

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

Miguel Barriga Reyes,

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Petitioner,

V.

KRISTI NOEM, Secretary of the United States

Department of Homeland Security;

PAMELA BONDI, United States Attorney

General;

MIGUEL VERGARA, San Antonio Field Office

Director for Enforcement and Removal, U.S.

Immigration and Customs Enforcement,

Department of Homeland Security;

BOBBY THOMPSON, Warden, South Texas

Detention Complex, Pearsall, Texas;

UNITED STATES DEPARTMENT OF

HOMELAND SECURITY;

UNITED STATES IMMIGRATION AND

CUSTOMS ENFORCEMENT;

EXECUTIVE OFFICE FOR IMMIGRATION

REVIEW;

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Civil Case No. 5:26-cv-00651-JKP

Respondents.

**MEMORANDUM IN SUPPORT OF PETITIONER'S AMENDED PETITION OF
HABEAS CORPUS AND REPLY TO RESPONDENTS' RESPONSE TO AMENDED
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, through undersigned counsel, respectfully submits this reply to Respondents' Response to the Amended Petition for Writ of Habeas Corpus (ECF 10, filed on February 20, 2026). Respondents' arguments fail to address the core of Petitioner's claims, which focus on the unconstitutionality and unlawfulness of his prolonged detention without any individualized custody determination under the Due Process Clause of the Fifth Amendment, the Administrative Procedure Act (APA), the Suspension Clause, and binding agency regulations.

While Respondents rely heavily on the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701, 2026 WL 323330 (5th Cir. Feb. 6, 2026), that decision resolves only statutory interpretation issues under 8 U.S.C. §§ 1225 and 1226—it does not foreclose Petitioner's independent constitutional and administrative-law challenges. For the reasons below, the Court should grant the Amended Petition and order Petitioner's immediate release or a prompt individualized bond hearing before a neutral decisionmaker.

I. PROCEDURAL HISTORY

On February 3, 2026, Petitioner filed his initial habeas petition under 28 U.S.C. § 2241 (ECF 1). On February 11, 2026, Respondent filed their initial reply (ECF 8). In light of the Fifth Circuit's intervening decision in *Buenrostro-Mendez v. Bondi*, Petitioner filed an amended petition (ECF 9) on February 13, 2026, and Respondents filed their response to the amended Petition on February 20, 2026 (ECF 10).

II. EXHAUSTION IS NOT REQUIRED OR IS EXCUSED HERE

Respondents argue exhaustion of administrative remedies bars relief, citing *Hinojosa v. Horn*, 896 F.3d 305 (5th Cir. 2018), and various district court decisions. This argument fails.

First, exhaustion is not strictly required for pure questions of law or constitutional claims raised in habeas, particularly where administrative remedies would be futile. Here, Petitioner's claims are constitutional and statutory (Due Process, APA, Suspension Clause), not discretionary bond decisions reviewable only by the BIA under 8 U.S.C. § 1226(e).

Second, seeking relief before an immigration judge or the BIA would be futile. Under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (which *Buenrostro* upheld on statutory grounds), IJs lack jurisdiction to grant bond or conduct hearings for individuals detained under § 1225(b)(2). Any request would be denied summarily, without analyzing dangerousness or flight risk, rendering exhaustion futile.

Third, the massive immigration court backlog (over 3 million cases) and policy barring bond under § 1225 make administrative relief illusory.

Fourth, Respondents argue that Petitioner must exhaust his remedies by seeking a bond determination from the immigration court. But Respondents simultaneously contend that Petitioner is subject to mandatory detention without a bond hearing. By Respondents' own interpretation of 8 U.S.C. § 1225 in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), Petitioner's exhaustion of administrative remedies would be futile. See *Orduna v. Bondi*, No. 1:26-CV-00280-RP (WD Tex. February 23, 2026).

Lastly, Respondents also contend that whether Petitioner is removable and challenges to the NTA should first be addressed with the IJ and BIA. Their arguments are misplaced. Petitioner argues that the whole basis for detention is erroneous. He is being subject to mandatory detention under a wrong basis and without proper legal justification. As addressed in the amended petition, "Because the NTA fails to allege any valid ground of removability, the immigration court lacks a

proper basis to exercise jurisdiction over removal proceedings against Petitioner, and ICE lacks statutory authority to detain him in connection with those proceedings. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (detention must be reasonably related to a legitimate statutory purpose); *Clark v. Martinez*, 543 U.S. 371, 380–81 (2005) (civil detention authority is limited).”

