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

Lourdes Martinez-Suarez, et. Al., Petitioners,	**Case No. 5:26-CV-00641-OLG**
v.	
Kristi Noem, Secretary, U.S. Department of Homeland Security, Pamela Bondi, U.S. Attorney General, Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Miguel Vergara, Field Office Director at U.S. Immigration & Customs Enforcement; Rose Thompson, Warden of the Karnes City Immigration Processing Center, Respondents	

PETITIONER'S REPLY TO RESPONSE IN OPPOSITION

Petitioner respectfully replies to the government Respondents' February 24th Response to Petition for Writ of Habeas Corpus (hereafter "Response"), Docket No.8, as follows:

BACKGROUND

Immigration detention in the United States operates at the intersection of statutory authority and constitutional limits. While the Immigration and Nationality Act (INA) provides the government with broad detention powers, these powers are not unlimited, and habeas corpus remains a critical mechanism to challenge unlawful confinement.

Recent decisions, including *Buenrostro-Mendez v. Bondi*, have narrowed certain statutory avenues for release, but they do not eliminate constitutional protections. This is the case at hand now before this Court.

Respondent's argue that Petitioner is an arriving alien subject to mandatory detention under §1225 as an applicant for admission and that this comports with due process. However, Petitioner will point out to the Court that detention without an opportunity for a meaningful individualized custody determination is unlawful on both statutory grounds and constitutional due process grounds. The Buenrostro-Mendez decision did not reach the due process question, confining its analysis and holding to statutory interpretation. See generally Buenrostro-Mendez, 2026 WL 323330, at *1-10. The case was remanded to the district court, not for dismissal, but "for further proceedings consistent with this opinion." Id. at *10. Likely those further proceedings will address Mr. Buenrostro-Mendez's due process claim, which the district court declined to reach in the first instance. [Buenrostro-Mendez was consolidated with another case on appeal. 2026 WL 323330, at *3. In that case, the district court also declined to reach the due process claim, granting the petition solely on statutory grounds. Covarrubias v. Vergara, No. 25-cv-112, 2025 WL 2950097, at *5 n.3 (S.D. Tex. Oct. 8, 2025)]. Respondents' counsel stated it as such during oral argument when he stated: "We have one issue before the Court now: the statutory question. . . . There's not, in other words, a due process claim here." Oral Argument, Buenrostro-Mendez v. Bondi, No. 25-20496, at 44:56–45:11 (5th Cir. Feb. 3, 2026), available at https:// www.ca5.uscourts.gov/OralArgRecordings/25/25-20496_2-3-2026.mp3.

Petitioner, Ms. Lourdes Martinez-Suarez (age 57) and her daughter Rosalia Escalante-Martinez (18), have been residing in San Antonio, Texas for almost four years (since May 27, 2022). They have a United States Citizen daughter and sister respectively. They have a United States son and brother respectively. They have United States grandchildren and nieces respectively. Both Petitioners (mother and daughter) were released on personal recognizance by the Respondents after determining that they were neither a danger to the community or a flight

risk. Petitioners are prima facie eligible for asylum as they are fleeing persecution in their Country of origin, Cuba. In allowing Petitioners to be released "on their own recognizance" after their entry in May 2022, Respondent's made the determination that the Petitioners were neither a flight risk nor a danger to the community. There have been no changed circumstances since Respondent's determination. In fact, the only reason that Petitioners are in an immigration detention center in Dilley, Texas is due to a policy change from the Respondent's. Petitioner's have not violated any of the terms of release "on their own recognizance." Respondent's detention of Petitioners on January 5, 2026 was only because they presented themselves to their check-in appointment at the ICE facility in direct violation of constitution due process laws.

Buenrostro does not address, and therefore does not eliminate, the argument that an immigrant detained under 8 U.S.C. § 1225 is entitled to a bond hearing at the beginning of their case, or 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.

LEGAL ANAYSIS PROCEDURAL DUE PROCESS

Petitioners arguesthat their detention is unlawful on three grounds: as a violation of the Fifth Amendment's Due Process Clause, as a violation of the Immigration and Nationality Act, and as a violation of the Administrative Procedure Act.

