UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

GURBHEJ SINGH,	§	
	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 3:26-cv-00313-LS
	§	
	§	
Mary De Anda Ybarra, et. al.,	§	
	§	
Respondents	§	

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Gurbhej Singh, by and through undersigned counsel, respectfully submits this Reply to the Federal Respondents' Response to Petition for Writ of Habeas Corpus Considering Recent Fifth Circuit Precedent. (ECF No. 4).

I. INTRODUCTION

Respondents concede that Petitioner's detention is premised entirely on the statutory interpretation adopted by the Fifth Circuit in *Buenrostro-Mendez v. Bondi,* No. 25-20496, --- F.4th---2026 WL 323330 (5th Cir. Feb. 6, 2026). However, as numerous district courts within the Fifth Circuit have recently held, the *Buenrostro-Mendez* decision only addressed the statutory interpretation of 8 U.S.C. § 1225(b)(2) and explicitly declined to reach the constitutional due process question. Accordingly, while *Buenrostro-Mendez* may control the statutory claim, it has "no bearing" on Petitioner's independent claim that his detention without a pre-deprivation bond hearing violates his Fifth Amendment right to procedural due process.

Petitioner, an Indian citizen who entered the United States illegally in 2023, was released on an order of recognizance on May 17, 2023, and was detained again on January 15, 2026. (ECF No. 1 at 21-22). Petitioner's release and subsequent re-detention without an individualized assessment of flight risk or dangerousness constitutes a violation of his constitutional right to procedural due process.

II. ARGUMENT

A. *Buenrostro-Mendez* Does Not Foreclose Petitioner's Due Process Claim

Respondents are correct that the Fifth Circuit in *Buenrostro-Mendez* held that aliens, like the Petitioner, who entered the United States illegally and are not "clearly and beyond a doubt entitled to be admitted," "shall be detained" under 8 U.S.C. § 1225(b)(2)(A) until the conclusion of their removal proceedings. The Fifth Circuit concluded that the detention authority relied upon by the government is lawful after reviewing the Immigration and Naturalization Act (INA)'s relevant provisions, structure, statutory history, and Congressional intent.

However, the Fifth Circuit panel in *Buenrostro-Mendez* only addressed the statutory interpretation of the INA. *Buenrostro-Mendez* did not address the independent claims Petitioner raises here—that his initial warrantless arrest violated § 1357(a)(2), 8 C.F.R. § 287.8(c), and the Fourth and Fifth Amendment, and that his prolonged confinement and conditions of detention violate due process. Additionally, the court did not examine whether ongoing detention without access to a bond hearing violates the Constitution. *See e.g., Christian Raul Escobar Paucay v. Warden, ERO El Paso Camp East Montana, et al.,* No. 3:26-cv-00412-KC, ECF No. 5 (W.D. Tex. Feb. 24, 2026); *Juan Jose Espinosa-Guillén v. Pam Bondi, et al.,* No. 1:26-cv-00295-RP, ECF No. 7 (W.D. Tex. Feb. 20, 2026). Counsel for the government in *Buenrostro-Mendez* stated during oral argument that the statutory question was the only issue before the Court, not a due

process claim. *Juan Jose Espinosa-Guillén,* No. 1:26-cv-00295-RP, ECF No. 7 at 3 n.2 (W.D. Tex. Feb. 20, 2026).

Federal district courts in the Western District of Texas have consistently held, post-*Buenrostro-Mendez*, that the Fifth Circuit's decision "does not change this case's outcome on procedural due process grounds." *See, e.g., Hassen v. Noem,* No. EP-26-CV-00048-DB, 2026 WL 446506, at *2 & n.1 (W.D. Tex. Feb. 9, 2026); *Clemente Ceballos v. Garite,* No. EP-26-CV-00312-DB, 2026 WL 446509, at *2 & n.2 (W.D. Tex. Feb. 10, 2026); *Marceau v. Noem,* No. EP-26-CV-237-KC, 2026 WL 368953 (W.D. Tex. Feb. 9, 2026); *Bonilla Conforme v. De Anda-Ybarra,* No. 3:26-cv-263-KC, 2026 WL 381110, at *1 (W.D. Tex. Feb. 11, 2026).