III. BUENROSTRO DOES NOT RESOLVE THE PETITIONER'S CONSTITUTIONAL AND ADMINISTRATIVE CLAIMS

Respondents assert that *Buenrostro* mandates denial of the Petition because it confirms Petitioner's detention under § 1225(b)(2)(A) as an "applicant for admission" subject to mandatory detention. While *Buenrostro* holds that § 1225(b)(2)(A)—not § 1226(a)—governs detention for individuals like Petitioner (who entered without inspection), that statutory conclusion does not resolve Petitioner's separate claims.

Buenrostro addressed only the interplay between §§ 1225 and 1226; it did not consider or foreclose arguments that prolonged mandatory detention without individualized review violates due process as applied, particularly where (as here) the detainee entered the U.S. when he was approximately eight months old, and has lived continuously in the U.S. for over 23 years, he had DACA status, he has no history of violence, he has a DWI reduced to obstruction, has cooperated fully with authorities, he has pending VAWA Self Petition and Adjustment of Status Applications with USCIS (which USCIS issued a prima facie determination), the last time he entered was with a parole document, and he has a legal pathway to gain lawful immigration status. The Fifth Amendment's Due Process Clause protects against arbitrary civil detention, and habeas remains available to challenge executive detention that is punitive, indefinite, or lacking meaningful review. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678 (2001) (due process limits on

indefinite detention); *Demore v. Kim*, 538 U.S. 510 (2003) (distinguishing limited mandatory detention from prolonged unreasonable detention).

Petitioner's detention—now prolonged (since December 19, 2025) without any neutral assessment of danger, flight risk, or alternatives to detention—is unconstitutional as applied. He seeks either release or a prompt hearing before an impartial decisionmaker to evaluate these factors, consistent with due process.

Respondents' reliance on *Buenrostro* also ignores that the decision leaves intact habeas jurisdiction to review constitutional claims arising from detention under § 1225. Multiple courts in and outside the Fifth Circuit have granted relief on similar as-applied due process grounds post-*Buenrostro*.

IV. PETITIONER'S PROLONGED DETENTION WITHOUT AN INDIVIDUALIZED HEARING VIOLATES DUE PROCESS

Demore involved § 1226(c), not § 1225(b), and emphasized that detention was permissible because it was "for the brief period necessary for...removal proceedings," averaging 90 days to six months. 538 U.S. at 530-31. Justice Kennedy's concurrence, which provided the fifth vote, stressed that due process may require a bond hearing if detention becomes unreasonably prolonged. *Id.*

Subsequent Supreme Court decisions have built on this, rejecting facial challenges to mandatory detention but leaving open as-applied claims where detention is prolonged without individualized review. See *Jennings v. Rodriguez*, 583 U.S. 281, 303-04 (2018) (remanding for consideration of as-applied due process claims under §§ 1225 and 1226); *Johnson v.*

Arteaga-Martinez, 596 U.S. 284, 292-93 (2022) (same, noting that prolonged detention may violate due process).

In *Thuraissigiam*, the Supreme Court addressed a Sri Lankan asylum seeker apprehended just 25 yards inside the U.S. border after crossing without inspection. He was placed in expedited removal under 8 U.S.C. § 1225(b), where an asylum officer rejected his credible-fear claim. He sought habeas corpus review to challenge that determination and obtain a new opportunity for asylum. The Court held that 8 U.S.C. § 1252(e)(2)—which severely limits habeas review in expedited removal cases—does not violate the Suspension Clause or Due Process Clause as applied. The habeas relief sought was not simple release from detention but additional administrative review to secure lawful presence/asylum—an expansion beyond the traditional scope of habeas (release from unlawful custody). The Court emphasized that such applicants at or near the border receive only statutory due process for admission matters. The court noted that *Thuraissigiam* did not address due process challenges to prolonged mandatory detention under § 1225(b) (or similar contexts), leaving such as-applied claims open (consistent with *Jennings v. Rodriguez*, 583 U.S. 281 (2018), which avoided constitutional questions on detention length). *DHS v. Thuraissigiam*, 591 U.S. 103, 138 (2020).