Petitioners argue that Respondents violated his Fifth Amendment right to procedural due process when Respondent's re-detained them more than four years after releasing them on personal recognizance.

i. The fact that Petitioners are detained pursuant to § 1225(b)(2) does not bar their due process claim.

Rather than engaging with the procedural due process test set forth in

Mathews v. Eldridge, 424 U.S. 319, 335 (1976), Respondents argue that because Petitioners are detained pursuant to § 1225(b)(2) and the statute does not provide for a bond hearing, "there can be no procedural due process violation." Petitioner does not agree as even assuming that § 1225(b)(2) properly applies to Petitioner, the provision is unconstitutional as applied to Petitioners. To support their argument that Petitioner, as an "applicant for admission," cannot be entitled to any process beyond that which § 1225(b)(2) provides, Respondents rely on Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 140 (2020). However, Petitioners will point out to the Court that in that case, the habeas petitioner was a noncitizen who was apprehended twenty-five yards from the border and placed into expedited removal proceedings pursuant to § 1225(a)(1). Thuraissigiam, 591 U.S. at 108-114. After immigration officials found that the noncitizen did not to have a "credible fear of persecution," he filed a habeas petition alleging that the "immigration officials deprived him of 'a meaningful opportunity to establish his claims' and violated credible-fear procedures by failing to probe past his denial of the facts necessary for asylum." Id. at 114. The Supreme Court rejected the noncitizen's argument that his expedited removal proceeding violated due process, holding that the noncitizen "ha[d] only those rights regarding admission that Congress has provided by statute." Id. at 140 (emphasis added). Respondents appear to contend that this holding deprives all "applicants for admission" of any constitutional due process rights whatsoever, including the right to challenge prolonged mandatory detention. As other courts addressing similar arguments have noted, Thuraissigiam dealt with a due process challenge to the sufficiency of § 1225's process for expedited removal—not with a challenge to prolonged mandatory detention. See, e.g., Lopez-Arevelo, 801 F. Supp. 3d at 682 (noting that

"[a]lthough Thuraissigiam certainly limited the scope of due process claims available to 'applicants for admission,' the decision's sweeping statements must be read in context."); Zafra v. Noem, No. EP-25-CV-00541-DB, 2025 WL 3239526, at *3 (W.D. Tex. Nov. 20, 2025). Petitioners argue that Thuraissigiam is not preclusive on the facts of this case because . . . Petitioner is not challenging their removal, but rather their detention during removal.") Here, Respondents opted to place Petitioner in formal removal proceedings under 8 U.S.C. § 1229a, not expedited removal proceedings. Petitioners are not challenging the constitutional adequacy of their removal proceedings, nor are they subject to a final order of removal. Instead, Petitioners' Writ of Habeas Corpus has nothing at all to do with gaining admission to the United States or with the adequacy of the "rights regarding admission that Congress has provided by statute." Thuraissigiam, 591 U.S. at 140. Rather, Petitioners invoke the due process clause solely to challenge the constitutionality of their continued detention without any determination that presents a risk of flight or danger to the community. In the present case, Petitioners remind the Court that Respondents released Petitioner on an "Order of Release on Recognizance" noting the specific terms that they must comply with to satisfy Respondent's terms, these included, "you must report for any hearings or interviews as directed by Immigration and Customs Enforcement or the Executive Office for Immigration Review. You must report in writing or person to Duty Officer .. you must not change your place of residence without first securing written permission form the officer listed above. You must not violate any local, State, or Federal laws or ordinances." Petitioners complied with all terms of their release on recognizance.

Since Thuraissigiam "did not address whether noncitizens mandatorily detained under § 1225(b) have a constitutional due process right to challenge the fact or length of their detention," Petitioners plead with the Court to find that Thuraissigiam does not foreclose Petitioner's due process claim. Lopez-Arevelo, 801 F. Supp. 3d at 682. At least one post-Thuraissigiam decision, affirming that the due process clause applies to noncitizens, even those who, like Petitioner, entered unlawfully without inspection. See, e.g., Zadvydas v. Davis, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons'" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."); Jennings v. Rodriguez, 583 U.S. 281, 312-315 (2018) (noting that "[d]ue process is flexible . . . [and] calls for such procedural protections as the particular situation demands" after instructing the Court of Appeals to consider on remand whether prolonged mandatory detention under § 1225(b) violates the Due Process Clause) (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)); Trump v. J. G. G., 604 U.S. 670, 673 (2025) (noting that "'[i]t is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings" (quoting Reno v. Flores, 507 U.S. 292, 306 (1993))). Petitioners urge the Court that Thuraissigiam does not bar all due process challenges brought by noncitizens classified as "applicants for admission" and Petitioners urge the Court to that find that their arbitrary detention is violative of the Due Process class of the United States Constitution.

