

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

_____	)	
Juan Pablo HERRERA CORDOBA	)	
	)	
Petitioner-Plaintiff,	)	
v.	)	Civ. No. 1:26-cv-00238-ADA-SH
	)	
PAM BONDI,	)	RE: RECONSIDERATION
United States Attorney General, et. Al.	)	
	)	DHS File Number: 
Respondents-Defendants.	)	
_____	)	

MOTION FOR RECONSIDERATION

On March 2, 2026, this Honorable District Court denied Petitioner's request for Habeas Corpus and held it is bound by *Buenrostro v. Bondi*, No. 25-20496, ---- F.4th ---- 2026 WL 323330, concluding Petitioner is lawfully detained under § 1225 and not entitled to bond. According to this Court, *Buenrostro-Mendez* held § 1225(b)(2) is a catchall for applicants for admission and contains no bond exception, applying even to long-resident illegal entrants. The Court also stated that Petitioner's due process claims relying on *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), are inapplicable to detention during ongoing removal proceedings, citing *Buenrostro*. The Court also rejected procedural and substantive due process claims, citing *Demore v. Kim*, 538 U.S. 510, 523 (2003), and held applicants for admission have only statutorily granted rights under *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020).

Respectfully, Petitioner request this Court to reconsider the decision, based on the following arguments.

This petition challenges the unlawful detention of Petitioner Juan Pablo HERRERA CORDOBA ("Mr. Herrera Cordoba"), a 30 year-old **who has a United States Citizen wife and three United States Citizen child, and he has resided in the United States for more than 15 years**. On or about January 05, 2026, Petitioner was arrested by immigration officials after he was stopped by a State Trooper for a traffic violation. He has since been held at the T. Don Hutto Detention Center in Taylor, Texas. *DKt* 1.

The Department of Homeland Security ("DHS") asserts that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b), despite Congress's separate detention framework in 8 U.S.C. § 1226(a), which governs interior arrests and provides discretionary bond and immigration-judge ("IJ") review.

Section 236 of the INA is codified at 8 U.S.C. § 1226 and noncitizens held under its authority have a right to have their custody determination reviewed by an immigration judge. However, the Fifth Circuit in *Buenrostro v. Bondi*, No. 25-20496, ---- F.4th ---- 2026 WL 323330 has incorrectly found that any noncitizen who entered the United States without inspection or admission is subject to mandatory detention. A request for bond is futile. Following this decision in the Fifth Circuit, immigration judges hold they do not have jurisdiction to hear the bond request or grant a bond to Petitioner due to being present in the United States without evidence of a lawful admission.

This novel interpretation means that potentially millions noncitizens who entered the United States without inspection (who have not already been formally admitted or paroled) that are contacted by ICE in the interior of the U.S. will be treated as if they were an “arriving alien” at the border and subject to mandatory detention, regardless of how long they have been present in the United States or other equities (such as complete lack of criminal history or U.S. citizen family members including dependent children). Respondents assert that all of these noncitizens are not entitled to a bond hearing by an IJ on the issue of release from custody during the pendency of removal proceedings. The Fifth Circuit has adopted this novel interpretation. *See Buenrostro supra*.

On February 18, 2026, the California Central district court judge Sykes issued her decision in *Maldonado Baustista v. Santacruz* (Case No. 5:25-cv-1873) vacated the BIA case *Matter of Yajure Hurtado*. This decision declares that Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A).

Nonetheless, in the Fifth Circuit immigration judges have received instruction that this order is not binding. *Exh. 1 Immigration Judge’s Guidance Sets Up Race to Avoid Fifth Circuit*. Bloomberg Law. <https://news.bloomberglaw.com/litigation/immigration-judges-guidance-sets-up-race-to-avoid-fifth-circuit>.

