

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

Segundo Mariano Chachipanta,

Case No. 3:26-cv-00250-LS

Petitioner,

v.

**PETITIONER'S MOTION TO
ALTER OR AMEND JUDGMENT**

MARY DE ANDA-YBARRA, in her
official capacity as Field Office Director of
Enforcement and Removal Operations,
El Paso Field Office, Immigration and
Customs Enforcement, et al.,

Respondents.

Joshua K. Poertner
STINSON LLP
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402
Telephone: (612) 335-1500
joshua.poertner@stinson.com

Attorney for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	1
FACTUAL AND PROCEDURAL BACKGROUND.....	1
ARGUMENT	5
I. The Court’s acceptance of Respondents’ unsupported and disputed assertion that Petitioner “voluntarily departed” the United States is a manifest error of fact.	5
A. Petitioner did not knowingly sign voluntary departure documents.	6
B. Petitioner did not voluntarily sign departure documents.	6
II. The Court’s conclusion that this case is moot “[b]ecause Petitioner is no longer detained by Respondents” is a manifest error of law.....	8
III. Petitioner’s habeas petition should be granted on the merits.....	11
A. <i>Buenrostro-Mendez</i> does not preclude procedural due process claim.....	12
B. Petitioner has not received due process.	13
C. Petitioner’s removal violates procedural due process.....	15
1. Private Interest	16
2. Risk of Erroneous Deprivation	18
3. Government’s Interest.....	18
CONCLUSION	19

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Acosta Espana v. Ortega</i> , No. 1:26-CV-00300-DAE, 2026 WL 594362 (W.D. Tex. Mar. 2, 2026)	13
<i>Agnes Mbonjo Meliki v. Lyons</i> , No. 5:26-CV-0140-JKP, 2026 WL 690011 (W.D. Tex. Mar. 2, 2026)	13
<i>Aguirre-Guevara v. Oddo</i> , No. 3:26-CV-70, 2026 WL 376846 (W.D. Pa. Feb. 11, 2026).....	12
<i>Aroca v. Mason</i> , No. 2:26-CV-00057, 2026 WL 357872 (S.D.W. Va. Feb. 9, 2026).....	12
<i>Azua-Zuniga v. Bondi</i> , No. 1:26-CV-287-RP, 2026 WL 482453 (W.D. Tex. Feb. 20, 2026)	15
<i>Bacilio-Sabastian v. Barr</i> , 980 F.3d 480 (5th Cir. 2020)	11
<i>Banister v. Davis</i> , 590 U.S. 504 (2020).....	5
<i>Black v. Decker</i> , 103 F.4th 133 (2d Cir. 2024)	18
<i>Bonilla Conforme v. Anda-Ybarra</i> , No. EP-26-CV-263-KC, 2026 WL 381110 (W.D. Tex. Feb. 11, 2026).....	17
<i>Buenrostro-Mendez v. Bondi</i> , 166 F.4th 494 (5th Cir. 2026)	12, 13, 14, 15
<i>Cando v. Bondi</i> , No. 8:26-CV-46, 2026 WL 357551 (D. Neb. Feb. 9, 2026).....	12
<i>Carbajal v. Wimmer</i> , No. 2:26-CV-00093, 2026 WL 353510 (D. Utah Feb. 9, 2026).....	12
<i>Ceballos v. Garite</i> , 3:26-cv-00312-DM (W.D. Tex. Feb 10, 2026).....	17
<i>Chafin v. Chafin</i> , 568 U.S. 165 (2013).....	10
<i>Chang v. INS</i> , 264 F.3d 378 (3d Cir. 2001).....	9

<i>Chinchilla v. De Anda-Ybarra</i> , No EP-25-CV-00548-DB, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025)	17
<i>Clemente Ceballos v. Garite</i> , 3:26-cv-00312-DM, 2026 WL 446509 (W.D. Tex. Feb 10, 2026)	16
<i>Connecticut Dep't of Pub. Safety v. Doe</i> , 538 U.S. 1 (2003)	14
<i>Diaz Yanez v. Bondi</i> , No. EP-26-CV-00486-DB, 2026 WL 690005 (W.D. Tex. Mar. 4, 2026)	13, 14
<i>Emilio P. v. Bondi</i> , No. 26-CV-850, 2026 WL 593785 (D. Minn. Mar. 2, 2026)	15
<i>Esli D. B.G., v. Bondi</i> , No. 5:26-CV-05020-RAL, 2026 WL 734992 (D.S.D. Mar. 16, 2026)	12
<i>Gomez Hernandez v. ICE Field Off. Dir., El Paso, Texas</i> , No. EP-26-CV-67-KC, 2026 WL 503958 (W.D. Tex. Feb. 23, 2026)	14
<i>Hassen v. Noem</i> , 3:26-cv-00048-DB, 2026 WL 446506 (W.D. Tex. Feb. 9, 2026)	16, 17
<i>Hassen v. Noem</i> , 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026)	19
<i>Hernandez-Fernandez v. Lyons</i> , No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025)	17
<i>Matter of Life Partners Holdings, Inc.</i> , 926 F.3d 103 (5th Cir. 2019)	5
<i>Lopez Miranda v. Flores</i> , No. EP-CV-583-KC, 2025 WL 3901908 (W.D. Tex. Dec. 10, 2025)	16
<i>Lopez-Arevelo v. Ripa</i> , 801 F. Supp. 3d 668 (W.D. Tex. 2025)	14, 19
<i>Mansare v. Wofford</i> , No. 1:26-CV-0433 DJC CSK, 2026 WL 764765 (E.D. Cal. Mar. 18, 2026)	12
<i>Marceau v. Noem</i> , No. EP-26-CV-237-KC, 2026 WL 368953 (W.D. Tex. Feb. 9, 2026)	16, 17, 19
<i>Maria S. for E.H.F. v. Doe</i> , 267 F. Supp. 3d 923 (S.D. Tex. 2017), <i>aff'd but criticized sub nom. Maria S.</i> <i>as Next Friend for E.H.F. v. Garza</i> , 912 F.3d 778 (5th Cir. 2019)	6, 7