ii. Petitioner's re-detention violates due process under Mathews v. Eldridge.

Petitioner urges the Court that re-detention, without a showing of changed circumstances, violates due process under Mathews v. Eldridge. . "[T]o determine whether a civil

detention violates a detainee's due process rights, courts apply the three-part [balancing] test set forth in Mathews v. Eldridge, 424 U.S. 319, 335 (1976)." Lopez-Arevelo, 801 F. Supp. 3d at 685 (quoting Martinez v. Noem, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at*2 (W.D. Tex. Sept. 8, 2025)). Courts must consider the following 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).**

Petitioners argue that here, the first Mathews factors weigh heavily in their favor as, ""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, 533 U.S. at 690; see also 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"). During the almost four years in which Petitioners have resided in the United States, they have begun to build a life here. They are employed, have attended schooling (and graduated with honors), and they have immediate relatives who are United States Citizens, a daughter and son (brother and sister respectively) and grandchildren and son-in-law. Petitioners argue that they have a strong liberty interest in their freedom from detention. See Lopez Miranda v. Flores, No. EP-25- CV-584-KC, 2025 WL 3901908, at *3 (W.D. Tex. Dec. 10, 2025) (holding that "noncitizens acquire a protectable liberty interest when they spend years establishing a life in the interior of the United States, regardless of their citizenship status.").

Petitioner's liberty interest argument is further strengthened by the fact that, Respondents considered their detention in 2022 and evaluated both the flight risk and danger to community factors and determined that they were neither a flight risk nor a danger to the community and as

such, allowed Petitioners to be released on their own recognizance. "[T]he govern-ment's decision to release an individual from custody creates 'an implicit promise,' upon which that individual may rely, that their liberty "will be revoked only if [they] fail[ ] to live up to the. . . conditions [of release]." Pinchi v. Noem, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025). In the present case, Petitioners have complied with all the conditions of release on recognizance. Even assuming, arguendo, that Petitioner's almost four years of living, studying and working in the San Antonio, Texas were insufficient to create a cognizable liberty interest, Respondent's provided Petitioner with a liberty interest when they released them from custody on their own recognizance in May 2022. It is well-established that once the government opts to provide a liberty interest or property interest, it cannot arbitrarily revoke this benefit without due process of law. See Wolff v. McDonnell, 418 U.S. 539, 558 (1974) (holding in the context of "good-time credits" for a prisoners that "a person's liberty is equally protected [by the due process clause], even when the liberty itself is a... creation of the State."); Morrissey, 408 U.S. at 482 (noting "that the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a 'grievous loss' on the parolee and often on others"); Graham v. Richardson, 403 U.S. 365, 374 (1971) (rejecting the concept that constitutional rights turn upon whether a governmental benefit is characterized as a "right" or as a "privilege"). Petitioners argue that like many other Petitioners in other courts, that a noncitizen who was previously released on a set of conditions has a strong liberty interest in avoiding re-detention. E.g., Pinchi, 792 F. Supp. 3d at 1032; Lopez-Arevelo, 801 F. Supp. 3d at 685-86.