B. Petitioner's Detention Without a Pre-Deprivation Bond Hearing Violates Procedural Due Process

The Due Process Clause of the Fifth Amendment applies to all persons within the United States, including aliens. *Lynch v. Cannatella*, 810 F.2d 1363 (5th Cir. 1987); *Zadvydas v. Davis*, 533 U.S. 678, 694 (2001). Noncitizens are entitled to due process of the law under the Fifth Amendment. *Trump v. J. G. G.,* 604 U.S. 670, 673 (2025); *Demore v. Kim,* 538 U.S. 510, 523 (2003). Petitioner, who lived freely in the United States for nearly three years after his release on recognizance, possesses a significant liberty interest in remaining free from physical confinement absent due process of law. (ECF No. 1 at 21–22.) There is no final order of removal, and his next Master Hearing is not scheduled until April 22, 2026. The government cannot strip this liberty interest without an individualized determination that continued detention serves a lawful and necessary purpose.

Under the three-factor balancing test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), Petitioner's renewed detention without a bond hearing violates the Fifth Amendment's guarantee of procedural due process.

First, the private interest at stake, the right to physical liberty, is paramount and the most essential of all private interests. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Having lived and worked in the community for nearly three years, Petitioner developed strong ties and a settled expectation of freedom. His sudden incarceration is not a minor administrative burden; it is a complete deprivation of bodily liberty with no clear end point.

Second, the risk of erroneous deprivation is intolerably high, especially considering the lack of any pre-deprivation hearing prior to re-detention. Following the Fifth Circuit's decision in *Buenrostro-Mendez*, noncitizens in Petitioner's position face the prospect of indefinite detention with no statutory or judicial mechanism for an individualized bond hearing. In such circumstances, due process demands a procedural safeguard to prevent unlawful or mistaken detention. Without one, Petitioner is effectively imprisoned at the unreviewable discretion of the executive, directly contravening the core purpose of the Due Process Clause.

Third, the government unquestionably has a legitimate interest in enforcing the immigration laws, ensuring appearance at proceedings, and protecting public safety. But its incremental interest in re-detaining Petitioner without notice or a pre-deprivation hearing is minimal. DHS already determined in 2023 that Petitioner was neither a danger nor a flight risk, and his subsequent almost three-year compliance record only strengthens that assessment. Moreover, the government already operates established mechanisms for giving noncitizens bond and custody hearings within the immigration system. Providing Petitioner with written notice of the proposed grounds for revoking his release and a prompt pre-detention hearing before a neutral decisionmaker would impose little additional administrative burden, especially compared to the severe deprivation of liberty at stake.

Because Petitioner's re-detention lacks both statutory basis and procedural safeguards, it constitutes precisely the kind of arbitrary confinement the Fifth Amendment forbids. Immediate release, subject to supervision if appropriate, is the only constitutionally adequate remedy.

C. Respondents' Reliance on *Thuraissigiam* and *Zadvydas* is Misplaced

Respondents rely on *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) (ECF No. 4 at 10), to argue that Petitioner, as a noncitizen seeking admission, is entitled only to the statutory protections set forth in the INA, thereby foreclosing constitutional due process claims. This reliance is misplaced. *Thuraissigiam* addressed the facial constitutionality of procedures afforded to noncitizens at the threshold of entry – specifically those apprehended within 25 yards of the border – and their ability to seek additional administrative review of an expedited removal order. It did not address the constitutionality of prolonged, mandatory detention for an individual who has successfully lived at liberty in the United States for years.