<i>Martinez v. Noem</i> , No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025)	16, 18
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	16, 18, 19
<i>Nicolas v. Noem</i> , No. 4:26-CV-00028-SEB-KMB, 2026 WL 364399 (S.D. Ind. Feb. 10, 2026)	12
<i>Nose v. Att’y Gen. of U.S.</i> , 993 F.2d 75 (5th Cir. 1993)	5, 6
<i>Ochoa v. Vergara</i> , No. 1:26-CV-266-RP, 2026 WL 482211 (W.D. Tex. Feb. 20, 2026)	13, 15, 18
<i>Ortez v. Chandler</i> , 845 F.2d 573 (5th Cir. 1988)	10
<i>Perdomo-Casana v. Lyons</i> , No. 1:26-CV-345-RP, 2026 WL 607267 (W.D. Tex. Mar. 4, 2026)	14
<i>Pride Ngu Fon v. Olson</i> , No. CV 26-10-DLB, 2026 WL 370947 (E.D. Ky. Feb. 10, 2026)	12
<i>Rojas v. Noem</i> , No. EP-25-CV-443-KC, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025)	18
<i>Singh v. Baltazar</i> , No. 1:26-CV-00336-CNS, 2026 WL 352870 (D. Colo. Feb. 9, 2026)	12
<i>Singh v. McDaniel</i> , No. C26-0003-LTS, 2026 WL 369757 (N.D. Iowa Feb. 10, 2026)	12
<i>Singh v. Taylor</i> , No. EP-26-CV-00155-DB, 2026 WL 360913 (W.D. Tex. Feb. 9, 2026)	15, 17
<i>Smith v. Ashcroft</i> , 295 F.3d 425 (4th Cir. 2002)	9
<i>Sumit v. Maldonado</i> , No. 26-CV-650 (AMD), 2026 WL 371132 (E.D.N.Y. Feb. 10, 2026)	12
<i>Villegas Angel v. Noem</i> , No. 1:26-CV-00384-DAE, 2026 WL 594368 (W.D. Tex. Mar. 3, 2026)	13, 14
<i>Virani v. Huron</i> , No. SA-19-CV-00499-ESC, 2020 WL 7405655 (W.D. Tex. Dec. 17, 2020)	11

<i>Wekesa v. United States Att’y</i> , No. 22-10260, 2022 WL 17175818 (5th Cir. Nov. 22, 2022)	14
<i>Ying Fong v. Ashcroft</i> , 317 F. Supp. 2d 398 (S.D.N.Y. 2004), <i>amended on reconsideration in part</i> <i>sub nom. Fong v. Ashcroft</i> , No. 03-CV-7261 (AKH), 2004 WL 1348994 (S.D.N.Y. June 15, 2004).....	13, 14, 18
<i>Yociris P. v. Bondi</i> , No. 26-CV-1080, 2026 WL 327937 (D. Minn. Feb. 8, 2026)	12
<i>Zadvydas v. Davis</i> , 533 U.S. 678 (2001).....	13
<i>Zalawadia v. Ashcroft</i> , 371 F.3d 292 (5th Cir. 2004)	8, 9, 10
<i>Zamudio Sanchez v. Noem</i> , No. EP-25-CV-00403-DCG, 2026 WL 596133 (W.D. Tex. Mar. 2, 2026)	14, 16
<i>Zegarra-Gomez v. I.N.S.</i> , 314 F.3d 1124 (9th Cir. 2003)	9

Statutes and Rules

8 U.S.C. § 1182(a)(9)(A)	9
8 U.S.C. § 1225	14, 15
8 U.S.C. § 1225(b)	12, 13
8 U.S.C. § 1226(a)	1, 2
28 U.S.C. § 2241	8
28 U.S.C. § 2241(c)(3).....	8
Fed. R. Civ. P. 59(e)	1, 5

Petitioner Segundo Mariano Chachipanta (“Petitioner”) hereby moves the Court to alter or amend the judgment entered on February 25, 2026 (ECF No. 5), pursuant to Federal Rule of Civil Procedure 59(e).

INTRODUCTION

The Court dismissed this case as moot based on the government’s simple assertion that “it appears that Petitioner voluntarily departed from the United States on February 23, 2026, and is no longer in custody.” (ECF No. 3.) Petitioner did not voluntarily agree to his own removal and this case is not moot. The Court should order Respondents to facilitate the return to the Petitioner to the United States and grant the Petition for habeas corpus.

Petitioner is a citizen of Ecuador who has resided in the United States since 2010. (ECF No. 1.) On January 8, 2026, he was apprehended by immigration authorities in Minnesota and was then transferred to Camp East Montana in El Paso, Texas. (*Id.*) On January 30, 2026, Petitioner filed a Petition for Writ of Habeas Corpus and Complaint for Declaratory Relief (*Id.*) On February 23, 2026, Respondents filed a Response, styled as “Federal Respondents’ Advisal to the Court (ECF No. 3, “Advisal”). In their Advisal, Respondents state “it appears that Petitioner voluntarily departed from the United States on February 23, 2026, and is no longer in custody.” Respondents provide no documentation for this assertion, rather they simply argue that because “Petitioner is no longer in custody, his habeas petition is now moot and should be dismissed or denied as moot.” (ECF No. 3.) Respondents are wrong.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen of Ecuador who has resided in the United States since 2010. (ECF No. 1.) He has established his long-standing residence and livelihood in this country. (*Id.*) On January 8, 2026, he was apprehended by immigration authorities in Minnesota and was then

transferred the next day to the ICE El Paso Camp East Montana facility (“East Montana”) in El Paso, Texas. (Declaration of Segundo Mariano Chachipanta (“Chachipanta Decl.”) ¶ 6.)

