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

Victor Manuel Balla De La Cruz, **SA-26-CV-600-OLG**

Petitioner,

REPLY TO RESPONSE

v.

Miguel Vergara *et al.*,

Respondents

The Court's intervention is still necessary. *Buenrostro-Mendez is limited to a statutory construction question. Buenrostro-Mendez* did not address or consider whether the Fifth Amendment tolerates suddenly detaining individuals who have been free within the United States for an extended period and denying them an opportunity to seek release from custody. *See generally Buenrostro-Mendez*, 2026 WL 323330, at *1–10. "*Buenrostro-Mendez* has no bearing on this Court's determination of whether [a habeas petitioner] is being detained in violation of [his] constitutional right to procedural due process." *Marceau v. Noem*, No. 3:26-cv-237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026). Petitioner pleaded alternate theories of relief. *See* ECF No. 1 Count 3 ¶¶ 96, 98; Count 5 ¶¶ 106, 108, 109; Count 7 ¶ 120, 124. The Court has the jurisdiction to consider these constitutional counts and order an appropriate hearing before EOIR in which the Department has the burden. *See* ECF No. 1 ¶ 8.

"The question at hand is not whether current agency guidance reflects a proper reading of the statutory schemes underlying pre-removal detention of noncitizens. 'The issue, instead, is whether those policies have been applied ... in an unconstitutional manner.' *Azalyar v. Raycraft*, 2026 WL 30741, at *4 (S.D. Ohio Jan. 2, 2026) (quoting *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923, at *7 (W.D. Tex. Oct. 21, 2025)). Section 1225(b)(2)(A) is constitutionally deficient because it forecloses access to any hearing wherein Petitioner might challenge his arrest and ongoing detention. "'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." *Trump v. J.G.G.*, 604 U.S. 673 (2025). This is particularly true for individuals once released and then re-detained. "Respondents cannot re-classify, re-arrest, and detain Petitioner ... without any process." *Blanco v. Bondi*, No. 5-25-CV-01412-FB-RBF, 2025 WL 3908488, at *4 (W.D. Tex. Dec. 30, 2025), report and recommendation adopted sub nom. *Betancourt Blanco v. Bondi*, No. SA-25-CV-01412-FB, 2026 WL 78204 (W.D. Tex. Jan. 9, 2026).

A hearing is necessary to acknowledge Petitioner's due process rights. "To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976)." *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025).

It is unassailable that Petitioner has a substantial liberty interest. "The interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Even if the statute proscribes Petitioner's mandatory detention, he still possesses "liberty interests created by the fact that the Petitioner[ ] in this case [was] released on recognizance prior to the manifestation of this interpretation." *Hernandez-Fernandez*, 2025 WL 2976923, at *8. This is consistent with the longstanding principle that due process requires a pre-deprivation hearing before the revocation of parole. *See Young v. Harper*, 520 U.S. 143, 147–49 (1997). Just as parolees have a protected interest in their "continued liberty" once released from immigration custody, noncitizens acquire "a protectable liberty interest in remaining out of custody on bond." *Hernandez-Fernandez*, 2025 WL 2976923, at *9. The longer a person is present in the United States free of restraint, the greater the liberty interest becomes.

Matter of Yajure Hurtado, 29 I. &. N. Dec. 216 (BIA 2025), prevents immigration courts from providing Petitioner with an "'opportunity to contest the existence, nature, or significance of [any] supervision violations' or otherwise make an individualized assessment of the need to re-detain him." *Hernandez-Fernandez*, 2025 WL 2976923, at *9. *Yajure Hurtado* requires the immigration court to find that a "lack authority to hear [Petitoner's] bond request." 29 I. & N. Dec. at 216. Petitioner "will continue to be erroneously deprived of his liberty without any forum

to challenge his detention." *Hernandez-Fernandez*, 2025 WL 2976923, at *9. "In terms of available alternatives and their probable benefits, agency decisionmakers regularly 'conduct[ ] individualized custody determinations ... consider[ing] flight risk and dangerousness.'" *Id.* (internal citation omitted); *see also* 8 C.F.R. §§ 236.1(c)(8); 1003.19(h)(3). Until recently, these bond hearings were afforded with regularity, so they pose no real burden on the government, and "[b]ecause such a proceeding would give [Petitioner] the opportunity to be heard and receive a meaningful assessment of whether he is dangerous or likely to abscond, it would greatly reduce the risk of an erroneous deprivation of his liberty." *Hernandez-Fernandez*, at *9. This factor also weighs in Petitioner's favor.

While "Respondents have an interest in ensuring that Petitioner appears for his removal hearings and poses no danger to the community, ... the decision to release [Petitioner] on his own recognizance three years ago, in and of itself, 'reflects a determination by the government that [he] is not a danger to the community or a flight risk.'" *Id.* (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd 905 F.3d 1137 (9th Cir. 2018). Moreover, "if such concerns exist, they would be squarely addressed if the Court were to grant the petition and order a bond hearing." *Id.* Thus, all three factors illustrate a due process violation.

