

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JUAN MENJIVAR ARAUJO

Petitioner,

VS.

PAMELA BONDI,
United States Attorney General; et al.

Respondents.

Civ. Case No. 1:26-cv-00237-ADA-SH

PETITIONER'S REPLY TO RESPONDENTS' ABBREVIATED RESPONSE

Petitioner Juan Menjivar-Araujo, through undersigned counsel, files this Reply to Respondents' Abbreviated Response and respectfully shows the Court as follows:

I. INTRODUCTION

1. Respondents filed their Abbreviated Response on February 6, 2026. That same day, the Fifth Circuit issued *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). Petitioner understands Respondents will rely on *Buenrostro-Mendez* to argue that the statutory detention-authority question is resolved against Petitioners in this Circuit for now. In light of that decision, this Reply focuses on Petitioner's independent procedural due process claim and requests relief on that basis.
2. *Buenrostro-Mendez* resolved a statutory interpretation question about detention authority. It did not adjudicate the merits of Petitioner's Fifth Amendment procedural due process claim. Even if DHS asserts detention under INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), due process still requires a meaningful, individualized custody determination. Freedom from

physical restraint lies at the core of the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

3. Post-*Buenrostro*, courts in this District have continued to grant habeas relief on procedural due process grounds notwithstanding the Government's statutory position under INA § 235(b)(2). See *Duran Aguila v. Bondi*, No. EP-26-CV-241-KC, Order (W.D. Tex. Feb. 9, 2026) (Cardone, J.) (recognizing *Buenrostro* did not decide procedural due process and granting relief on due process grounds).
4. Respondents' abbreviated filing does not meaningfully address Petitioner's due process claim. Instead, Respondents largely incorporate by reference arguments from other cases and request denial without explaining why due process permits categorical no-hearing detention for a person like Petitioner, who has lived in the United States for more than 20 years, has substantial family ties, and is pursuing lawful status while in pending § 1229a proceedings. The Court should grant relief and the release of petitioner, or in the alternative a bond hearing.

II. BUENROSTRO DOES NOT FORECLOSE PETITIONER'S PROCEDURAL DUE PROCESS CLAIM

5. *Buenrostro-Mendez* addressed statutory detention authority. The panel held that certain noncitizens who entered without inspection may be treated as "applicants for admission" such that DHS may invoke INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), during § 1229a proceedings. 2026 WL 323330, at *1–9.
6. *Buenrostro-Mendez* did not resolve whether the Constitution permits DHS to detain an interior resident for civil immigration purposes with no meaningful, individualized custody process. The statutory label DHS invokes does not eliminate Petitioner's protected liberty interest. *Zadvydas*, 533 U.S. at 690.

7. This Court may grant relief on due process grounds without deciding any statutory issue. Courts in this District have done so in materially similar cases. *See Escobar-Arauz v. Noem*, No. EP-25-CV-00619-DB, 2025 WL 3543648, at *5–6 (W.D. Tex. Dec. 10, 2025) (Briones, J.) (holding that even assuming the Government’s statutory position, the petitioner “is entitled to procedural due process”).
8. Courts in this District have also expressly held that *Buenrostro-Mendez* does not alter the procedural due process analysis where the court assumed, without deciding, that DHS’s § 1225(b) theory applied. In *Maya-Contreras v. Warden of ERO El Paso East Montana Camp*, et al., No. 3:26-cv-00290-DB (W.D. Tex. Feb. 9, 2026), the court acknowledged *Buenrostro-Mendez* and its conclusion that Respondents’ statutory interpretation of § 1225(b)’s mandatory detention provision is correct, but held that “*Buenrostro-Mendez* does not change this court’s outcome on procedural due process grounds,” because the court had already “accepted without deciding” Respondents’ statutory interpretation in its original due process analysis.
9. Likewise, in *Zafra v. Noem*, No. EP-25-cv-00541-DB, 2025 WL 3239526, at *3 (W.D. Tex. Nov. 20, 2025), the court explained that the parties disputed Respondents’ “novel interpretation” of mandatory detention under § 1225(b) and whether the petitioner fell within it, but held: “Even assuming without deciding Respondents’ reading is correct, the Court will not address these arguments because the Court finds Petitioner is entitled to procedural due process in his as-applied challenge.”
10. *Clemente Ceballos v. Garite*, No. 3:26-cv-00312-DB (W.D. Tex. Feb. 10, 2026), likewise supports the same point, even after *Buenrostro-Mendez*, this District continues to recognize

that procedural due process claims remain independently viable and may warrant relief notwithstanding DHS's invocation of § 1225(b).