During Petitioner’s first week at East Montana, on or about January 14, 2026, he was brought to a private room with one female Hispanic officer. (*Id.* ¶ 7.) While in that room, Petitioner was handcuffed by his hands and feet. (*Id.*) The officer presented Petitioner with paperwork in English. (*Id.*) The officer asked Petitioner if he knew how to speak English, and he informed the officer that he understood very little English. (*Id.*) The officer had a document and, nonetheless, began explaining the document to Petitioner in English. (*Id.*) Based on Petitioner’s understanding of what the officer said in English, Petitioner thought the officer said that if Petitioner signed the document, then he would be released from detention within 72 hours. (*Id.*) While the officer was explaining the document to Petitioner in English, Petitioner asked the officer if she could tell Petitioner what the document said in Spanish. (*Id.*)

At that point, the officer told Petitioner that he was a “racist.” (*Id.* ¶ 8.) Another officer then entered the room. (*Id.*) Petitioner was explicitly told that if he did not sign the document, then he would remain in detention for eighteen months. (*Id.*) Petitioner do not know what the document was that he was told to sign. (*Id.*) He was not permitted to call his children or his attorneys to discuss signing the document. (*Id.*) Petitioner felt the officers were forcing him to sign the document and maintains to this day that he was indeed forced to sign the document despite not wanting to do so. (*Id.*) Petitioner does not have any copies of the document he signed. (*Id.*)

On January 30, 2026, Petitioner filed a Petition for Writ of Habeas Corpus and Complaint for Declaratory Relief declaring his detention unlawful and requesting release from custody or alternatively a bond hearing pursuant to 8 U.S.C. § 1226(a) and the Due Process Clause. (ECF No. 1.) On February 3, the Court issued an order requiring Respondents to “show cause by

February 23, 2026, why the Court should not grant the relief Petitioner seeks by filing an answer or other responsive pleading.” (ECF No. 2.) The Court’s order did not address any right of reply, let alone provide as much to Petitioner. (*Id.*)

On or about February 3 or 4, Petitioner asked the officers at East Montana if there was anything he could do to inquire more about the documents he signed because he did not know what the documents said. (Chachipanta Decl. ¶ 10.) Petitioner spoke to a male Hispanic officer at East Montana at that time. (*Id.*) When Petitioner spoke to the officer, Petitioner also expressed his fear of returning to Ecuador. (*Id.*) The officer ignored Petitioner when Petitioner spoke to him. (*Id.*) There were other detainees who witnessed Petitioner talking to the officer. (*Id.*)

Petitioner also noted his fear of returning to Ecuador in writing. (*Id.* ¶ 11.) Using a tablet provided to Petitioner in East Montana, Petitioner wrote to ICE officials and expressed his fear of returning to Ecuador. (*Id.*) Petitioner also left a complaint in the comment section for the East Montana detention facility, where he was advised to leave complaints. (*Id.*)

On or about February 5, 2026, Petitioner was told to stand in a line. (*Id.* ¶ 13.) When Petitioner got to the front of the line, there was an officer with a laptop. (*Id.*) The officer asked Petitioner why he was afraid to return to Ecuador. (*Id.*) Petitioner began to explain that various politicians in Ecuador had been threatening Petitioner, which caused Petitioner to go into hiding. (*Id.*) But, before Petitioner could finish explaining, the officer shut the laptop and left. (*Id.*) Petitioner was never given another chance to articulate why he was fearful to return to Ecuador. (*Id.*)

On or about February 6, 2026, Petitioner received a notice that he was being assigned to a flight to return to Ecuador. (*Id.* ¶ 14.) Petitioner was provided with no further information at that time. (*Id.*) On the evening of February 22, 2026, officers told Petitioner to gather his belongings

because he was leaving the detention facility. (*Id.* ¶ 15.) Petitioner believed that he was being returned to Minnesota. (*Id.*) He kept asking officers for more information, but no one would answer any of his questions. (*Id.*) Petitioner asked why he was being transported when he knew the Court—*this Court*—set a deadline in Petitioner’s case—*this case*—for the following day. (*Id.*)

On February 23, 2026, Respondents’ deadline to respond to the Petition, Petitioner was transported to an airport at around 1:00 A.M. and removed to Ecuador. (*Id.* ¶ 16.)¹ Approximately 15 hours after Respondents removed Petitioner to Ecuador, Respondents filed what they labeled as “Federal Respondents’ Advisal to the Court” (the “Advisal”), which stated “it appears that Petitioner voluntarily departed from the United States on February 23, 2026, and is no longer in custody.” (ECF No. 3.) Despite suggesting they “may provide” documentation for that assertion “[s]hould the Court require” it, Respondents provided no documentation at that time. Respondents nonetheless claimed that “[b]ecause Petitioner is no longer in custody, his habeas petition is now moot and should be dismissed or denied as moot.” (*Id.*)

Two days later, on February 25, 2026, the Court accepted Respondents’ unsupported assertion and concluded the Petition was moot “[b]ecause Petitioner is no longer detained by Respondents.” (ECF No. 4.) “Consistent with [that] Order,” the Court entered final judgment and dismissed the case with prejudice the same day. (ECF No. 5.)

It took several days for Petitioner’s attorneys to finally connect with him over the phone because Petitioner was left without a phone or money. Since then, his legal team with Stinson LLP have communicated with him over the phone and WhatsApp to understand the circumstances of

¹ Petitioner was dropped off in a location that was eight hours away from where he previously resided in Ecuador, with no money and no phone. (*Id.*)

his removal and gather the facts described herein. Communication has been strained given that Petitioner was removed to Ecuador with no phone and no money.