DHS v. Thuraissigiam, 591 U.S. 103 (2020), does not foreclose the Court from granting this Petition for two reasons. First, *Thuraissigiam* "challenged the denial of

his asylum claim, whereas [Petitioner] challenges his detention in immigration custody." *Lopez-Arevelo*, 2025 WL 2691828, at *8 (citing *Thuraissigiam*, 591 U.S. at 103). Moreover, Thuraissigiam "had already received his due process through the credible fear interview," *id.*, whereas Petitioner has received no process at all. Second, *Thuraissigiam* does not apply because Petitioner "was detained after years of presence in the United States, rather than on the threshold of initial entry." *Lopez-Arevelo*, 2025 WL 2691828, at *10. *Thuraissigiam* rested on the notion that "an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause" than those set by Congress. 591 U.S. at 107. But Petitioner was not at the threshold when he was detained, so "'it cannot be denied that [he] was 'already in the country.'" *Lopez-Arevelo*, 2025 WL 2691828, at *10. The Court therefore must grant this Petition. And because Petitioner "does not fit into the category of "noncitizens who had committed certain enumerated offenses," as discussed in *Demore v. Kim*, 538 U.S. 510 (2003), nor does he challenge the admission process itself, such as in *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), those cases are distinguishable in the context of" the matter before the Court. *Azalyar v. Raycraft*, 2026 WL 30741, at *8.

Zadvydas v. Davis, 533 U.S. 678 (2001), is likewise inapplicable. As Judge Cardone has explained,

> In *Zadvydas*, the Supreme Court considered a challenge to the statute that permits the Government to detain aliens who are subject to final

> orders of removal. *Zadvydas*, 533 U.S. at 682. The Court held that such detention becomes unlawful once removal is no longer reasonably foreseeable because "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem." *Id.* at 699. *Zadvydas*, by its very terms, squarely applies to post-removal-period detention. *See id.* But it "has no direct application" to people who are detained pending removal proceedings. *See Buenrostro-Mendez*, 2026 WL 323330, at *9. And the constitutional concerns of indefinite detention raised in the post-final-removal-order context are not equally present when removal proceedings remain pending and will eventually conclude. *See Zadvydas*, 533 U.S. at 697. The Fifth Circuit's reiteration of *Zadvydas*' general inapplicability to pre-final-removal-order-detention is not a ruling on the viability of any and all due process challenges to that detention. And this aside does not change the fact that the Fifth Circuit only decided the statutory question and did not adjudicate the petitioners' due process claims. Moreover, this Court's many immigration habeas decisions finding due process violations have been based on the *Mathews v. Edlridge* test and principles of procedural due process, not on *Zadvydas*. *See, e.g.*, *Martinez*, 2025 WL 2965859, at *3–5; *Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 WL 2792588, at *10–13 (W.D. Tex. Oct. 2, 2025); *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 685-87 (W.D. Tex. 2025).

Bonilla Conforme v. De Anda-Ybarra, No. 3:26-cv-00263-KC (W.D. Tex. Feb. 11, 2026). To be clear, Petitioner does not have a final order of removal. On February 3, 2026, an immigration judge in New Jersey ordered him removed, without a hearing, to *Honduras* (not Ecuador, his country of origin). *See* Exh. C. Petitioner is within the appeal period and intends to file an appeal by the deadline of March 5, 2026. His removal proceedings therefore remain pending. *See* 8 C.F.R. § 1241.1.

Courts agree that ordering a hearing during which the government must establish either flight risk or danger is the appropriate recourse. *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668 (W.D. Tex. 2025); *Bonilla Conforme v. De Anda-*

Ybarra, No. 3:26-cv-00263-KC (W.D. Tex. Feb. 11, 2026); *Sisalema Chango v. De Anda-Ybarra*, No. 3:26-cv-00245-KC (W.D. Tex. Feb. 11, 2026); *Camacho-Gutierrez v. Thompson et al.*, No. 5:25-CV-01876-MA, 2026 WL 195758 (W.D. Tex. Jan. 16, 2026); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *George v. Noem*, No. 3:25-CV-02935-S-BW, 2026 WL 30829 (N.D. Tex. Jan. 5, 2026); *Parada-Hernandez v. Johnson*, No. 3:25-CV-2729-K-BN, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025); *De Law Cruz Salmeron v. Olson*, No. 4:25-CV-198-RGJ, 2026 WL 324486 (W.D. Ky. Feb. 6, 2026); *Hernandez-Parrilla v. De Anda-Ybarra*, No. 2:25-CV-01224-MIS-KK, 2025 WL 3632769 (D.N.M. Dec. 15, 2025); *Guerra v. Noem*, No. 1:25-CV-1341, 2025 WL 3204289 (W.D. Mich. Nov. 17, 2025); *E.V. v. Raycraft*, No. 4:25-CV-2069, 2025 WL 3122837 (N.D. Ohio Nov. 7, 2025); *Azalyar v. Raycraft*, No. 1:25-CV-916, 2026 WL 30741 (S.D. Ohio Jan. 2, 2026); *Destino v. FCI Berlin, Warden*, No. 1:25-CV-374-SE-AJ, 2025 WL 4010424 (D.N.H. Dec. 24, 2025). This Court should too.

CONCLUSION

A bond hearing in which Respondents have the burden of proof by clear and convincing evidence is the appropriate remedy for this constitutional violation. The

Court should grant this Petition and order Respondents to hold this hearing within three business days.

DATED: February 18, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, David Wilson, hereby confirm that I caused service of this document on Federal Respondents through ECF and their legal representatives.

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