UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Soriano Altamirano, Petitioner, v. **Kristi Noem, et al.** Respondents.	Civil Action No. 5:26-cv-607-XR

REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

The Fifth Amendment to the Constitution states that "[n]o **person** shall be deprived of life, liberty, or property, without **due process of law**." Petitioner is 51 years old and has resided in the United States for over 20 years, i.e. most of her adult life. She has two teenage-aged children, and both are United States citizens. She has a community, roots, and a life here. Petitioner has been in the Government's custody for three months now, without the most basic of due process rights: an opportunity to demonstrate before a neutral arbitrator that she is neither a danger to the community, nor a flight risk, such that the Government is justified in detaining her while she awaits adjudication of her immigration proceedings.

Due to the Government's recently intensifying immigration enforcement operations, thousands of individuals just like Petitioner have been detained without an opportunity for bond. Following the Fifth Circuit's decision in *Buenrostro*, courts in the Fifth Circuit now face the question: is it unconstitutional to detain individuals like Petitioner, who have an established life and connection to the United States, without bond? In answering this question, district courts have the opportunity to define due process jurisprudence for years to come. Many district courts, including courts in this district, have already held that detention of similarly situated individuals without a bond hearing is a clear violation of their due process rights. Petitioner respectfully urges this Court to follow the reasoning of its sister courts and hold the same.

A. *Buenrostro-Mendez* is not dispositive of Petitioner's request.

Respondents argue that the Fifth Circuit's recent decision in *Buenrostro* "requires that the Court deny this habeas petition." Dkt. 7 at 1. That is incorrect. While this Court is bound by *Buenrostro's* holding that §1225(b) governs Petitioner's detention, *Buenrostro* did not reach Petitioner's due process claim—namely, the constitutionality of detaining individuals indefinitely, without at least a bond hearing. *See Ceballos v. Garite et al.*, Case No. 26-cv-00312,

2026 U.S. Dist. LEXIS, at *4, n. 2 (W.D. Tex. Feb. 10, 2026) (Briones, J.) ("…*Buenrostro-Mendez* does not change this case's outcome on procedural due process grounds."); *Lema v. Anda-Ybarra*, Case No. 26-cv-249, slip op., Dkt. 7, at 2 (W.D. Tex. Feb. 9, 2026) (Cardone, J.) ("…the *Buenrostro-Mendez* court did not reach the due process question, confining its analysis and holding to statutory interpretation…In sum, ***Buenrostro-Mendez* has no bearing on this Court's determination of whether Cumbe Lema is being detained in violation of his constitutional right to procedural due process.**") (emphasis added). Thus, *Buenrostro* does not require denial of the petition, as Petitioner's separate due process claim entitles Petitioner to the relief requested.[1]

B. **Petitioner's Present and Continued Detention without Bond Constitutes a Procedural Due Process Violation.**

The Supreme Court has long established that the Due Process Clause applies to all "persons" within the United States, including non-citizens, regardless of their legal status. "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, 335 (1976)." *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 U.S. Dist. LEXIS 174415, at *2 (W.D. Tex. Sept. 8, 2025) (Pulliam, J.) (hereinafter *Martinez I*). The factors are: (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)

[1] Respondents also argue, without citing to authority, that the Court should dismiss Petitioner's request because "Petitioner has not attempted to distinguish and explain why *Buenrostro* does not control the outcome of this case, leaving the Court to do that work for Petitioner." Dkt. 7 at 9. This is not true. *Buenrostro* issued after Petitioner had already filed her petition, and Petitioner was aware that Respondents would address *Buenrostro* in responsive briefing, which they did. Petitioner does not contest that *Buenrostro* is dispositive of the statutory issue, so there is no "work" that the Court must do for Petitioner. And Petitioner's reply brief did the work of explaining "why *Buenrostro* does not control the outcome of this case."

"the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. "The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time." *M.S.L. v. Bostock*, No. 25-cv-1204, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025) (citing *Mathews*, 424 U.S. at 348).

1. The private interest factor weighs heavily in Petitioner's favor, as Petitioner has a well-established life in the United States.