Unlike the respondent in *Thuraissigiam,* Petitioner is not a recent arrival; he lived in the community for approximately three years following his 2023 release on an order of recognizance. While the Fifth Circuit recently held in *Buenrostro-Mendez v. Bondi* (5th Cir. Feb. 6, 2026) that noncitizens who entered without inspection are subject to mandatory statutory detention under 8 U.S.C. § 1225(b)(2)(A), the court did not, and could not, grant the government unfettered deference to ignore traditional standards of fairness.

Petitioner's history of prior release and successful compliance with supervision demonstrates that his current re-detention (commenced January 15, 2026) is not a regulatory necessity. Because Respondents, relying on *Matter of Yajure Hurtado*, now maintains that no administrative mechanism exists for an Immigration Judge to even consider Petitioner's release, the detention has crossed the constitutional threshold from regulatory custody to unlawful

punishment. Where the government claims it lacks the statutory authority to provide a hearing, the only constitutionally adequate remedy to prevent indefinite, lawless confinement is immediate release.

Furthermore, Respondents' argument that the Fifth Circuit in *Buenrostro* found that *Zadvydas v. Davis*, 533 U.S. 678 (2001) did not apply to detained aliens who received due process through removal proceedings (ECF No. 4 at 10-11) mischaracterizes the continuing nature of Petitioner's due process rights. This argument misapprehends the nature of Petitioner's current due process claim. *Zadvydas* limits the detention period after a final order of removal, but the underlying constitutional principle, that the government's authority to detain an alien is limited and must not become indefinite or punitive, remains relevant here.

Here, Petitioner asserts that his continued detention, which began on January 15, 2026, violates the Due Process Claus because it is unreasonably prolonged without any mechanism for pre-deprivation, individualized review, particularly given his prior release on an order of recognizance.

The Fifth Amendment Due Process Clause requires that when a regulatory detention, however mandatory at the outset, becomes unreasonably prolonged, the detaining authority must provide a non-arbitrary justification for continued custody. Petitioner's Master Hearing is not scheduled until April 22, 2026, guaranteeing a minimum of over three months of detention since his re-detention, with the total length of removal proceedings potentially lasting years, as evidenced by the 3.74 million pending cases in immigration court (ECF No. 4 at 9). The significant and ongoing delay in Petitioner's immigration proceedings renders his mandatory detention punitive rather than administrative. While Respondents contend that the statutory text of § 1225 and the holding in *Buenrostro-Mendez v. Bondi*, 2026 WL 323330 (5th Cir. Feb. 6,

2026) mandate detention without the possibility of bond, such an interpretation creates a "legal vacuum" that violates the Fifth Amendment.

Procedural due process does not disappear simply because a statute is labeled "mandatory." Because the government, relying on *Matter of Yajure Hurtado*, maintains that no administrative mechanism exists to assess the necessity of Petitioner's confinement, the detention has become lawless. Where the government refuses to provide a neutral assessment of flight risk or danger, it loses the constitutional authority to deprive an individual of their physical liberty. This is especially true for Petitioner, whose almost three-year history of successful compliance at liberty proves that detention is not "reasonably foreseeable" to lead to removal, but is instead an arbitrary and punitive sanction. Accordingly, because no additional administrative procedure is available to cure this violation, the only constitutionally adequate remedy is immediate release under the conditions of supervision previously in place.

D. Exhaustion of Administrative Remedies is Futile

Respondents incorrectly argue that Petitioner must first seek relief with the immigration court or the BIA to fully exhaust administrative remedies. However, because Respondents simultaneously contend that Petitioner is subject to mandatory detention without a bond hearing under 8 U.S.C. § 1225, Petitioner's attempt to exhaust administrative remedies is rendered futile. The BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), which Respondents rely upon (ECF No. 4, at 8), held that Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. Since Respondents assert the detention is mandatory, exhaustion is futile.