Petitioners also argue that the second Mathews factor, the risk of erroneous deprivation, should also weigh in their favor. "The regulations authorizing ICE to release a noncitizen from custody require that the noncitizen 'demonstrate to the satisfaction of the officer that such release

would not pose a danger to property or persons' and that the noncitizen is 'likely to appear for any future proceeding.'" Pinchi, 792 F. Supp. 3d at 1032 (quoting 8 C.F.R. § 1236.1(c)(8)). Release on recognizance, bond or parole thus "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." Saravia v. Sessions, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd sub nom. Saravia for A.H. v. Sessions, 905 F.3d 1137 (9th Cir. 2018). Absent some sort of pre-detention hearing to determine whether their circumstances have changed such that they now presents a danger or a flight risk when the government previously determined that they presented neither, the risk of erroneous deprivation of Petitioner's liberty interest is obvious and detrimental. In the present case, Respondents do not contend that Petitioners violated any conditions of release or otherwise present a danger or a flight risk. Instead, Respondents rely solely on the government's change in policy to justify Petitioners re-detention, as Respondents rely on the recent Fifth Circuit Court of Appeals findings in Buenrostro v. Bondi and the application of §1225 applying to noncitizens present in the United States. This does not diminish the Petitioners' positioning considering the Mathews factors.

Under the third Mathews factor, even a weighty private interest must be balanced against 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. Respondents, "of course, have a generalized interest in ensuring noncitizens appear for their removal hearings and do not pose a risk to the communities in which they live." Zafra, 2025 WL 3239526, at *4. But this interest is not served by summarily re-detaining noncitizen "applicants for admission" whom the government previously determined were not flight risks or

dangers to the community without a showing of changed circumstances. Indeed, given the high costs of detention, the fiscal and administrative burdens of providing noncitizens in these circumstances with some form of hearing pales in comparison with the burdens of re-detaining thousands of noncitizens who were previously released on parole or recognizance. The administrative burdens of providing a pre-detention hearing are not substantially greater than those associated with providing a post-detention hearing at which the IJ denies bond based on "Matter of Yajure-Hurtado applies: 29 I&N Dec. 216 (BIA 2025). The IJ issued this denial on January 29, 2026; prior to the Hurtado case being vacated by a federal district Court. In other words, the post-detention process Respondents actually provided Petitioners presents roughly the same administrative burden as would a pre-detention hearing, while creating a significantly higher risk of erroneous deprivation. Thus, the Petitioner pleads with the Court that again this factor favors their position.

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*.Individuals who have been released from custody gain a protected liberty interest in remaining free from custody, and ICE must show materially changed circumstances to justify redetention. See e.g. Matter of Sugay, 17 I&N at 640, Ortega v. Bonnar, 415 F. Supp. 3d 963, 969 (N.D. Cal 2019), Lopez-Arevelo v. Ripa, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11(W.D. Tex. Sept. 22, 2025)("[Once] released from immigration custody, noncitizens acquire 'a protectable liberty interest in

remaining out of custody on bond,"); Singh, 2025 WL 1918679, at *6 ("Furthermore, the Supreme Court has held that, even when a statute authorizes revocation of an individual's freedom, the individual may retain a protected liberty interest under the Due Process Clause."). These factors all favor a determination that Petitioners are being held without due process of law. The Respondents re-detention of Petitioners after Respondent's released them on their own recognizance in May 2022 violate their liberty interest. Respondent's did not provide any type of prior notice, any showing of changed circumstances, or a meaningful opportunity to contest their re-detention and simply arbitrary detained Petitioners on January 5, 2026 thereby violating the Fifth Amendment's Due Process Clause of the Unites States Constitution.

Respondents' Failure to Conduct Any Mathews v. Eldridge Analysis Independently Violates Due Process

Respondents invoke Mathews v. Eldridge, 424 U.S. 319 (1976), but perform no balancing whatsoever. They do not analyze Petitioner's liberty interest, the risk of erroneous deprivation, or he availability of less restrictive alternatives to detention. That omission is not incidental; it is he constitutional defect. Due process requires individualized assessment. A standardized brief hat applies the same conclusory assertions to every detainee cannot satisfy Mathews, which demands case-specific evaluation of whether existing procedures adequately protect against erroneous deprivation of liberty.

Here, the risk of error is substantial. Detention is imposed categorically, without a hearing, without individualized findings, and without any opportunity for Petitioner to contest the necessity of confinement. Respondents' refusal to engage in Mathews balancing underscores hat Petitioner's detention is not the product of reasoned decision-making, but of categorical policy.

