent decisions from courts within this Circuit confirm this distinction. In Amin Ibrahim Hassen v. Kristi Noem, Secretary, U.S. Department of Homeland Security, et al., No. EP-26-CV-00048-DB (W.D. Tex. El Paso Div.), the district court granted a petition for a writ of habeas corpus on procedural due process grounds despite acknowledging *Buenrostro-Mendez*. The court held that while *Buenrostro-Mendez* affirmed the government's statutory interpretation regarding detention under 8 U.S.C. § 1225(b), it did not

change the outcome for claims based on constitutional procedural due process. The court reasoned that noncitizens who have established connections in the US by living here for a some period of time acquire a protected liberty interest, and that the government cannot revoke that liberty and return an individual to mandatory detention without an individualized determination of danger or flight risk. The court concluded that, even if the statutory reading in *Buenrostro-Mendez* is correct, a petitioner is still entitled to pursue an as-applied procedural due process challenge requiring the government to justify continued detention by clear and convincing evidence at a bond hearing.

Similarly, in Jose Rogelio Cumbe Lema v. Mary De Anda-Ybarra, et al., Cause No. EP-26-CV-249-KC (W.D. Tex. El Paso Div.), the district court granted habeas relief on procedural due process grounds and expressly found that *Buenrostro-Mendez* had no bearing on the constitutional right to a meaningful individualized custody determination. Although the court denied the petitioner's statutory claims in light of *Buenrostro-Mendez*, it distinguished the Fifth Circuit's ruling as limited strictly to statutory interpretation (i.e. 1225 vs 1226). Because the petitioner had lived in the US for certain period of time before being detained, the court held that his case was materially indistinguishable from prior precedents recognizing due process violations and ordered that he be provided a bond hearing at which the government must prove the necessity of continued detention by clear and convincing evidence.

These recent *post-Buenrostro-Mendez* decisions demonstrate that courts within this Circuit continue to distinguish between statutory arguments foreclosed by *Buenrostro-Mendez* and independent constitutional due process challenges that remain fully cognizable grounds for habeas relief. In the case at bar, as alleged in the Petition, Petitioner has continuously resided in

the US since at least November, 2023 following his entry and asylum application. He was released from DHS custody, lived openly in the interior of the country for several years, complied with all conditions of release, and had no criminal history before his warrantless re-arrest by ICE in November, 2025. His sudden re-detention, two years after his initial release and without any individualized custody determination, constitutes an arbitrary deprivation of liberty.

Petitioner's claim(s) therefore rest(s) on the Fifth Amendment's Due Process Clause. It goes without saying that having established substantial ties and continuous presence in the US for two years, Petitioner possesses a protected liberty interest in freedom from unjustified and indiscriminate re-detention. The government's decision to revoke that liberty and arbitrarily subject him to continued detention without prior notice, individualized findings, or a meaningful opportunity to be heard presents precisely the type of arbitrary confinement the Due Process Clause is designed to prevent. As stated above, this constitutional challenge is distinct from, and not resolved by, the holding in *Buenrostro-Mendez*, which addressed **only/primarily** statutory interpretation (1225 vs 1226) and did not foreclose independent due process claims.

Accordingly, because *Buenrostro-Mendez* addressed only the statutory question of whether the detention provisions themselves mandate a bond hearing, and did not decide whether detention without adequate procedural safeguards violates the Fifth Amendment, it does not mandate denial of the Petition in the instant case. The underlying facts of this case are virtually indistinguishable from those in *Amin Ibrahim Hassen* and *Jose Rogelio Cumbe Lem*a, and therefore militate in favor of the same outcome, namely, Petitioner's release or, at a minimum, a bond hearing.

Next, Respondents further assert that the petition should be dismissed for failure to exhaust administrative remedies, arguing that Petitioner must first pursue relief before the immigration court and the BIA and that district courts lack jurisdiction to review discretionary custody determinations or unexhausted claims. However, because "[n]othing in the record suggests that the BIA would reconsider [the Hurtado decision], given its recency," Petitioner's "failure to appeal in these circumstances [is not] counted as an impermissible failure to exhaust administrative remedies." Cabanas v. Bondi, Civil Action No. 4:25-cv-04830, 2025 U.S. Dist. LEXIS 223356, 2025 WL 3171331, at *3 (S.D. Tex. Nov. 13, 2025). In addition, "As in Fuentes v. Lyons, 5:25-cv-00153, Dkt. No. 15 (S.D. Tex. Oct. 16, 2025), the Court found that under relevant immigration law, exhaustion of administrative remedies is statutorily required only on appeals from final orders of removal. See Hniguira v. Mayorkas, 2024 U.S. Dist. LEXIS 49720, 2024 WL 1201634, at *6 (S.D. Tex. Mar. 20, 2024). And prudential exhaustion is not necessary where, as here, "the interests of the individual weigh heavily against requiring administrative exhaustion." See McCarthy v. Madigan, 503 U.S. 140, 145, 112 S. Ct. 1081, 117 L. Ed. 2d 291 (1992); Gallegos-Hernandez v. United States, 688 F.3d 190, 194 (5th Cir. 2012). Chavez v. Bondi, No. 5:25-CV-00227, 2025 U.S. Dist. LEXIS 264505, at *10 (S.D. Tex. Dec. 12, 2025).

Accordingly, Respondents' exhaustion argument fails for multiple independent reasons. First, no statute requires exhaustion in the context of a habeas challenge to detention that is not an appeal from a final order of removal. Second, where the BIA has recently issued binding precedent (Matter of YAJURE HURTADO) foreclosing the precise relief sought, further administrative review would be futile and need not be pursued. Third, district courts retain jurisdiction under 28 U.S.C. § 2241 to review constitutional and legal challenges to immigration detention, as opposed to discretionary factual determinations. Finally, given the substantial

liberty interest at stake and the ongoing deprivation of freedom without an individualized constitutional review, prudential exhaustion is unwarranted. For all of these reasons, dismissal on exhaustion grounds is improper.

CONCLUSION

In light of the foregoing, it is respectfully requested that the Court deny Respondents' opposition and grant the relief requested in the Petition.

Dated: February 16, 2026
Port Washington, New York

Respectfully submitted,

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