11. These decisions confirm the critical point here: even where DHS invokes § 1225(b)(2) and even where courts assume that statutory framework applies, Petitioner may still prevail on an as-applied procedural due process claim, and this Court may grant relief on that constitutional basis without revisiting the statutory detention-authority dispute.

III. PETITIONER STATES A MERITORIOUS AS APPLIED PROCEDURAL DUE PROCESS CLAIM

A. Due process protects Petitioner's liberty interest

8. The Fifth Amendment provides that no person shall be deprived of liberty without due process of law. U.S. Const. amend. V. Freedom from physical restraint lies at the core of the liberty the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). These protections apply to persons detained within the United States, including in the immigration context. *Id.* at 687. Due process requires, at minimum, a meaningful opportunity to be heard before a neutral decisionmaker when the Government seeks to continue a serious restraint on liberty. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004).
9. Petitioner has lived in the United States since at least March 2005. On January 27, 2026, ICE officers stopped Petitioner while he was on his way to work and took him into custody. Petitioner is married to a U.S. citizen and is the father of two U.S. citizen children. Petitioner has only one prior arrest, a DWI from 2017, for which he completed probation and complied with all court orders. Petitioner remains detained at the T. Don Hutto Detention Center while his removal proceedings are pending, yet he has received no individualized custody hearing before an immigration judge to determine whether detention is actually necessary.

B. *Mathews* balancing requires an individualized custody hearing here

10. In evaluating what process is due, courts apply *Mathews v. Eldridge* and consider (1) the private interest affected, (2) the risk of erroneous deprivation and the value of additional safeguards, and (3) the Government's interest and the burden of additional procedures. 424 U.S. 319, 335 (1976).

i. Private Interest

11. Petitioner's interest is substantial. He is confined in a secure detention facility and separated from his U.S. citizen spouse and young U.S. citizen children, who rely on him emotionally and financially. His spouse filed an I-130 family petition on his behalf, and he has a pending I-601A waiver of inadmissibility as part of his pursuit of lawful status. Detention has severely hindered his ability to communicate with counsel, gather evidence, and prepare his case. He is also eligible to seek cancellation of removal under 8 U.S.C. § 1229b(b), INA § 240A(b), but detention has made collecting supporting documentation, meeting with counsel, and preparing witnesses extraordinarily difficult. This is a severe deprivation of liberty. *Zadvydas*, 533 U.S. at 690.

ii. Risk of erroneous deprivation and value of safeguards

12. The risk of erroneous deprivation is especially high where there is no neutral, individualized custody determination at all. Respondents' position is categorical, because DHS labels Petitioner an "applicant for admission," he is denied any opportunity to demonstrate he is not a flight risk and not a danger. Under that regime, there are no findings, no burden of proof, no record, and no meaningful opportunity for Petitioner to present evidence or rebut the Government's assumptions. Due process does not permit civil confinement based solely on the Government's unilateral label, without any neutral

determination that detention is necessary to serve flight risk or danger concerns. *See Zadvydas*, 533 U.S. at 690; *Hamdi*, 542 U.S. at 533. A custody hearing before an immigration judge is the minimal safeguard that allows both sides to present evidence and permits a neutral decisionmaker to determine whether detention is actually necessary and, if not, what less restrictive alternatives would suffice. *See Escobar-Arauz v. Noem*, No. EP-25-CV-00619-DB, 2025 WL 3543648, at *4–6 (W.D. Tex. Dec. 10, 2025).

iii. Government interest and burden

13. The Government's interests in ensuring appearance and protecting the community are legitimate, but they are served by individualized custody determinations and conditions of supervision where appropriate. The additional burden is minimal because custody hearings are routine, and Respondents already litigate risk and conditions of release in ordinary immigration custody proceedings.
14. For these reasons, courts in this District have granted procedural due process relief even where the Government insisted § 1225(b)(2) controlled. *See Escobar-Arauz*, 2025 WL 3543648, at *5–6. Courts have continued to grant due process relief after *Buenrostro-Mendez*. *See Duran Aguila v. Bondi*, No. EP-26-CV-241-KC, Order (W.D. Tex. Feb. 9, 2026); *Clemente Ceballos v. Garite*, No. 3:26-cv-00312-DB (W.D. Tex. Feb. 10, 2026); *Maya-Contreras v. Warden of ERO El Paso East Montana Camp, et al.*, No. 3:26-cv-00290-DB (W.D. Tex. Feb. 9, 2026). Respondents' abbreviated response offers no basis to deny Petitioner the individualized custody process due process requires.