Violation of the Accardi Doctrine

Government agencies are required to follow their own regulations. United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 268 (1954); United States v. Heffner, 420 F. 2d 809, 811 (4th Cir. 1969) ("An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its actions cannot stand and courts will strike it down."). A violation of the Accardi doctrine may itself constitute a violation of the Fifth Amendment Due Process Clause, particularly when liberty is at stake. See e.g. Sering Ceesay v. Kurzdorfer, 781 F. Supp. 3 d 137, 160(W.D. N.Y. 2025) (citing Rombot v. Souza, 296 F. Supp 3d 383, 388 (D. Mass. 2017))

Private Interest

"'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*, 54 2 U.S. 507, 529 (2004)). 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."). This is the case for these Petitioners as well, as they have lived, studied, and worked in the interior of the United States (in San Antonio, Texas) for almost four years since theu entered the United States.

Government's Interest

Regardless of the government's purported interest in enforcing its interpretation of 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.")). Further, while the government "has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community," such interest "would be squarely addressed through a bond hearing." *Id.* (citing *Martinez v. Noem*, 2025 WL 2598379 at *4 (W.D. Tex. Sep. 8, 2025)). These are the same consideration that Respondents make when deciding whether to allow a noncitizen to be release from custody on personal recognizance. In the instant case, Respondent's made this assessment in May 2022 and granted Petitioners release on recognizance.

Fifth Circuit Precedent on Procedural Due Process

Federal courts in the Fifth Circuit have repeatedly granted release on procedural due process grounds. Even after the recent Fifth Circuit precedent in Buenrostro-Mendez v. Bondi, Judges in this circuit have granted Writ of Habeas Corpus Petitions in recognizing the noncitizen's procedural due process rights. *Hassen v. Noem*, 3:26-cv-00048-DB (W.D. Tex. Feb.

9, 2026) and *Clemente Ceballos v. Garite,* 3:26-cv-00312-DB (W.D. Tex. Feb 10, 2026); Gomez Molina v. Noem, 26-cv-00476 (W.D. Tex. Feb 24, 2026); and Alvarez-Rico v. Noem, 4:26-CV-00729 (S.D. Tex. Feb 24, 2026). These cases are also in the fifth circuit and are post-Buenrostro case and applicable to the present case. Petitioners are currently urging this Court to make similar determinations, findings, and orders: that of weighing their almost four years in the United States, as they lived, studied and worked in San Antonio, Texas, carrying out their day-to-day affairs clearly establishing a protected liberty interest of freedom and complying with Respondent's conditions of release such that the arbitrary re-detention on January 5, 2026 was violative of their due process rights. Due to a change in government policy and an interim memo issued by Respondents, the government actors detained Petitioner on January 5, 2026.

Many other cases in the various Districts of Texas also recognize noncitizen's due process rights in granting release to Petitioners' Writ of Habeas Corpus Petitions. See *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); *Cruz-Reyes v. Bondi*, (S.D. Tex. Feb. 3, 2026); *Singh v. Taylor,* 2026 WL 360913 (W.D. Tex. Feb. 9, 2026); *Aguila v. Warden, ERO El Paso Camp East Montana,* (W.D. Tex. Feb. 9, 2026); Gomez Molina v. Noem, (W.D. Tex. Feb. 24, 2026); Alvarez-Rico v. Noem, (S.D. Tex. Feb. 24, 2026).