In *Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 (W.D. Tex. Oct. 2, 2025), the court held: “At the heart of *Thuraissigiam* was 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 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)). “Th[is] distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.” *Zadvydas*, 533 U.S. 678, 693 (2001). And the distinction is one of place—not status: “[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.” *Martinez v. Hyde*, --- F. Supp. 3d ----, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). ““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 *Leng May Ma*, 357 U.S. at 187). For someone like Santiago, who was detained after living, studying, working, and marrying in this country over the course of two decades, “it cannot be denied that she was ‘already in the country.’” *See id.* (quoting *Jennings*, 583 U.S. at 289).

In sum, *Thuraissigiam* does not prohibit Santiago from pursuing her due process claim, for two reasons. First, because she challenges her detention, not her deportability [...]. And second, because she was detained after twenty years of presence in the United States, rather than on the threshold of initial entry, her circumstances are nothing like *Thuraissigiam*’s, and her as-applied due process challenge cannot thus be rejected out of hand.”

This case is different than *Thuraissigiam*, as Petitioner was not apprehended at or near the border during his initial entry or subsequent parole entry. Instead, Petitioner has been in the U.S. for almost 23 years, he was brought by his parents when he was eight months old, he had DACA status, he has no history of violence, he has a DWI reduced to obstruction, has cooperated fully with authorities, he has pending VAWA Self Petition and Adjustment of Status Applications with USCIS (which USCIS issued a prima facie determination), he has EAD, the last time he entered was with a parole document, and he has a legal pathway to gain lawful immigration 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 (1976).” *Martinez v.*

Noem, No. 5:25- CV-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). Those 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) “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 335.¹

All three *Mathews* factors weigh in Petitioner’s favor. First, because he has spent all of his life in the United States (he knows no other country or culture), he entered when he was eight months old, has cooperated with ICE, has a pending VAWA and AOS applications, and he was paroled at his last entry. Therefore, Petitioner possesses a cognizable interest in his freedom from detention. *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *9 (W.D. Tex. Oct. 21, 2025). This interest “deserves great weight and gravity.” *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *6 (W.D. Tex. Oct. 16, 2025).

Additionally, Petitioner has been detained since December 19, 2025, for more than two months. No IJ will ever determine if he merits release based on flight risk or dangerousness. Petitioner’s first immigration hearing was held on January 20, 2026, more than one month after initial detention. The next master calendar hearing is scheduled for March 12, 2026.² That is almost three months after initial detention, and that is not the final hearing; the case is set to continue and be resolved in years (and he is not even given a chance to pursue his pending VAWA and AOS outside of detention). His removal proceedings are not brief as the government contends. As stated in the amended petition, the Pearsall immigration court has a huge backlog,

¹ This is well established law. We are citing from *Orduna v. Bondi*, No. 1:26-CV-00280-RP (WD Tex. February 23, 2026) to address all the *Mathews* factors.

² Automated case information, last accessed on February 24, 2026. <https://acis.eoir.justice.gov/es/caseInformation>

and cases are resolved in at least six months. The Petitioner's detention is expected to be unreasonable and prolonged. The Respondents were not and are not prepared to detain thousands of noncitizens and expect prompt removal proceedings. The statutory scheme of mandatory detention, as applied, violates due process.

The second factor—the risk of erroneous deprivation—also weighs strongly in favor of Petitioner. Petitioner lacks any opportunity to contest the reasonableness of his detention, meaning the risk of erroneous deprivation lies in this “automatic continued deprivation of liberty for a noncitizen.” *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *7 (W.D. Tex. Oct. 16, 2025).

As to the third factor, “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.” *Id.* at *6. “In any event, if such concerns exist, they would be squarely addressed” at a bond hearing. *Lopez-Arevelo*, 801 F. Supp. 3d at 687. Regardless, the government “conducted [bond hearings] for decades until its reinterpretation of the law earlier this year,” reducing any purported interest in ceasing to hold bond hearings. *Id.*

As such, all three factors favor Petitioner, and the Court should find that Petitioner's detention without any opportunity to challenge his detention through a bond hearing violates the Due Process Clause.