LEGAL STANDARD

Rule 59(e) allows a litigant to file a “motion to alter or amend a judgment.” Fed. R. Civ. P. 59(e). “The Rule gives a district court the chance to rectify its own mistakes in the period immediately following its decision,” including “in habeas proceedings.” *Banister v. Davis*, 590 U.S. 504, 508 (2020) (quotation omitted). A Rule 59(e) motion is available “in habeas proceedings.” *Id.* at 513. Such a motion should be granted where the movant “clearly establish[es] either a manifest error of law or fact” or “present[s] newly discovered evidence,” though “cannot be used to raise arguments which could, and should, have been made before the judgment issued.” *Matter of Life Partners Holdings, Inc.*, 926 F.3d 103, 128 (5th Cir. 2019) (quotation omitted).

ARGUMENT

I. The Court’s acceptance of Respondents’ unsupported and disputed assertion that Petitioner “voluntarily departed” the United States is a manifest error of fact.

Petitioner did not “voluntarily depart” the United States because he did not sign voluntary departure documentation knowingly and voluntarily. Individuals who enter the United States unlawfully have due process protections, including a right to a hearing before an immigration judge before being deported, under the Fifth Amendment. *Nose v. Att’y Gen. of U.S.*, 993 F.2d 75, 78 (5th Cir. 1993). Those due process rights may be waived if the waiver was *knowing and voluntary*. *Id.* A court will consider factors like “party’s background and experience, clarity of written waiver agreement, and whether party was represented by or consulted by an attorney” when determining if a waiver was *knowing*. *Id.* Courts must “indulge in every reasonable presumption against a waiver.” *Id.*

A. Petitioner did not knowingly sign voluntary departure documents.

In *Nose*, the court held that the plaintiff knowingly waived her Fifth Amendment due process rights because she “(1) was a highly educated person who had received a nursing degree, studied English for over two years at a major United States university, and subsequently passed a state English proficiency exam; (2) the [waiver] forms Nose signed clearly stated that: ‘I am waiving my rights to ... a hearing before an Immigration Judge to determine my admissibility or deportability,’ and ‘I have read and understood all the questions and statements on this form;’ and (3) she was able to consult with an attorney.” *Id.* at 79.

Here, none of these factors are present. Petitioner does not have the educational background or familiarity with English as the plaintiff in *Nose*. Petitioner’s highest level of education is elementary school, and he most recently worked as a construction worker in Minnesota. (Chachipanta Decl. ¶ 4.) The document Petitioner signed was unclear to Petitioner because he did not read English, the document was not explained to him in Spanish, and he does not know what document he signed. (*Id.* ¶¶ 7-8.) Petitioner was not able to consult with a lawyer or family before signing the documents. (*Id.* ¶ 8.) In fact, the process may well have been rushed to prevent petitioner from consulting with his attorney. Therefore, petitioner did not *knowingly* sign the documents provided by ICE officials.

B. Petitioner did not voluntarily sign departure documents.

For the *voluntariness* requirement, the Fifth Circuit applies a “totality of the circumstances” test. *Maria S. for E.H.F. v. Doe*, 267 F. Supp. 3d 923, 934 (S.D. Tex. 2017), *aff’d but criticized sub nom. Maria S. as Next Friend for E.H.F. v. Garza*, 912 F.3d 778 (5th Cir. 2019). Factors include: “(1) the existence of threats of violence, (2) the exertion of improper influence, (3) length of detention, (4) location of detention, and (5) the [individual’s] maturity, education, and physical and mental condition.” *Id.* at 946 (citing *Streetman v. Lynaugh*, 812 F.2d 950, 957

(5th Cir. 1987)). The waiver is voluntary if it is a “free and rational choice” and not the product of coercion. *Id.* (citing *United States v. Anderson*, 755 F.3d 782, 790 (5th Cir. 2014)).

In *Maria S.*, the court focuses on several key facts to determine that the plaintiff voluntarily signed a Form I-826, which facilitates the “voluntary return to one’s country of origin.” *Id.* at 928. Firstly, the I-826 Form presented to the plaintiff in *Maria S.* was translated into Spanish, and she could read the document in Spanish. *Id.* at 948. Secondly, the plaintiff had been removed twice before, had signed this exact I-826 Form twice before, and understood that filling out the document and checking the box for voluntary departure would result in her removal, despite her expressed fear of return to her home country. *Id.* Thirdly, the court found that the length, location, and manner of the plaintiff’s detention, which was less than one day, did not tip the balance toward finding that the plaintiff was coerced, especially because she was not physically restrained. *Id.* at 948-49. Additionally, the plaintiff was not restrained at all, therefore the “entire process was devoid of physical hardship.” *Id.* at 948. Finally, the court found that the plaintiff in *Maria S.* was not represented by counsel, but was permitted to call a family member and thus “performed a ‘cost-benefit’ analysis of her available options.” *Id.* at 952.

Here, in contrast and unlike the plaintiff in *Maria S.*, Petitioner could not read or understand the document because it was not translated into Spanish for him or explained orally in Spanish to him despite his repeated requests for an explanation or a translation in Spanish. (Chachipanta Decl. ¶ 7.) Petitioner had never encountered the document previously because he has never been removed from the United States before this. Moreover, Petitioner was detained for at least six days, far longer than the Plaintiff in *Maria S.*, before he was presented with the document at issue, and he was specifically warned that if he did not sign the document, he would continue to be detained for at least eighteen months. (*Id.* ¶¶ 6-8.) The threat of prolonged detention is inherently coercive.

Moreover, he was handcuffed by his hand and feet while he was coerced into signing the document. (*Id.* ¶ 7.) Based on the explanation provided by the officer, he understood that signing the document would facilitate his release within 72 hours, but he was not understand that it would result in his return to Ecuador. (*Id.* ¶¶ 7-8.) Furthermore, Petitioner was given no opportunity to call his attorneys or family members before signing the document, and was not permitted to review the document at a later date after he had the opportunity to make phone calls. (*Id.* ¶¶ 8, 10.) Finally, the ICE officials ignored Petitioner when expressed his fear of returning to Ecuador, and officers walked away before Petitioner was given the chance to fully explain why his fear was credible. (*Id.* ¶¶ 10-11, 13.) Therefore, ICE officials did not provide Petitioner with the opportunity to explain why he feared returning to Ecuador, contributing to his mental distress. (*Id.* ¶ 8.)