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. Most judges in the Fifth Circuit have continued to grant habeas petitions on due process grounds. *See Exhibit 2, Cheney, K. (n.d.). Judges may have found a way to bypass 5th Circuit ruling upholding Trump’s mass detention policy | reuters.* <https://www.politico.com/news/2026/02/10/texas-immigration-detention-rulings-00774124>

Buenrostro does not address, and therefore does not foreclose, the argument that an immigrant detained under 8 U.S.C. § 1225(b)(2) 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 and in sister districts have granted habeas relief on procedural due process grounds notwithstanding the statutory limitations addressed in *Buenrostro*. See *Lopez-Mejia v. Warden*, 5:26-cv-00160 (S.D. Tex. Feb. 23, 2026) (finding the “Petitioner is a noncitizen who previously entered the United States without inspection and has established ties to the United States through his residency, the Due Process Clause of the Fifth Amendment guarantees Petitioner an individualized assessment of his flight risk and dangerousness and an opportunity to respond prior to detention by ICE. This conclusion is further supported by the growing number of district courts that have likewise found that mandatory detention of noncitizens who have established a presence in the United States violates their procedural due process rights.”)(citing collection of cases holding the same); *Bonilla-Chicas v. Warden*, 5:26-CV-00131 (S.D. Tex. Feb. 20, 2026); *Escobar-Paucay v. ERO El Paso Camp East Montana*, EP-26-CV-412-KC (W.D. Tex. Feb. 24, 2026); *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); *Monge Escoto v. Bondi*, 2026 No. EP-26-CV-283-KC, at *2 (W.D. Tex. Feb. 12, 2026) (granting habeas and finding “the Fifth Circuit only decided the statutory question and did not adjudicate the petitioners’ due process claims”); *Rodriguez Flores v. Bondi*, No. EP-26-CV-00338-DB at *2 (W.D. Tex. Feb.11, 2026) (“acknowledge[ing] the Fifth Circuit’s precedential decision in *Buenrostro-Mendez* held Respondents’ statutory interpretation of Section 1225(b)’s mandatory detention provision is correct. However, *Buenrostro-Mendez*. does not change this case’s outcome on procedural due process grounds.”)

Pre-*Buenrostro* many district courts in the Fifth Circuit found Respondents’ mandatory detention under section 1225 also violated the petitioners’ as applied procedural due process rights. See e.g., *Perez v. Noem*, 2025 WL 3532430 (N.D. Tex. Nov. 14, 2025); *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); See also *Mendoza Escobar v. Bondi*, 2026 WL 412684, at *3-5 (D.N.M. Feb 13, 2026).

The Fifth Amendment's Due Process Clause extends to all persons, regardless of status. See *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 fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To determine what process Petitioner is due, this Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

In *Santiago v. Noem*, Judge Pitman of the Western District of Texas, Austin 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).

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, she reiterated her reasoning in *Monge Escoto v. Bondi*, 2026 No. EP-26-CV-283-KC, at *2 (W.D. Tex. Feb. 12, 2026) which was decided post-Buenrostro.

In both cases, 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 no evidence of flight risk or danger to the community. *Id.* at *10-*14.

Although this case was decided before *Buenrostro* in the Fifth Circuit, she reiterated her reasoning in *Monge Escoto v. Bondi*, 2026 No. EP-26-CV-283-KC, at *2 (W.D. Tex. Feb. 12, 2026) which was decided post-Buenrostro.

Likewise, Mr. Herrera Cordoba has a high liberty interest in being free from detention due to his 15 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.

The procedural protections required in a given situation are evaluated using the *Mathews v. Eldridge* factors:

First, the private interest that will be affected by the official action; second, 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 finally, 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, 335 (1976)); *See Arreola*, 872 F.3d 976, 993 (9th Cir. 2017) (applying *Mathews* factors in immigration detention context).

1. Private Interests

1. Turning to the first Mathews factor, “‘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). **Petitioner resided at liberty within the U.S. for over fifteen years, and during that time, he established extensive ties and life in the community. His detention denies him that freedom.**
2. 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 supra*; *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 15 years, and during that time, he established extensive ties and life in the community including a stable address, employment, and caring for his United States citizen wife and United States citizen children.