E. The Only Constitutionally Adequate Remedy is Immediate Release

Respondents' current position – that Petitioner is subject to mandatory detention without any administrative mechanism for review – renders his detention lawless. While some courts have historically offered a choice between a hearing and release, Respondents' own refusal to recognize the jurisdiction of Immigration Judges to conduct such hearings makes immediate release the only viable remedy to cure the ongoing constitutional violation.

In *Juan Jose Espinosa-Guillén v. Pam Bondi,* No. 1:26-cv-00295-RP, ECF No. 7 (W.D. Tex. Feb. 20, 2026), the court recognized that where the risk of erroneous deprivation is absolute, the court must order immediate release. The *Espinosa-Guillén* court specifically enjoined the government from further detention without first proving dangerousness by clear and convincing evidence, effectively prioritizing Petitioner's liberty over the government's preference for detention.

Also, other recent decisions in this Circuit confirm that when the government fails to justify detention, it loses the authority to detain. In *Christian Raul Escobar Paucay v. Warden,* No. 3:26-cv-00412-KC (W.D. Tex. Feb. 24, 2026), the court explicitly cautioned that a sham proceeding where an IJ denies bond for "lack of jurisdiction" does not satisfy due process and requires release from custody. *Christian Raul Escobar Paucay v. Warden*, No. 3:26-cv-00412-KC, ECF No. 5 at 4 (W.D. Tex. Feb. 24, 2026).

In *Amin Ibrahim Hassen v. Kristi Noem*, No. 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026), the court set a strict 48-hour deadline for the government to either justify detention via clear and convincing evidence or release the Petitioner. *Amin Ibrahim Hassen v. Kristi Noem*, No. 3:26-cv-00048-DB, ECF No. 8 at 4-5 (W.D. Tex. Feb. 9, 2026); *see also e.g., Rojas v. Noem*, No. EP-25-CV-443-KC, 2025 LX 448717 (W.D. Tex. Oct. 30, 2025).

Additionally, because Respondents consistently argue in the Fifth Circuit (following *Buenrostro-Mendez*) that Immigration Judges lack the statutory authority to provide the very hearings these district courts have ordered, the "hearing option" is a legal impossibility. Therefore, under the *Mathews* balancing test, the only way to avoid an indefinite and unconstitutional deprivation of Petitioner's fundamental liberty interest, especially given his almost three-year history of living law-abidingly at liberty, is an order for his immediate release under reasonable conditions of supervision.

Petitioner respectfully requests this Court follow the reasoning of *Espinosa-Guillén* and similar decisions and order his immediate release, as the alternative (a bond hearing) has been effectively foreclosed by the government's own legal positions.

III. CONCLUSION

For the reasons set forth above, and those stated in the original Petition, the government's continued detention of Petitioner without any legal mechanism for review is a clear violation of the Due Process Clause of the Fifth Amendment. Because Respondents maintain, pursuant to *Matter of Yajure Hurtado* and recent Fifth Circuit briefing – that Immigration Judges lack the statutory authority to even conduct a bond hearing, the "procedural" remedy of a hearing is effectively a legal nullity.

Under the *Mathews v. Eldridge* balancing test, where the risk of erroneous deprivation is absolute and the private interest in liberty is fundamental, the only constitutionally adequate remedy is the termination of the unlawful detention. Petitioner's almost three-year history of living lawfully in the community demonstrates that his release poses no threat to the government's interests that cannot be managed through standard conditions of supervision.

WHEREFORE, Petitioner respectfully requests that this Court:

(i) Grant the Petition for Writ of Habeas Corpus;

(ii) Order Respondents to release Petitioner from custody immediately under the same terms and conditions of supervision that governed his liberty prior to his re-detention;

(iii) Enjoin Respondents from further detaining Petitioner without first proving, by clear and convincing evidence at an individualized hearing, that his detention is necessary to prevent a flight risk or a danger to the community; and

(iv) Grant any other relief the Court deems just and proper.

Dated: February 25, 2026

Respectfully submitted,

/s/Gita B. Kapur
Gita B. Kapur
Attorney for Petitioner