Petitioner notes that this Court can still grant relief, even after acknowledging the Fifth Circuit's precedential decision in *Buenrostro-Mendez v. Bondi* as this case "does not change the case's outcome on procedural due process grounds." The El Paso Division previously stated, "Buenrostro-Mendez has no bearing on this Court's determination of whether [a habeas petitioner] is being detained in violation of her 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). A court in the El Paso Division of the Western District of Texas has held the same, granting an immigration detainee's habeas claim days after the decision in Buenrostro-Mendez. Hassen v. Noem, No. 3:26-cv-48-DB, ECF No. 8 at *4 n.1 (W.D. Tex. Feb. 9, 2026),("Buenrostro-Mendez does not change this case's outcome on procedural due process grounds."). In a very recent decision in the Southern District of Texas, Houston Division, the Court granted the Habeas Corpus and ordered Respondents to release Petitioner within forty-eight hours due to the violations of due process in almost identical circumstances wherein the Petitioner was arbitrarily detained on December 1, 2025 after having been previously (four years prior) released by Respondent's on personal recognizance. Alvarez-Rico v. Noem, (S.D. Tex. Feb. 24, 2026). The present case before the Court is almost identical to the facts of the Alvarez-Rico v. Noem case as both Petitioners were released by Respondent's on personal recognizance and re-detained approximately four years later with no changed circumstances. Petitioner urges the Court to follow the determinations made by the Court in the Southern District of Texas in this case, as it is also in the Western District of Texas and was decided on February 25, 2026. In that case, the Judge found that the many violations of constitutional due process merited an immediate release of Petitioner. The Court ordered the following: "The Court therefore ORDERS that Petitioner be released from custody within 48 hours pursuant to the terms of his 2021 release order.

Respondents may not re-detain Petitioner during the pendency of his removal proceedings absent a pre-detention hearing before an IJ at which the government demonstrates, by clear and convincing evidence, that he is a flight risk or a danger to the community or has violated the conditions of his release. Respondents similarly may not subject Petitioner to additional conditions of release without showing why new conditions are necessary". Alvarez-Rico v. Noem, (S.D. Tex. Feb. 24, 2026).

Additionally, numerous immigration decisions finding due process violations in this District have been based on the Mathews v. Eldridge test and principles of procedural due process, not on Zadvydas. See, e.g., Martinez v. Noem, No. 3:25-cv-430-KC, 2025 WL 2965859, at *3-5 (W.D. Tex. Oct. 21, 2025); 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). As such, Petitioners argue that Buenrostro-Mendez does not preclude Petitioner's procedural due process claim.

Preserving the Statutory Claim

Petitioner preserves his position of continuing to stand by the position that his immigration case is governed by 8 U.S.C. § 1226. Thereby Petitioner respectfully rejects the Fifth Circuit Courts determination that mandatory detention applies in his case. Petitioner raises this statutory argument rejected by *Buenrostro* in order to preserve that argument should future litigation in that case have an impact on the statutory issue in his case. Given that the issue is pending before various courts of appeals, there is a possibility that either the en banc Fifth Circuit or the Supreme Court may address the issue and stay or reject the panel's conclusion. Accordingly, Petitioner raises this statutory issue to preserve the statutory argument as the

government has misinterpreted the statute, but Petitioner expressly acknowledge that *Buenrostro* adversely decided the issue, and Petitioner only raises this argument solely to preserve further review.

Respondents' Failure of Proof Requires Immediate Relief

Respondents bear the burden of justifying civil detention. They have not done so. Their failure to provide any individualized rationale leaves the Court with no lawful basis to defer, remand, or delay relief. Where detention is unsupported by individualized findings and insulated from meaningful review, the Constitution requires intervention. The appropriate remedies are immediate release or, at minimum, a prompt bond hearing at which the government bears the burden of proving that continued detention is necessary.

Petitioners argue that Respondents' action of re-detention of Petitioner without a pre-detention showing (or even allegation) of a change in his circumstances violated Petitioner's procedural due process rights, and that the Court must now determine the appropriate remedy. Courts addressing similar circumstances have ordered various remedies, including a § 1226(a) bond hearing before an IJ, a bond hearing at which the government bears the burden of proof, and immediate release from custody. E.g., Zafra, 2025 WL 3239526, at *5 (ordering a prompt bond hearing at which "the government shall bear the burden of justifying Petitioner's continued detention during the pendency of his removal proceedings by clear and convincing evidence"); Lopez Benitez v. Francis, 795 F. Supp. 3d 475, 499 (S.D.N.Y. 2025) (ordering immediate release from custody after determining that the petitioner's continued detention violated procedural due process).