2. Risk of Erroneous Deprivation

3. 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.”

4. There is not sufficient evidence that petitioner is a flight risk or danger to community. Nonetheless, ICE detained him, and the government has not given any reason why it did so, other than arguing that he is subject to mandatory detention based on the government’s decision pursuant to a nation-wide policy involving a novel interpretation of the INA. Petitioner has not been provided any procedural safeguards to determine whether his detention is justified under the Fifth Amendment, and his request for a custody redetermination was denied because the immigration judge found that they lacked jurisdiction. Given the absence of any procedural safeguards, “the probable value of additional procedural safeguards, i.e., a bond hearing, is high.” *A.E.*, 2025 WL 1424382, at *5.

3. Government’s Interest

5. Third, the government’s interest in detaining petitioner without a hearing is “low.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Doe v. Noem*, No. 2:25-cv-01103-DAD-AC 2025 WL 691664 at *6 (E.D. Cal. Apr 17, 2025). 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. In immigration court, custody hearings are routine and impose a “minimal” cost. *Doe*, 2025 WL 691664, at *6. 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.”)).

6. On balance, the Mathews factors show that Petitioner is entitled to immediate release as his detention is unlawful from its inception. He was previously granted a family petition through his U.S. Citizen wife. He has not committed any crime nor has any bars that will not allow him to apply for immigration relief in Court. “[T]he root requirement’ of the Due Process Clause” is ““that an individual be given an opportunity for a hearing before he is deprived of any significant protected interest.”” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (*quoting Boddie v. Connecticut*, 401 U.S. 371, 379 (1971)); *See Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (“Applying [the Mathews] test, the Court usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty ”). The Supreme Court has held that Due Process requires a pre-deprivation hearing before those released on parole from a criminal conviction can have their parole finally revoked. *See Morrissey v. Brewer*, 408 U.S. 471, 480–86 (1972). The same is true for those subject to revocation of probation. *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973). However, under the current Fifth circuit *Buenrostro* opinion immediate release is the only mechanism for relief. Petitioner seeking a bond proceeding in the jurisdiction he is detained is a futile exercise.

7. Given the absence of “evidence of urgent concerns,” this Court should conclude that immediate release is the appropriate remedy. Indeed, many district courts have ordered 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.

Mr. Herrera Cordoba remains in detention and separated from his family and community. He is experiencing significant and deep emotional and mental trauma from this separation from all those he loves. The human consequences are immediate and severe. Mr. Herrera Cordoba **has a United States citizen wife and three United States citizen children**. Since Mr. Herrera Cordoba's detention, his six-year-old daughter, [REDACTED], **has been struggling in school**. In addition, [REDACTED] is underperforming in her academic classes, she receives special education classes and has a Developmental Delay.

Mr. Herrera Cordoba's wife, Mrs. Mondragon, has experienced significant mental health deterioration since her husband's detention. **She has been experiencing PTSD anxiety, emotional distress, and functional impairment**. Mrs. Mondragon experiences anticipatory grief, persistent fear, and emotional dysregulation when contemplating life without her husband, and she is currently taking prescribed medication to manage her anxiety and depression. **He also has an approved I-130 family petition that was approved on November 01, 2023.**

PRAYER FOR EXPEDITED CONSIDERATION

Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests expedited consideration. Each day of unlawful detention inflicts irreparable harm on Petitioner and his U.S. citizen wife and child, depriving them of their husband and father's care, stability, and support. Prompt judicial intervention is necessary to protect Petitioner's constitutional rights and his family's well-being.



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Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Juan Pablo Herrera Cordoba, and submit this verification on his behalf.

I hereby verify that the foregoing Motion for Reconsideration are true and correct to the best of my knowledge.

Dated this 5th March, 2026.



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Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2026, I caused a true and correct copy of the foregoing Motion for Reconsideration to be served by certified mail, return receipt requested, on the following:

U.S. Attorney's Office for the Western District of Texas
Attn: Stephanie Rico | Civil Process Clerk
601 N.W. Loop 410, Suite 600 San Antonio, TX 78216

Warden, T. Don Hutto Detention Center
Charlotte Collins
1001 Welch
Taylor, TX 76574

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 5th day of March, 2026.