"The interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Foucha* v. *Louisiana,* 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action"). "This liberty interest applies to noncitizens, although to varying degrees." *Martinez v. Noem*, No. 25-cv-430, 2025 U.S. Dist. LEXIS 209332, at *8 (W.D. Tex. Oct. 21, 2025) (Cardone, J.) (hereinafter *Martinez II*). "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission…and those who are within the United States after an entry, irrespective of its legality." *Id.* at *9 (quoting *Martinez v. Hyde*, 792 F. Supp. 3d 211, 216 (D. Mass. July 24, 2025) (hereinafter *Martinez III*)). "In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely on the threshold of initial entry." *Id.* (quoting *Martinez III*, 792 F. Supp. at 216).

Petitioner has resided in the Untied States for over twenty years, has a community here, has two U.S. citizen children, and has no criminal record. *See generally* Dkt. 1. Petitioner's past and ongoing detention has clearly deprived her of her liberties, including lack of freedom of

movement, and lack of contact with family and friends. *See Martinez II*, 2025 U.S. Dist. LEXIS, at *9. Many district courts, including this Court's sister courts, have determined that "because the petitioners established a life here—albeit without authorization—they possessed a strong liberty interest in their freedom from detention." *Id.* (collecting cases).[2] These decisions are "persuasive and consistent with the longstanding principle that due process applies to those who are present in the interior of the United States, regardless of their citizenship status," and this factor weighs in favor of Petitioner. *Id.* (citing *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)).

2. Petitioner's past and ongoing detention without a bond hearing have already deprived Petitioner of her liberty and her ability to prepare for her removal proceedings.

The second *Mathews* factor 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 I*, 2025 U.S. Dist. LEXIS, at *3 (quoting *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1186 (D. Minn. May 21, 2025)).

There is not simply a "risk" that Petitioner will be deprived of her liberty interest while in detention without bond. Petitioner's three months of detention without a bond hearing has already deprived her of her liberty interest in freedom from detention and her ability to effectively prepare for her removal proceedings. Petitioner's access to counsel has been severely restricted while in detention, and access to community support from her family is effectively

[2] *Vieira v. De Anda-Ybarra,* No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025) (Briones, J.);; *Martinez I*, 2025 U.S. Dist. LEXIS, at *5-6 (Cardones, J.); *Perez v. Noem*, No. 3:25-CV-2920-K-BN, 2025 WL 3532430 (N.D. Tex. Nov. 14, 2025) (Kinkeade, J.); *Monge Escoto v. Bondi*, No. EP-26-CV-283-KC, at *2 (W.D. Tex. Feb. 12, 2026) (Cardone, J.); *Rodriguez Flores v. Bondi*, No. EP-26-CV-00338-DB (Feb. 11, 2026) (Briones, J.); *Ceballos*, 2026 U.S. Dist. LEXIS, at *3 (Briones, J.); *Conforme v. Anda-Ybarra*, No. 26-cv-263, 2026 U.S. Dist. LEXIS, at *6-7 (W.D. Tex. Feb. 11, 2026) (Carone, J.); *Lopez-Arevelo*, 2025 LEXIS, at *29-34; *Sanchez Alvarez v. Noem*, No. 25-cv-1090, 2025 U.S. Dist. LEXIS 204896, 2025 WL 2942648, at *1, 7 (W.D. Mich. Oct. 17, 2025); *Chogllo Chafla v. Scott*, Nos. 25-cv-437, 438, 439, 2025 U.S. Dist. LEXIS 184909, 2025 WL 2688541, at *1, 10 (D. Me. Sept. 22, 2025).

non-existent. These circumstances have made it impossible for Petitioner to effectively prepare for her removal proceedings. Each day that Petitioner remains detained without at least a bond hearing, increases the risk that Petitioner will be deprived of her liberties. Moreover, "[t]his risk can be easily ameliorated through a bond hearing. Indeed agency decisionmakers regularly conduct individualized custody determinations considering flight risk and dangerousness." *Martinez II*, 2025 U.S. Dist. LEXIS, at *10. Because there is a clear risk to Petitioner's liberty interest that can easily be ameliorated with a bond hearing, this factor weighs in favor of Petitioner. *Id.; see also supra*, n. 3.