All of these factors, including the threats by ICE officials, created a coercive environment and caused Petitioner to experience mental distress. Therefore, Petitioner did not sign the provided documents knowingly and voluntarily and so could not have “voluntarily departed” the United States.

II. The Court’s conclusion that this case is moot “[b]ecause Petitioner is no longer detained by Respondents” is a manifest error of law.

The Court’s habeas jurisdiction in this case was determined at the time Petitioner filed his Petition and is not defeated by Respondents’ subsequent unconsented removal of Petitioner from the United States. The statutory text of 28 U.S.C. § 2241 confers jurisdiction upon federal courts to grant writs of habeas corpus to individuals held “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). “The Supreme Court has made it clear that the ‘in custody’ determination is made at the time the habeas petition is filed.” *Zalawadia v. Ashcroft*, 371 F.3d 292, 297 (5th Cir. 2004) (citing *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)). Courts retain habeas jurisdiction even if the petitioner is removed from the country, so long as the

petition was filed while the petitioner was in custody. *Zalawadia*, 371 F.3d at 297; *see also Chang v. INS*, 264 F.3d 378, 382 (3d Cir. 2001) (same); *Zegarra-Gomez v. I.N.S.*, 314 F.3d 1124, 1127 (9th Cir. 2003) (“case or controversy requirement is satisfied where the petitioner is deported, so long as he was in custody when the habeas petition was filed and continues to suffer actual collateral consequences of his removal.”); *Smith v. Ashcroft*, 295 F.3d 425, 428 (4th Cir. 2002) (finding that jurisdiction existed despite removal because “Smith was in custody at the time the petition was filed, and though Smith is no longer in the United States, he is unmistakably affected by the legal implications of our decision.”). Were the rule otherwise, the government could unilaterally divest federal courts of jurisdiction simply by executing a removal order while habeas proceedings are pending. Such a result would undermine the constitutional function of habeas corpus and incentivize the government to act in haste to avoid judicial scrutiny of potentially unlawful conduct. Courts have rightly rejected this outcome and found that deported habeas petitioners remain with the court’s habeas jurisdiction as long as their petitions were filed while they were still in custody.

To establish jurisdiction after removal, a petitioner must demonstrate a concrete and continuing injury other than detention. *Zalawadia*, 371 F.3d at 297 (finding that petitioner’s “deportation bars him from seeking reentry into the United States for a period of five years...[which] constitutes a cognizable collateral consequence; as such, his petition presents a live case or controversy and is not moot.”) (citing 8 U.S.C. § 1182(a)(9)(A)(i)). Similarly here, Petitioner may be considered “ineligible to be admitted to the United States” because he has been “previously removed.” 8 U.S.C. § 1182(a)(9)(A). Petitioner thus has a concrete and continuing injury other than detention.

The Court's Order dismissing this case cites *Ortez v. Chandler*, 845 F.2d 573, 575 (5th Cir. 1988) for the proposition that a "habeas petition becomes moot when the habeas relief requested can no longer be effected." (ECF No. 4.) *Ortez* is inapposite because the petitioner was not challenging his deportation. In *Ortez*, the petitioner challenged the bond set at his deportation hearing, and he argued that "the new bond conditions were thus imposed in violation of due process." *Ortez*, 845 F.2d at 574. The Fifth Circuit specifically found petitioner's case to be moot because he "challenges a bond determination not deportation, ... he himself requested deportation while his appeal was pending ..., and [petitioner] has not placed the issue of his deportation before this court." *Id.* at 575. The Fifth Circuit held: "It is *not* the fact that Garay Ortez has been deported that renders this appeal moot; we do not decide that question. Rather, it is the fact that the habeas relief he requests-reduction of his bond-can no longer be effected." *Id.* (emphasis added). Unlike the petitioner in *Ortez* who simply contested his bond amount, Petitioner here challenged his detention, and now removal, on due process grounds. Petitioner never voluntarily consented to his removal and has a continuing injury because his deportation bars him from reentry into the U.S. *Zalawadia*, 371 F.3d at 297. Therefore, petitioner's case is not moot.

Additionally, the Court's Order dismissing this case cites *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) for the proposition that "a case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." (ECF No. 4.) This case is cited for a general statement of the mootness doctrine, however the substance of the case involves the Hague Convention of the Civil Aspect of International Child Abduction and whether the parties' child should live in the United States or United Kingdom. For the reasons discussed above, the facts of petitioner's case are inapposite, and he still suffers a concrete and continuing injury due to his inability to reenter the United States.

Similarly, Respondents cite *Bacilio-Sabastian v. Barr*, 980 F.3d 480, 483 (5th Cir. 2020) for the proposition that “[b]ecause Petitioner is no longer in custody, his habeas petition is now moot and should be dismissed or denied as moot.” However, the holding of *Bacilio-Sabastian* is not applicable here. In *Bacilio-Sabastian*, petitioners argued that despite being released, they continued to suffer collateral consequences because they could not seek work authorization, and that these collateral consequences are a continuing injury. *Id.* at 483. The Fifth Circuit found that “aliens who are released from ICE custody can[not] maintain a habeas petition by showing collateral consequences [and] even if they could demonstrate collateral consequences, they have not done so here because any work authorization is subject to [USCIS] discretion.” *Id.* To put it mildly, being released from custody is distinct from being coerced into “voluntary” departure. Unlike the petitioners in *Bacilio-Sabastian*, Petitioner here makes no argument as to collateral consequences of his detention, but rather his continuing injury stems from his inability to reenter the U.S. due to his involuntary removal while his habeas petition was pending before this Court.