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Immigration Judge's Guidance Sets Up Race to Avoid Fifth Circuit

Feb. 20, 2026, 12:32 PM CST

New guidance issued by the Trump administration's top immigration judge this week could result in continued denial of bond hearings for detainees in Fifth Circuit states—Texas, Mississippi, and Louisiana—as judges in other jurisdictions may choose to grant the hearings, immigration attorneys and law professors say.

Chief Immigration Judge Teresa Riley, in response to a scathing ruling Feb. 18 from Judge Sunshine Sykes of the US District Court for the Central District of California, emailed immigration judges Thursday reminding them of the Fifth Circuit's recent decision upholding the Trump administration's stance on mandatory detention.

Sykes' decision vacated the Board of Immigration Appeals decision in *Yajure Hurtado*—the precedent on which Riley's prior guidance for denying the bond hearings relied.

But Riley's new email to immigration judges, reviewed by Bloomberg Law, noted that Sykes' findings didn't supersede the Fifth Circuit's interpretation of the detention statute, which backed the Trump administration's mandatory detention theory using similar legal reasoning in *Yajure Hurtado*.

"In cases arising in the 5th Circuit, the court did not overrule or vacate the recent 5th Circuit precedential decision," Riley wrote. "Nor did the court overrule or vacate well-established precedent requiring administrative agencies to apply binding circuit court precedent to cases arising within that circuit."

The guidance puts increased pressure on attorneys to seek intervention from federal courts before federal authorities move detainees to Fifth Circuit detention centers.

attorneys have turned to the judicial branch, filing an avalanche of habeas corpus petitions in federal district courts around the country.

inifer Koh, a professor at Pepperdine Caruso School of Law, said she expects a "race to the courthouse" for detainees' lawyers to file petitions before their clients are swept to the Fifth Circuit from other jurisdictions following Sykes' order.

The US Department of Justice and the Executive Office for Immigration Review, which operates immigration courts, declined to comment.

Patchwork of Rulings

The mandatory detention question is pending in multiple appellate circuits around the country and is expected to ultimately land at the Supreme Court, immigration law professors and immigration lawyers say. For now, a patchwork of conflicting rulings is emerging from various district courts and circuits, with district judges overwhelmingly rejecting the policy. Sykes' Wednesday ruling has significant heft because it applies to detainees nationwide based on the class she certified.

David Niels Frenzen of the USC Gould School of Law Immigration Clinic, who was involved in litigating the underlying nationwide class case over which Sykes is presiding, said his team isn't conceding that noncitizens detained in the Fifth Circuit lack protections from Sykes' ruling. The treatment of class members in those states may be the subject of legal fights to come, he said.

Appeals courts across the country are considering the issue. Seventh Circuit judges were extremely skeptical of the mandatory detention policy in an interim decision, and heard further arguments in the matter earlier this month. The US Court of Appeals for the Eighth Circuit oral arguments Thursday, appeared amenable to Trump's position. The Ninth and Sixth circuits are expected to hear arguments next month.

The dispute has emerged due to the Trump administration's novel reinterpretation of longstanding immigration law. For decades, authorities interpreted the act such that noncitizens apprehended in the interior of the country were generally entitled to go before an immigration judge and argue for their release.

But last year, the Trump administration determined that such detainees aren't entitled to a bond hearing.

Sykes threw out the administration's mandatory detention policy as unlawful. In December, she issued a final declaratory judgment that the nationwide class of noncitizens is eligible for bond hearings.

Some immigration judges began holding the hearings, but largely stopped after Riley wrote in a January email that they weren't bound by Sykes' declaratory judgment and should continue following *Yajure Hurtado*.

Sykes in sharp words Feb. 18 criticized the administration's position.

"It is not the executive department's province and duty to say what the law is," she wrote. "The role of the judiciary is to continue to demand compliance with the law even in the face of outright defiance by the executive."