The Western District of Texas has granted habeas petitions under procedural due process grounds. See *Orduna v. Bondi*, No. 1:26-CV-00280-RP (WD Tex. February 23, 2026); *Cumbe Lema v. Noem*, No. 3:26-cv-00249-KC (W.D. Tex. February 9, 2026); *Lala Barros v. Noem*, No. 3:25-cv-488-KC, 2025 (W.D. Tex. Nov. 10, 2025); *Erazo Rojas v. Noem*, No. 3:25-cv-443-KC

(W.D. Tex. Oct. 30, 2025); *Martinez v. Noem*, No. 3:25-cv-430-KC (W.D. Tex. Oct. 21, 2025); *Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 (W.D. Tex. Oct. 2, 2025); *Lopez-Arevelo v. Ripa*, No. 3:25-cv-337-KC (W.D. Tex. Sept. 22, 2025).

V. RESPONDENTS' DETENTION POLICY VIOLATES THE APA AND AGENCY REGULATIONS

The BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which underpins Respondents' policy, is arbitrary and capricious under the APA. 5 U.S.C. § 706(2)(A). *Hurtado* reversed decades of post-IIRIRA practice treating individuals arrested interiorly as detainable under § 1226(a) with bond eligibility. This abrupt shift lacks reasoned explanation, ignores reliance interests (e.g., Petitioner's long-term U.S. ties, pending VAWA and AOS, legal pathway to permanent residence), and contradicts regulations requiring individualized custody reviews. Moreover, Respondents violate their own regulations. 8 C.F.R. § 287.3(d) requires a custody determination within 48 hours of arrest, and § 236.1(c) mandates bond hearings for non-mandatory detainees. Even under § 1225, regulations permit parole for "urgent humanitarian reasons" or "significant public benefit." 8 C.F.R. § 212.5(b). Respondents have provided no such review, rendering detention arbitrary.

VI. PETITIONER'S DETENTION VIOLATES THE SUSPENSION CLAUSE

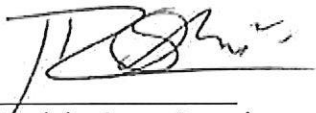
Respondents fail to address the Suspension Clause, which prohibits suspending the writ of habeas corpus except in cases of rebellion or invasion. U.S. Const. art. I, § 9, cl. 2. By imposing indefinite detention without meaningful judicial review, Respondents effectively suspend the writ for Petitioner.

Habeas corpus remains available to all persons in the United States who are detained by executive authority, including noncitizens in civil immigration custody. The Supreme Court has repeatedly held that Congress—and a fortiori the Executive—may not eliminate all avenues of meaningful judicial review of the legality of detention. *St. Cyr*, 533 U.S. at 305–06; *Boumediene*, 553 U.S. at 779.

VII. CONCLUSION

Buenrostro forecloses a purely statutory claim to § 1226 bond eligibility but does not bar Petitioner's as-applied constitutional and APA challenges to his prolonged, unreviewed detention. The Court should grant the Amended Petition, order Petitioner's immediate release, or alternatively order a prompt individualized bond hearing before a neutral decisionmaker.

Respectfully submitted, February 24, 2026.



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CERTIFICATE OF SERVICE

I, Patricio Garza Izaguirre, certify that on this date, a true and correct copy of this **MEMORANDUM IN SUPPORT OF PETITIONER'S AMENDED PETITION OF HABEAS CORPUS AND REPLY TO RESPONDENTS' RESPONSE TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS**, was served to the following by the CM/ECF system:

1. KRISTI NOEM, Secretary of the United States Department of Homeland Security;
2. PAMELA BONDI, United States Attorney General;
3. MIGUEL VERGARA, San Antonio Field Office Director for Enforcement and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security;
4. CHARLOTTE COLLINS, Warden, T. Don Hutto Detention Center, Taylor, Texas;
5. UNITED STATES DEPARTMENT OF HOMELAND SECURITY;
6. UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT;
7. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

On February 24, 2026



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