Respondents also cite *Virani v. Huron*, No. SA-19-CV-00499-ESC, 2020 WL 7405655, at *3 (W.D. Tex. Dec. 17, 2020) for the same proposition. Again, the case is not relevant to the dispute here. In that case, the petitioner was released from custody on bond, which was his requested relief in his petition. Here, Petitioner requested release or a bond hearing in his Petition (ECF No. 1), but instead he was removed to Ecuador, despite this pending proceeding.

In sum, this court maintains jurisdiction over this matter because it is undisputed that the Petition was filed while Petitioner was in custody at East Montana and Petitioner continues to suffer a concrete and continuing injury because he cannot reenter the United States.

III. Petitioner’s habeas petition should be granted on the merits

Petitioner anticipates that Respondents may argue that even if the Court exercises jurisdiction and finds that the Petition is not moot, it should be denied on the merits following the

Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), which was decided after the Petition was filed. Petitioner reserves his arguments regarding the applicability of 8 U.S.C. § 1225(b) and reiterates his arguments that, separate from violating the statutes, his detention violates his procedural due process rights. (ECF No. 1.)

A. *Buenrostro-Mendez* does not preclude procedural due process claim

Petitioner first contends that the Fifth Circuit's recent decision in *Buenrostro-Mendez* was decided incorrectly. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). Since the *Buenrostro-Mendez* panel's decision, it has received overwhelmingly negative treatment. *See e.g. Singh v. Baltazar*, No. 1:26-CV-00336-CNS, 2026 WL 352870, at *4 (D. Colo. Feb. 9, 2026); *Nicolas v. Noem*, No. 4:26-CV-00028-SEB-KMB, 2026 WL 364399, at *3 n.3 (S.D. Ind. Feb. 10, 2026); *Yociris P. v. Bondi*, No. 26-CV-1080 (ECT/EMB), 2026 WL 327937, at *2 (D. Minn. Feb. 8, 2026); *Cando v. Bondi*, No. 8:26-CV-46, 2026 WL 357551, at *5 (D. Neb. Feb. 9, 2026); *Esli D. B.G., v. Bondi*, No. 5:26-CV-05020-RAL, 2026 WL 734992, at *5 (D.S.D. Mar. 16, 2026); *Aroca v. Mason*, No. 2:26-CV-00057, 2026 WL 357872, at *15 n.40 (S.D.W. Va. Feb. 9, 2026); *Aguirre-Guevara v. Oddo*, No. 3:26-CV-70, 2026 WL 376846, at *1 (W.D. Pa. Feb. 11, 2026); *Mansare v. Wofford*, No. 1:26-CV-0433 DJC CSK, 2026 WL 764765, at *4 (E.D. Cal. Mar. 18, 2026); *Singh v. McDaniel*, No. C26-0003-LTS, 2026 WL 369757, at 1 n.2 (N.D. Iowa Feb. 10, 2026); *Pride Ngu Fon v. Olson*, No. CV 26-10-DLB, 2026 WL 370947, at *7 n.6 (E.D. Ky. Feb. 10, 2026); *Carbajal v. Wimmer*, No. 2:26-CV-00093, 2026 WL 353510, at *8 (D. Utah Feb. 9, 2026); *Sumit v. Maldonado*, No. 26-CV-650 (AMD), 2026 WL 371132, at *2 n.4 (E.D.N.Y. Feb. 10, 2026). Notwithstanding this rejection of *Buenrostro-Mendez* by courts across the country, *Buenrostro-Mendez* did not address and does not foreclose the due process claim raised in the Petition in this case, and relief should be granted, as Petitioner's mandatory detention without an

individualized determination and involuntary removal without any formal process violate his procedural due process rights.

B. Petitioner has not received due process.

“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). “Noncitizens are entitled to due process of the law under the Fifth Amendment.” *Ochoa v. Vergara*, No. 1:26-CV-266-RP, 2026 WL 482211, at *2 (W.D. Tex. Feb. 20, 2026) (citing *Trump v. J. G. G.*, 604 U.S. 670, 673 (2025)). Even when the government alleges that a person is detained pursuant to a statute, “it is for the courts to decide whether the constitutional protections afforded pursuant to a given statute are adequate.” *Villegas Angel v. Noem*, No. 1:26-CV-00384-DAE, 2026 WL 594368, at *3 (W.D. Tex. Mar. 3, 2026). “Just as the Constitution requires the government to afford notice of any action against an alien, so too it requires an opportunity for the alien to be heard.” *Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 403 (S.D.N.Y. 2004), *amended on reconsideration in part sub nom. Fong v. Ashcroft*, No. 03-CV-7261 (AKH), 2004 WL 1348994 (S.D.N.Y. June 15, 2004) (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)).

Courts in this District have consistently held that persons detailed under § 1225(b)(2)(A) may bring procedural due process claims under the Fifth Amendment to challenge the lawfulness of their detention, and that the Fifth Circuit’s decision in *Buenrostro-Mendez* has not precluded these constitutional claims. *Agnes Mbonjo Meliki v. Lyons*, No. 5:26-CV-0140-JKP, 2026 WL 690011, at *3 (W.D. Tex. Mar. 2, 2026) (“*Buenrostro-Mendez*...does not preclude constitutional claims”); *Diaz Yanez v. Bondi*, No. EP-26-CV-00486-DB, 2026 WL 690005, at *1 (W.D. Tex. Mar. 4, 2026) (“*Buenrostro-Mendez* does not change this case’s outcome on procedural due process grounds.”); *see also Acosta Espana v. Ortega*, No. 1:26-CV-00300-DAE, 2026 WL 594362, at *3

(W.D. Tex. Mar. 2, 2026) (“Although Federal Respondents insist that Petitioner’s due process claim is ‘entirely derivative’ of his statutory claim, that is not so. Petitioner’s claim is constitutional, not statutory, in nature.”); *Gomez Hernandez v. ICE Field Off. Dir., El Paso, Texas*, No. EP-26-CV-67-KC, 2026 WL 503958, at *1 (W.D. Tex. Feb. 23, 2026) (“this Court, in its many immigration habeas decisions, has granted relief on procedural due process grounds, not statutory grounds.”); *Perdomo-Casana v. Lyons*, No. 1:26-CV-345-RP, 2026 WL 607267, at *5 (W.D. Tex. Mar. 4, 2026).²

Most importantly, the Fifth Amendment requires that the opportunity for a non-citizen to be heard must be “meaningful...that is, an ‘opportunity...granted at a meaningful time in a meaningful manner.’” *Ying Fong*, 317 F.Supp.2d at 403 (quoting *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437 (1982)). Here, there is no dispute that Petitioner has had no meaningful opportunity to contest his detention or removal.