Not a Feature of a Functional Legal System'

Still, immigration attorney Rachael Savage said she's unsure Sykes' order will lead to more releases on bond for noncitizens.

Immigration attorneys have raised alarms that when bond hearings are granted, their clients more often than ever have been denied release. The Trump administration has fired immigration judges en masse and sent military lawyers to fill gaps.

Sykes last week, prior to the hearing where she considered vacating *Yajure Hurtado*, ordered the speedy release of multiple detained noncitizens for whom she'd ordered bond hearings during habeas proceedings. She found immigration courts had improperly placed the burden on detainees to argue why they should be released.

ually getting the bond hearings coming off of a habeas grant, that doesn't necessarily—or almost ever—mean that the individual will actually be granted bond, or that the immigration judge will actually conduct the individualized bond hearing that's required under board precedent," Savage said.

the meantime, "there will be more chaos, and more unnecessary human suffering," said Koh of Pepperdine. "To be completely honest, not a feature of a functional legal system to have lawyers needing to race to file habeas petitions, and for courts then to have to make decisions over whether they can hear a case based on literally the minute at which a lawyer was able to file something."

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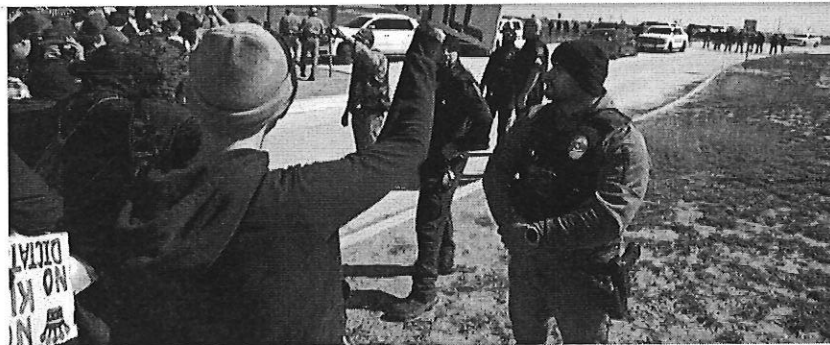
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Judges may have found a way to bypass 5th Circuit ruling upholding Trump's mass detention policy

Two Texas judges, who are bound by the circuit's ruling, outlined a legal rationale allowing them to continue granting immigrants' release.



POLITICO



Protesters gather outside the South Texas Family Residential Center detention facility on Jan. 28, 2026. | Eric Gay/AP Photo

By KYLE CHENEY

02/10/2026 01:58 PM EST

Updated: 02/10/2026 03:11 PM EST



Federal judges may have found a workaround to reject the Trump administration's mass detention policy after an appeals court backed the approach.

A three-judge panel of the 5th Circuit Court of Appeals on Friday blessed the administration's interpretation of the government's power to systematically detain people targeted for deportation — even if they have no criminal records and have lived in the country for decades.

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But two federal district court judges in Texas, who are bound by the New Orleans-based 5th Circuit's ruling, said the 2-1 decision left an opening for them to continue granting immigrants' release on other grounds, primarily constitutional arguments against detaining people who have established roots in the U.S. without due process. Those roots amount, in legal parlance, to a "liberty interest" that the Constitution says cannot be taken away without at least a hearing before a neutral judge.

"This conclusion is not changed by the Fifth Circuit's recent decision," Judge Kathleen Cardone, an El Paso based appointee of George W. Bush, ruled late Monday in at least five cases, concluding that the circuit's decision "has no bearing on this Court's determination of whether [the petitioner] is being detained in violation of his constitutional right to procedural due process."

Judge David Briones, an El Paso-based Clinton appointee, reached a similar conclusion.

"The Court reiterates its original holding that noncitizens 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," Briones wrote.

The decisions from the Texas-based judges are notable in part because the administration has often rushed detainees there after their arrests in other states such as Minnesota.

