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I. INTRODUCTION

The Petitioner filed his habeas petition on January 30, 2026. Dkt. 1. The Court entered a show cause order requiring the Government respond on or before February 6, 2026. Dkt. 4. The Respondents filed their opposition to the grant of the petition on February 6, 2026. Dkt. 6. The Court ordered Petitioner to submit supplemental briefing in light of the decision *Buenrostro-Mendez v. Bondi*, --- F.4th ---, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026) elaborating on his due process claims, his claim under Maldonado Bautista, and his APA as independent grounds for release on or before February 16, 2026. The Respondents may file their response on or before February 27, 2026. Dkt. 7. Petitioner now files this Supplemental Brief on February 16, 2026.

It is anticipated that the Respondents will argue that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) in accordance with the recent Fifth Circuit Court of Appeals holding. *Buenrostro v. Bondi*, No. 25-20496, ---- F.4th ---- 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026). Respondents will also likely also assert that Petitioner's detention does not violate his due process rights because he is only entitled to due process provided in the statute citing *Department of Homeland Security v. Thuraissigiam* and several district courts.

Although *Buenrostro* forecloses a statutory basis for release in the Fifth Circuit for now, it leaves untouched the constitutional limits on immigration detention. Procedural due process remains a viable and effective ground for habeas relief, as reflected in numerous recent decisions within the Fifth Circuit. *Thuraissigiam* does not foreclose Petitioner's due process argument. *Thuraissigiam* was detained upon entry and subject to credible fear interview. When he did not pass the interview and was ordered removed, he sought habeas to review that denial and request relief. In Petitioner's case, he entered the United States

without inspection in 2008. He has resided in the country for 18 years. He is well established in the community and has deep ties in the Austin area. He is eligible for cancellation of removal for certain non-legal permanent residents based on his United States citizen children. His habeas petition is not attacking a removal order as Thuraissigiam did. Petitioner is challenging his mandatory detention. Petitioner re-urges his arguments that his due process rights are violated by his mandatory detention under 8 U.S.C. §1225.

II. ARGUMENTS

A. *Buenrostro* does not address the claims that Petitioner's detention violates his as applied Fifth Amendment right to procedural due process

Buenrostro does not address, and therefore does not foreclose, the argument that an immigrant detained under 8 U.S.C. § 1225 is entitled to release, as a matter of constitutional law. Nor does it diminish the long-standing role of habeas corpus as a foundational mechanism for challenging unlawful executive detention. All persons within the United States possess a cognizable, protectable liberty interest in freedom from physical restraint in the most basic constitutional sense, and habeas corpus remains the fundamental instrument for safeguarding that liberty by ensuring immigration detention is not arbitrary, unlawful, or inconsistent with due process.

In line with this principle, multiple federal courts in the Fifth Circuit have granted habeas relief on procedural due process grounds notwithstanding the statutory limitations addressed in *Buenrostro*. See *Hassen v. Noem*, 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026) (granting habeas relief after acknowledging the Fifth Circuit's precedential decision in *Buenrostro* and noting the case "does not change the case's outcome on procedural due process grounds."); *Clemente Ceballos v. Garite*, 3:26-cv-00312-DB (W.D. Tex. Feb 10, 2026) (also granting habeas relief after acknowledging the Fifth Circuit's precedential decision in *Buenrostro* and noting the case "does not change the case's outcome on procedural due process grounds."); *Singh v. Taylor*, 2026 WL 360913 (W.D. Tex. Feb. 9, 2026); *Santiago v. Noem*, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025);

Hernandez-Fernandez v. Lyons, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Parada-Hernandez v. Johnson*, 2025 WL 3465958 (N.D. Tex. Oct. 29, 2025), report and recommendation adopted, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025); *Rojas v. Noem*, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025); *De Leon Hernandez v. Bondi*, 2025 WL 3217037 (W.D. La. Nov. 18, 2025); *Chinchilla v. De Anda-Ybarra*, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025); *Vieira v. De Anda-Ybarra*, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025).

Petitioner asserted in his original Petition that the Respondents have violated his Fifth Amendment procedural due process rights. Dkt. 1 at 25-27. He re-urges that claim for relief here. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE has the authority to detain non-citizens, however, this authority is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom.