² To the extent that Respondents argue that *Connecticut Dep’t of Pub. Safety v. Doe*, 538 U.S. 1 (2003) and *Wekesa v. United States Att’y*, No. 22-10260, 2022 WL 17175818 (5th Cir. Nov. 22, 2022) are controlling for due process claims brought by immigrants detained under § 1225, courts in this District have consistently rejected these arguments. *Perdomo-Casana*, 2026 WL 607267, at *4 (“The Court finds neither of these arguments to be persuasive.”); *Gomez Hernandez*, 2026 WL 503958, at *1 (W.D. Tex. Feb. 23, 2026) (“the Court does not find Doe applicable.”); *Diaz Yanez v. Bondi*, 2026 WL 690005, at *2 (W.D. Tex. Mar. 4, 2026) (“The Court need not look any further to determine Connecticut Department of Public Safety does not save the day.”); *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 683 (W.D. Tex. 2025) (“The Court does not find the Wekesa opinion persuasive because it did not discuss the due process issue at all...”); *Villegas Angel v. Noem*, 2026 WL 594368, at *3 (“...this Court does not find Wekesa persuasive.”) Similarly, to the extent that Respondents argue that Petitioner’s claim is properly characterized as a substantive due process claim, courts in this District have rejected these arguments. *Villegas Angel v. Noem*, 2026 WL 594368, at *3 (“Petitioner is challenging the process that is due to him before he can be deprived of a protected interest—his liberty. That is squarely a procedural due process claim.”); *Zamudio Sanchez v. Noem*, No. EP-25-CV-00403-DCG, 2026 WL 596133, at *11 (W.D. Tex. Mar. 2, 2026) (granting petitioner’s release on procedural, rather than substantive, due process grounds). Accordingly, Petitioner’s Fifth Amendment procedural due process claim is not foreclosed by *Buenrostro-Mendez* or any other authority.

C. Petitioner's removal violates procedural due process.

Petitioner was removed from the United States while the instant habeas petition was pending and without any formal process, except Respondents' disputed claim that Petitioner voluntarily consented to his removal. The Court in *Emilio P. v. Bondi*, No. 26-CV-850 (JMB/SGE), 2026 WL 593785 (D. Minn. Mar. 2, 2026) addressed a substantially similar situation. In that case, ICE similarly asked the petitioner to sign a voluntary departure form (I-210), but did not permit him to make any calls before signing, did not provide him with a version of the document in Spanish, and never provided him with a copy of the document after he signed. *Id.* at *2. The court found that petitioner did not know of or understand the provisions in the form or "the consequences for failing to comply with voluntary departure or for re-entering the United States illegally." *Id.* The court granted petitioner's habeas petition and ordered petitioner released, however ICE proceeded to return petitioner to Mexico. *Id.* The Court ultimately ordered the government to allow the petitioner to reenter the U.S., facilitate his travel and bear the cost, and refrain from detaining the petitioner upon his reentry. Similarly here, the Respondents have violated Petitioner's rights in the same manner and the appropriate remedy would be to grant Petitioner's habeas petition and order ICE to facilitate his return to the U.S.

The Fifth Circuit's decision in *Buenrostro-Mendez* did not address, and therefore does not foreclose, the procedural due process argument that an immigrant detained under § 1225 is entitled to challenge his detention or receive bond hearing as a matter of constitutional law. As noted above, multiple federal courts, including those in the Fifth Circuit, have granted habeas relief on procedural due process grounds, even in light of the Fifth Circuit's decision in *Buenrostro-Mendez*. See, e.g., *Azua-Zuniga v. Bondi*, No. 1:26-CV-287-RP, 2026 WL 482453, at *2-4 (W.D. Tex. Feb. 20, 2026); *Ochoa v. Vergara*, No. 1:26-CV-266-RP, 2026 WL 482211, at * (W.D. Tex. Feb. 20, 2026); *Singh v. Taylor*, No. EP-26-CV-00155-DB, 2026 WL 360913, at *4 (W.D. Tex. Feb. 9,

2026); *Hassen v. Noem*, 3:26-cv-00048-DB, 2026 WL 446506, at *4 n.1 (W.D. Tex. Feb. 9, 2026); *Clemente Ceballos v. Garite*, 3:26-cv-00312-DM, 2026 WL 446509, at *3 n.2 (W.D. Tex. Feb 10, 2026); *Marceau v. Noem*, No. EP-26-CV-237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026). These decisions confirm that denial of Petitioner's request for a bond hearing violates procedural due process as applied to a non-citizen.

In making this determination, courts apply the three-part test set forth in *Mathews* which analyzes the following factors: (1) "the private interest that will be affected by the official action"; (2) "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 (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, at 335 (1976). This same test is applied to challenge Petitioner's removal on due process grounds. All three of the *Mathews* factors weigh in favor of Petitioner and therefore Petitioner's due process claim should not be denied.