Under the facts of the present case, the Petitioners requests that the Court find that the proper remedy for the violation of Petitioner's due process rights is immediate release from custody under the conditions of their previous release on recognizance. Respondents previously determined that Petitioners were neither a flight risk nor a danger to the community pursuant to 8 C.F.R. § 1236.1(c)(8). There is no indication that the circumstances that led to this conclusion have changed in the years since Respondents released Petitioners from custody, and Petitioners have complied with all the conditions of their release. Despite this compliance, Petitioners have been unlawfully detained without bond for nearly two months. These circumstances are similar to cases in which courts have found a due process violation where ICE failed to follow its own procedures prior to re-detaining a noncitizen who was previously released on an Order of Supervision pursuant to 8 C.F.R. § 241.13. In those cases, courts in Texas, have ordered immediate release from custody. See Ahmed v. Tate, No. 4:25-CV-05639 (S.D. Tex. Dec. 15, 2025) (Ellison, J.); Abuelhawa v. Noem, No. 4:25-CV-04128, 2025 WL 2937692 (S.D. Tex. Oct. 16, 2025). Given the weight of the liberty interests at stake and the fact that a custody determination already occurred, the Petitioners plead that the Court concludes that the same remedy is appropriate here. See J.U. v. Maldonado, 805 F. Supp. 3d 482, 498 (E.D.N.Y. 2025) (ordering immediate release where the petitioner was re-detained "with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond") Lopez Benitez v. Francis, 795 F. Supp. 3d 475, 497 (S.D.N.Y. 2025) ("Indeed, given the nature of the constitutional violation [petitioner] sustained here—i.e., Respondents' failure to conduct any kind of individualized assessment before [re-]detaining him—any post-deprivation review by an immigration judge would be inadequate."). As such, Petitioner respectfully requests that this Court grants their writ of habeas corpus by ordering Respondent's to release Petitioner within 48

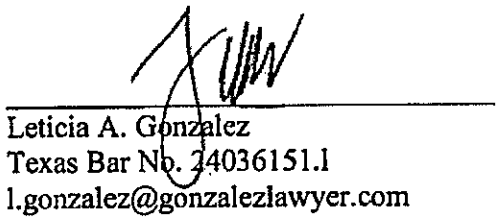
hours pursuant to the terms of their release on recognizance, and order that Respondents may not re-detain Petitioners during the pendency of their removal proceedings absent a pre-detention hearing before an IJ at which the government demonstrates, by clear and convincing evidence, that they are a flight risk or a danger to the community or Petitioners have violated the conditions of their release.

Respondents bear the burden of justifying civil immigration detention. They have not met that burden here. Their opposition expressly disclaims any attempt to engage with Petitioner's individual circumstances, relying instead on a standardized memorandum untethered to the facts of this case. As a result, Respondents do not dispute that Petitioner was released on their own recognizance into the United States, lived openly in the interior for an extended period with the government's authorization, filed a timely asylum application, and was arrested without any individualized determination that detention was necessary.

Civil detention must be the product of reasoned, individualized decision-making. Where the government offers no petitioner-specific justification, no procedural safeguards, and no available administrative remedy, continued detention violates the Fifth Amendment. This Court is not required to defer to a detention regime that is defended only in the abstract and unsupported by the record.

For these reasons, Petitioner respectfully requests that the Court grant the writ and order their immediate release. In the alternative, Petitioner requests a prompt bond hearing before a neutral decision maker at which the government bears the burden of proving that continued detention is justified.

Respectfully Submitted,



03/03/2026
Date

Leticia A. Gonzalez
Texas Bar No. 24036151.l
l.gonzalez@gonzalezlawyer.com
5000 San Pedro Ave.
San Antonio, Texas 78212
Phone: (210) 293-9393
Fax: (210) 298-5762

Attorney for Petitioner

CERIFICATE OF SERVICE

I certify that on today's date, March 3, 2026, I filed the above of Petitioner's Reply to Response in Opposition by using the Courts CM/ECF system, which will automatically send a notice of electronic filing to Defendant's counsel.

/s/ Leticia Gonzalez
Leticia Gonzalez

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

I represent Petitioners, Lourdes Martinez- Suarez and Rosalia Escalante-Martinez, and submit this verification on their behalf. I hereby verify that the factual statements made in the foregoing PETITIONER'S REPLY TO RESPONSE IN OPPOSITION are true and correct to the best of my knowledge and belief.

Dated this 3rd day of March 2026.

By: /s/ Leticia Gonzalez
Leticia Gonzalez