The Fifth Amendment’s Due Process Clause extends to all persons, regardless of status. *See A. A. R. P. v. Trump*, 145 S. Ct. 1364, 1367 (2025). Thus, noncitizens, such as Petitioner, are entitled to due process protections. *See id.*; *see also Chavez-Acosta v. Garland*, No. 22-3045, 2023 WL 246837, at *3 (6th Cir. Jan. 18, 2023); *Acosta Dominguez v. Noem*, EP-25-CV-00741-DB (W.D. Tex. El Paso, Jan. 8, 2026) (granting habeas petition after revocation of parole without notice because noncitizen had due process rights under the Fifth Amendment and the INA applying the *Mathews v. Elridge* test and holding that 1252(b) is unconstitutional as applied to petitioner).

The Supreme Court's *Mathews v. Eldridge* test provides the appropriate framework when determining what procedural safeguards are due, requiring courts to consider “(1) the private interest affected, (2) the risk of erroneous deprivation through the procedures used and the probable value of additional safeguard; and (3) the Government's interest, including the fiscal and administrative burdens of additional procedures.” *Danierov v. Noem*, No. 2:25-cv-01215-KG-KRS, 2025 WL 3653925, at *2 (D.N.M. Dec. 17, 2025)(quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)) (internal quotations omitted).

Indeed, many district courts have determined to order the immediate release of immigration habeas petitioners held in custody in violation of their due process rights. *See, e.g., J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025); *Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025). In the majority of these cases, the Court found that the government had no or an insignificant interest in detaining the petitioner. *See J.U.*, 2025 WL 2772765, at *10; *Zumba*, 2025 WL 2753496 *10.

In *Santiago v. Noem*, Judge Cardone of the Western District of Texas, El Paso Division, granted the petitioner immediate release through a writ of habeas corpus on as applied procedural due process grounds. 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025). Although this case was decided before *Buenrostro* in the Fifth Circuit, Judge Cardone explicitly focuses on the as applied due process violation issue as independent from the 8 U.S.C. § 1225 issue. She found that the petitioner had a liberty interest in remaining free from detention. *Id.* at *10. Applying the *Mathews* test, the Court found that the petitioner has a private interest in being free from physical detention. There is a high risk of erroneous detention due to no individualized review of her detention, and that the government had a low interest in maintaining her detention to seek a removal order against her as there was evidence of flight risk or danger to the community. *Id.* at *10-*14.

Likewise, Mr. Lagos-Bautista has a high liberty interest in being free from detention due to his 18 years in the United States, the risk of erroneously deprivation is high due to no individualized review of flight risk or danger to the community factors, and the government interest in maintaining Petitioner's detention to seek a removal order against him is low.

Turning to the first Mathews factors in this case, “‘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, at *2 (W.D. Tex. Sept. 8, 2025) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Petitioner has a substantial private interest in remaining free from detention. “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).

Federal courts in Texas have found that noncitizens have a protected liberty interest in their freedom, regardless of citizenship status, 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-25-CV-584-KC, 2025 WL 3901908, at *3 (W.D. Tex. Dec. 10, 2025); *Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025) (finding noncitizen has protectable liberty interest because he was “living in the United States for over four years and attends his local church”); *Hernandez-Fernandez*, 2025 WL 2976923 at *9 (“Because he spent nearly three years at liberty in the United States, [petitioner] possesses a cognizable interest in his freedom from detention.”). Petitioner resided at liberty within the U.S. for over 18 years, and during that time, he established extensive ties and life in the community including a stable address, employment, and caring for his wife and three United States citizen children.

Second, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025). Civil immigration detention, which is “nonpunitive in purpose and effect[,]” is justified when a noncitizen presents a risk of flight or danger to the community. *See Zadvydas*, 533 U.S. at 690; *Padilla v. U.S. Immigr. & Customs Enft.*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023). The government’s refusal to provide bond hearings creates a high risk of erroneous deprivation, since the process afforded in removal proceedings does “not ameliorate the risk that [a petitioner] will be erroneously deprived of his liberty while his removability is assessed.” *See Rojas v. Noem*, 2025 WL 3038262 at *3-*4. Bond hearings that “conduct individualized custody determinations considering flight risk and dangerousness” are the precise “type of proceeding that would give [a noncitizen] an opportunity to be heard and to receive a meaningful assessment of whether he is dangerous or likely to abscond.” *Id.* at *4.

Petitioner is not a flight risk or danger to the community. The government does not dispute this and did not present evidence that petitioner was a flight risk or danger to community. Petitioner has not been provided with any procedural safeguards to determine whether his detention is justified under the Fifth Amendment. Given the absence of any procedural safeguards, the probable value of additional procedural safeguards is high.