1. Private Interest

Petitioner has a private interest in being free from illegal detention and remaining in his community with his family without being subject to unlawful removal. "'The interest in being free from physical detention' is 'the most elemental of liberty interests.'" *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, *2 (W.D. Tex. Sept. 8, 2025) (quoting *Hamdi v. Rumsfeld*, 543 U.S. 507, 529 (2004)). "Civil detainees possess a cognizable interest in their physical freedom during the pendency of their removal proceedings." *Zamudio Sanchez*, 2026 WL 596133, at *12 (W.D. Tex. Mar. 2, 2026). Regardless of citizenship status, a person has a protected liberty interest in their freedom when they have spent time living, working, or supporting a family in the interior of the United States. *See, e.g., Lopez Miranda v. Flores*, No. EP-CV-583-KC, 2025 WL 3901908,

*3 (W.D. Tex. Dec. 10, 2025) (“[T]his Court has already held that noncitizens acquire a protectable liberty interest when they spend years establishing a life in the interior of the United States, regardless of their citizenship status.”); *Chinchilla v. De Anda-Ybarra*, No EP-25-CV-00548-DB, 2025 WL 3645178, *4 (W.D. Tex. Dec. 16, 2025) (finding noncitizen has a protectable liberty interest because he was “living in the United States for over four years and attends his local church”); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, *9 (W.D. Tex. Oct. 21, 2025) (“Because he spent nearly three years at liberty in the United States, [petitioner] possesses a cognizable interest in his freedom from detention.”).

Nothing in *Buenrostro*’s holding or reasoning alters this. *Hassen v. Noem*, 3:26-cv-00048-DB, 2026 WL 446506, at *4 (W.D. Tx. Feb. 9, 2026); *Berting Marceau v. Noem*, No. EP-26-CV-237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026); *Bonilla Conforme v. Anda-Ybarra*, No. EP-26-CV-263-KC, 2026 WL 381110, at *1 (W.D. Tex. Feb. 11, 2026); *Singh v. Taylor*, No. EP-26-CV-00155-DB, 2026 WL 360913, at *1 (W.D. Tex. Feb. 9, 2026); *Ceballos v. Garite*, 3:26-cv-00312-DM at *3 n.2 (W.D. Tex. Feb 10, 2026). For example, in *Hassen*, the Court recognized that “non-citizens who have ‘established connections’ in the United States by virtue of living in the country for a substantial period acquire a liberty interest in being free from government detention without due process of law” and held that Hassen, who lived in the United States for over a year, had met the threshold to acquire such a liberty interest. *Hassen v. Noem*, 2026 WL 446506, at *3.

Here, Petitioner has lived in the United States for over 15 years and has built ties in his community. (ECF No. 1). Therefore, he has acquired the same liberty interest which entitles him to be free from physical detention and free from unlawful removal without due process of law.

2. Risk of Erroneous Deprivation

Under the second factor in the *Mathews* test, the Court considers “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.” *Martinez v. Noem*, 2025 WL 2598379, at *3 (quoting *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. May 21, 2025)). “Petitioner lacks any opportunity to contest the reasonableness of his detention, meaning the risk of erroneous deprivation lies in this ‘automatic continued deprivation of liberty for a noncitizen.’” *Ochoa v. Vergara*, 2026 WL 482211, at *2 (W.D. Tex. Feb. 20, 2026) (citing *Vieira v. De Anda-Ybarra*, 806 F. Supp. 3d 690, 701 (W.D. Tex. 2025)). Removing Petitioner while his habeas petition is pending and refusing to meaningfully engage with Petitioner’s legal arguments regarding his detention creates a high risk of erroneous deprivation of Petitioner’s rights. *See Ying Fong*, F.Supp.2d at 403 (non-citizen must be provided meaningful opportunity to be heard).

3. Government’s Interest

Respondents “ha[ve] an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community,” but such interest would be appropriately addressed through a bond hearing as the purpose of the hearing is to make such a determination. *Rojas v. Noem*, No. EP-25-CV-443-KC, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025) (citing *Martinez*, 2025 WL 2598379 at *4). Instead of going through any kind of formal process, Respondents instead deported Petitioner without providing him a meaningful opportunity to be heard. Not only have Respondents provided no opportunity to assess whether Petitioner is a flight risk or a danger to the community, Respondents have made no argument to that effect. “Where the noncitizen poses no danger and is not a flight risk, all the government does in requiring detention is separate families and remove from the community breadwinners, caregivers, parents, siblings and employees.” *Black v. Decker*, 103 F.4th 133, 154 (2d Cir. 2024) (internal quotations omitted).

Importantly, requiring a meaningful opportunity for an individualized assessment would impose only incremental costs resulting because “in immigration court, custody hearings are routine and impose a ‘minimal’ cost.” *Lopez-Arevelo*, 801 F. Supp. at 687 (quoting *Singh v. Andrews*, No. 25-cv-801, 2025 WL 1918679, *8 (E.D. Cal. July 11, 2025) (quoting *Doe v. Becerra*, 787 F.Supp.3d 1083 (E.D. Cal. Mar. 3, 2025))). Therefore, the third and final *Mathews* factor also weighs in Petitioner’s favor.

CONCLUSION

For the foregoing reasons, the Court should grant Petitioner’s motion to alter or amend the judgment. The altered judgment should order Respondents to facilitate and effectuate Petitioner’s immediate return to the United States and grant the Petition, thereby requiring Petitioner’s immediate release in Minnesota or, in the alternative, a bond hearing before an immigration judge at which the government shall bear the burden of justifying, by clear and convincing evidence, the dangerousness or flight risk for Petitioner’s continued detention. *See e.g.* Order, *Hassen v. Noem*, 3:26-cv-00048-DB, at *4-5 (W.D. Tex. Feb. 9, 2026); *Berting Marceau*, No. EP-26-CV-237-KC, 2026 WL 368953, at *2.

Date: March 25, 2026

Respectfully submitted,

/s/ Joshua K. Poertner

Joshua K. Poertner
STINSON LLP
50 South Sixth Street, Suite 2600
Minneapolis, Minnesota 55402
(612) 335-1500
joshua.poertner@stinson.com

Attorney for Petitioner