3. No government interest is served by detaining Petitioner without bond.

Even though Respondents argued in their brief that detaining Petitioner without bond is not a due process violation, **Respondents do not identify what government interest is served by the Government's detention without bond.** *See generally* Dkt. 7. As other courts have noted, the Government perhaps has "a general interest in enforcing the INA as they interpret it. But…[Petitioner's] constitutional interest in [her] liberty exists above and apart from the INA." *Martinez II*, 2025 U.S. Dist. LEXIS, at *11 (internal citations omitted). Moreover, "the Government has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community. **But these concerns would be squarely addressed through a bond hearing.**" *Id.* Because the Government's interests are easily served by affording Petitioner a bond hearing, this factor weighs in favor of Petitioner. *See supra*, n. 3.

Because all *Mathews* factors weigh in favor of Petitioner, Petitioner's detention without an individualized bond hearing deprives her of her constitutional right to procedural due process under the Fifth Amendment. Petitioner respectfully requests the Court to order Respondents provide her a bond hearing.

C. **Petitioner has not received the process due to her.**

Citing *Thuraissigiam*, Respondents argue that because Petitioner has received the process due under the statute, there is no violation of her due process rights. Dkt. 7 at 10. As Judge Cardone found, "[t]his argument relies on an expansive reading of *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020) and other recent Supreme Court precedent. *Martinez II*, 2025 U.S. Dist. LEXIS, at *7. Courts in this district have already rejected this argument. *See id.*; *Lopez-Arevelo v. Ripa*, 25-cv-337, 2025 U.S. Dist. LEXIS 188232, at *20-28 (W.D. Tex. Sept. 21, 2025) (Cardone, J.). As other Courts in this district, Petitioner requests the Court to agree "with its sister court's thoughtful analysis and decline[] to summarily reject [Petitioner's] due process challenge" based on this expansive reading of *Thuraissigiam.*

D. Exhaustion Does Not Bar this Court's Review.

Respondents argue that Petitioner has not exhausted all administrative remedies, precluding this Court's review of her petition. Dkt. 7 at 13-14. But exhaustion "is statutorily required only on appeals from final orders of removal." *Fuentes v. Lyons*, 5:25-cv-00153, slip op., Dkt. 15, at 5 (S.D. Tex. Oct. 16, 2025) (citing *Hniguira v. Mayorkas*, 2024 WL 1201634, at *6 (S.D. Tex. Mar. 20, 2024)). Because Petitioner does not seek review of a final order of removal, exhaustion does not preclude the Court's consideration of this Petition. *Id.*

Moreover, an exception to the exhaustion doctrine is when the "available administrative remedies are either unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action." *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (quoting *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994)). Here, Respondent argues that Petitioner must seek bond before an immigration

court, before seeking relief from this Court. Dkt. 7 at 14. But seeking bond before an immigration judge would be a "patently futile course of action," given the BIA decision that immigration judges do not have jurisdiction to hear bond requests for individuals detained pursuant to 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *Fuentes*, Dkt. No. 15 at 5-6; *see also Pizarro Reyes v. Raycraft,* 2025 WL 2609425, at *3 (E.D. Mich. Sept. 9, 2025); *Lopez-Arevelo*, 2025 LEXIS, at *16-17. Exhaustion clearly does not preclude this Court's review.

E. APA

Respondents argue that any APA claim may not be heard in a habeas case, and they cite to an unpublished Tenth Circuit decision in support. But to the extent that the APA claims are related to her unconstitutional detention, habeas is the proper vehicle. As the respondents argued in their response "Put simply, release from ICE custody . . . is a remedy that is only available through a habeas petition. Armando C. G. v. Tsoukaris, No. 20-5652, 2020 WL 4218429, at *7 (D.N.J. July 23, 2020) (emphasis added) (internal quotations omitted)." Dkt. 7 at 14.

But even absent any APA claim, her detention is unlawful on Constitutional grounds, and this Court may order her release based on the constitutional claim alone.

Date: February 20, 2026

Respectfully submitted,

/s/Jennifer Scarborough
Jennifer Scarborough
Attorney for Petitioner
TX State Bar No. 24106401
Email: jennifer@texasborderlawyer.com
Law Firm of Jennifer Scarborough
PO Box 18460, Minneapolis, MN 55418

CERTIFICATE OF SERVICE
All parties were served through this Court's ECF system. Dated 02/20/2026

/s/ Jennifer Scarborough
Attorney for Petitioner