Third, regardless of the government’s purported interest in enforcing the immigration detention statutes, a habeas petitioner’s “constitutional interest in his liberty exists above and apart from the INA.” *Rojas*, 2025 WL 3038262 at *4 (citing *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (“[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.”)). The government’s interest in detaining petitioner without procedural safeguards is low. The

government's interest is further diminished where a person "does not have a criminal record," *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763 at *2 (N.D. Cal. July 4, 2025), as is the case here. On balance, the Mathews factors show that Petitioner is entitled to immediate release. Under the current Fifth circuit Buenrostro opinion immediate release is the only mechanism for relief.

B. Scope of Relief Requires Immediate Relief

As to the appropriate remedy, Petitioner requests that he be immediately released from custody. This is because a bond hearing would only be an appropriate remedy where "the government has at least some articulable, legitimate interest in detaining the petitioner," but immediate release is appropriate where "the government had no or an insignificant interest in detaining the petitioner." *Santiago-Santiago v Noem*, EP-25-CV-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025) at *13. Furthermore, immigration judges do not have jurisdiction to re-determine custody decisions of persons detained under 1225 as arriving aliens after the Fifth Circuit's erroneous decision in *Buenrostro*.

Given the absence of evidence of urgent concerns, this Court should conclude that Respondents violated Petitioner's as applied procedural due process rights when they arrested Petitioner. Respondents lacked an arrest warrant they detained him and failed to provide him on "a pre-deprivation hearing is required to satisfy due process." *Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677 at *9 (N.D. Cal. July 17, 2025). Numerous district courts have reached a similar conclusion. *See, e.g., id.; Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596 at *5 (E.D. Cal. July 14, 2025); *Pinchi*, 2025 WL 1853763, at *3–4; *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL1918679 at *6 (E.D. Cal. July 11, 2025);

Valencia Zapata v. Kaiser, No. 25-CV-07492-RFL, 2025 WL 2578207 at *1 (N.D. Cal. Sept. 5, 2025).

C. Petitioner Re-Urges Relief under Maldonado Bautista and Violations of the Administrative Procedures Act

Petitioner re-urges his claims for relief relating to his class membership in *Maldonado Bautista* and the exceptions to the exhaustion requirement. Dkt. 1 at 20 – 24. In light of the Fifth Circuit’s decision in *Buenrostro*, Petitioner’s only relief is immediate relief despite the mandates of *Maldonado Baustista*. Were this Court to grant relief by requiring the immigration judge provide Petitioner a bond hearing, the immigration judge would find he lacks jurisdiction to conduct the hearing citing to *Yajure Hurtado* and *Buenrostro*.

Petitioner also urges his Administrative Procedures Act violation claim. Dkt. 1 at 29-30. The Fifth Circuit did not squarely address this claim in *Buenrostro*. Respondents are unlawfully detaining Petitioner thereby improperly altering the substantive rules concerning mandatory custody status without the required notice-and-comment period and would be in violation of the INA and its regulations. These actions by Respondents violate the APA. Under the APA, this Court may hold unlawful and set aside an agency action which is “contrary to constitutional right, power, privilege or immunity.” 5 U.S.C. § 706(2)(B). The regulations at 8 C.F.R. §§ 1003.19(h)(1)(B) and 1003.19(h)(2)(B) providing no review of DHS custody decision for arriving aliens in removal proceedings are in violation of substantive and procedural due process as guaranteed by the Fifth Amendment to the United States Constitution. It is ultra vires because it exceeds the authority granted ICE by Congress at 8 U.S.C. § 1226(a). See *Y-Z-L-H v. Bostock*, 792 F. Supp.3d 1123 (D. Oregon July 9, 2025) (granting habeas based on APA claims.); *Parada-Hernandez v. Johnson*,

2025 WL 3465958 (N.D. Tex. Oct. 29, 2025), report and recommendation adopted, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025).

III. CONCLUSION

For these reasons, this Honorable Court should order the immediate release of Petitioner. Petitioner has a fundamental interest in liberty and being free from official restraint. The government's re-detention of Petitioner without bond violates his right under the statute and his procedural due process as applied. For the foregoing reasons, the Court should grant Mr. Lagos-Bautista's petition for habeas corpus and order his immediate release.

Respectfully submitted this 16th day of February, 2026.

/s/ Nicole L. True

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PETITIONER'S SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS in the case of Silvestre Lagos-Bautista v. Pamela Bondi, et al., Civil Action 1:26-CV-235-RP, was sent to Assistant United States Attorney Adrian Acosta via the CM/ECF Pacer system.

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

Dated this 16th day of February, 2026

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