C. Remedy

15. Where a procedural due process violation is established, the appropriate remedy is an individualized custody hearing before an immigration judge within a prompt, court-ordered

deadline, or release under reasonable conditions of supervision. *Escobar-Arauz*, 2025 WL 3543648, at *6; *Duran Aguila*, No. EP-26-CV-241-KC, Order (W.D. Tex. Feb. 9, 2026).

16. At that custody hearing, due process requires the Government to bear the burden to justify continued detention. Because the loss of liberty is severe, the detainee should not share the risk of error equally. *Addington v. Texas*, 441 U.S. 418, 425–27 (1979). Consistent with recent decisions in this District, the Court should require the Government to prove dangerousness or flight risk by clear and convincing evidence. *See Escobar-Arauz*, 2025 WL 3543648, at *5–6.

IV. RESPONDENTS' PROCEDURAL OBJECTIONS DO NOT BAR RELIEF

A. Jurisdiction.

17. Respondents reference jurisdictional objections under 8 U.S.C. § 1252, but Petitioner challenges his detention and the absence of constitutionally adequate custody process, not a discretionary decision to commence proceedings or execute a final removal order. Courts in this District have repeatedly rejected materially identical jurisdictional arguments in immigration habeas cases challenging detention and seeking release or a constitutionally adequate custody hearing. *See Escobar-Arauz*, 2025 WL 3543648, at *2–3.

B. Exhaustion.

18. Where no statute or rule mandates exhaustion, the decision whether to require exhaustion rests within the Court's "sound judicial discretion." *Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013). This is a discretionary exhaustion doctrine, sometimes called 'prudential exhaustion.'" *Island Creek Coal Co. v. Bryan*, 937 F.3d 738, 747 (6th Cir. 2019).
19. In the Fifth Circuit, due process claims—other than procedural errors correctable by the BIA—are generally not subject to exhaustion. *Anwar v. INS*, 116 F.3d 140, 144 n.4 (5th

Cir. 1997). And no statute imposes exhaustion as a prerequisite to relief under 28 U.S.C. § 2241. Prudential exhaustion is therefore not required, particularly where exhaustion would be futile or where detention inflicts ongoing and irreparable harm.

20. That is the case here. The injury is occurring now. Petitioner is detained without any meaningful custody hearing mechanism. Moreover, Respondents' position is that the Immigration Court lacks bond jurisdiction because DHS asserts detention under INA § 235(b)(2), 8 U.S.C. § 1225(b)(2). Requiring Petitioner to pursue an administrative remedy that Respondents contend is unavailable would be futile. *See Escobar-Arauz*, 2025 WL 3543648, at *3–4.
21. Alternatively, even where exhaustion might be considered, courts may waive it when “the legal question is fit for resolution and delay means hardship.” *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). Courts weigh prudential exhaustion concerns such as whether: (1) agency expertise is needed to develop the record and reach a proper decision; (2) relaxing exhaustion would encourage deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and avoid judicial review. *Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025). Here, those considerations weigh against requiring exhaustion.
22. Bond appeals to the BIA commonly take months. *Lopez-Campos*, 2025 WL 2496379, at *5 (citing *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025)). But the question presented here is a purely legal one that is fit for immediate resolution, and further delay would impose unnecessary hardship—including continued detention and additional impairment of Petitioner's ability to prepare his removal defense. *See Shalala*, 529 U.S. at 13. Courts have waived exhaustion in similar circumstances. *See Lopez-Campos*, 2025 WL

2496379, at *5; *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Simpiao v. Hyde*, 2025 WL 2607924, at *6–7.

23. For these reasons, the Court should waive any prudential exhaustion requirement and reach the merits of Petitioner's habeas petition.

V. RESPONDENTS' REQUEST REGARDING A RELEASE DEADLINE

20. Respondents request that any release order specify a calendar date rather than an hourly deadline. Petitioner's overriding interest is a prompt and enforceable remedy. Petitioner does not oppose expressing a release deadline as a specific calendar date so long as it is immediate and certain and does not permit open-ended delay.

VI. CONCLUSION

For these reasons, Petitioner respectfully requests that the Court grant the Petition in part on procedural due process grounds and order Respondents, within a prompt deadline set by the Court, to either release Petitioner or provide an individualized custody hearing before an immigration judge at which the Government bears the burden to justify continued detention by clear and convincing evidence or release Petitioner under reasonable conditions of supervision.

Dated: February 11, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 11, 2026, I served a true and correct copy of the foregoing through the Court's CM/ECF system on counsel for Respondents.

/s/ Maria Nereida Jaimes
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