A spokesperson for the Department of Homeland Security did not immediately respond to a request for comment.

A Justice Department official, granted anonymity to speak candidly, said the rulings were in keeping with the view that there are rogue judges who continue to make results-oriented decisions to suit their personal policy preferences.

The 5th Circuit's ruling has yet to percolate through federal courts across Texas and Louisiana, where detained immigrants have been filing so-called "habeas" petitions in extraordinary numbers to seek freedom from what they say is illegal detention without the opportunity for bond. The losing parties in Friday's ruling may still appeal the decision to the full bench of the 5th Circuit or the Supreme Court.

But the reaction from judges in Texas dealing with large numbers of habeas cases may inform their calculus. Other judges are maintaining a cautious approach. Judge Fernando Rodriguez Jr., a Brownsville-based Trump appointee, has peppered attorneys in a long series of cases to update him on

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AD

Outside the 5th Circuit, judges who have been largely rejecting the Trump administration's mass detention policy were less restrained.

Judge Charlotte Sweeney, a Biden appointee in Colorado, delivered a detailed rejection of the 5th Circuit ruling, saying the panel's two-judge majority "paid lip service" to crucial legal principles and attempted to mask "infirmity" with clunky analogies.

Judge Evelyn Padin, a Biden appointee in New Jersey, similarly said she was "unpersuaded" by the 5th Circuit's opinion, which she said would render other aspects of immigration law meaningless.

that other circuits may soon rule on the key legal questions at the heart of the mass detention policy.

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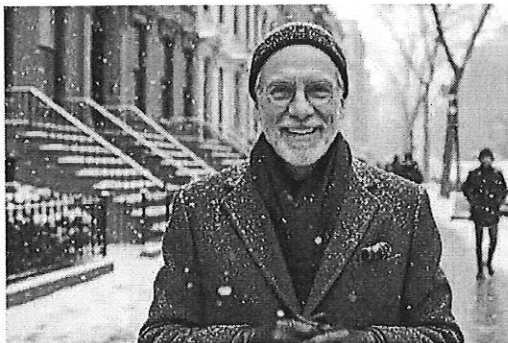
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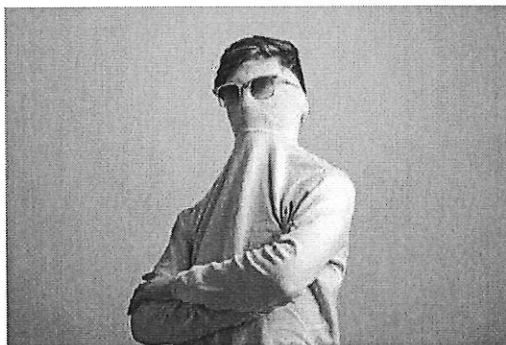
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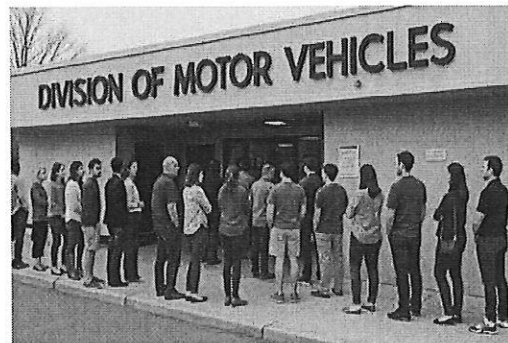
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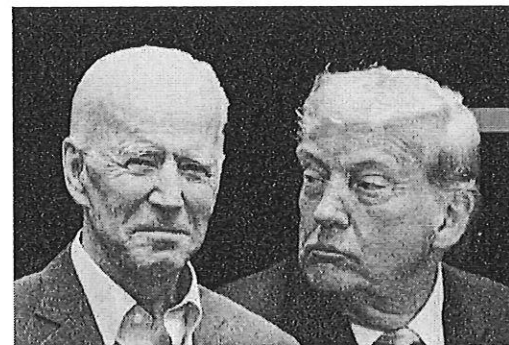
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