

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ALBERSON GONZALEZ ACERO,

Petitioner,

v.

BOBBY THOMPSON, *et al.*,

Respondents.

Case No. 5:26-cv-00673-JKP

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

PETITIONER'S REPLY TO THE RESPONDENTS' RESPONSE

Petitioner replies to Respondents' Response filed on February 9, 2026. Petitioner recognizes the Fifth Circuit's precedential decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. 2026) issued on February 6, 2026, determining Respondents' statutory interpretation of Section 1225(b)'s mandatory detention provision must be followed. "However, *Buenrostro-Mendez* [sic] does not change this case's outcome on procedural due process grounds." *Hassen v. Noem*, No. EP-26-CV-00048-DB, at 4, n.1 (W.D. Tex. Feb. 9, 2026). Critically, *Buenrostro-Mendez* addressed only statutory construction—it did not examine any constitutional challenge to the mandatory detention policy. When the application of 8 U.S.C. § 1225(b)(2) is examined in the context of Petitioner's specific circumstances—his prior release on recognizance, compliance with reporting requirements, fixed address, stable employment, and his complete absence of criminal history or flight risk—it is

clear that his detention violates the Fifth Amendment's guarantee of due process. Respondents' reliance on *Thuraissigiam* to support a denial of Petitioner's due process claim is misplaced.

THURAISSIGIAM DOES NOT FORECLOSE PETITIONER'S DUE PROCESS CLAIM

Respondents state that Petitioner "is receiving or has received due process afforded through removal proceedings in immigration court" and cite *Thuraissigiam* as support. But, as this Court has already ruled, "*Thuraissigiam* does not foreclose [Petitioner's] due process claims." *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *7 (W.D. Tex. Oct. 21, 2025) (citations omitted). There are "two key points of distinction between *Thuraissigiam* and [Petitioner's] case." *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 682 (W.D. Tex. 2025). First, "Unlike Petitioner in *Thuraissigiam*, [Mr. Gonzalez-Acero] does not challenge the admission process in any way or assert a right to remain in the United States. He merely seeks a chance to apply for release...[and] [n]othing in *Thuraissigiam* suggests [he] lacks such a due process right." *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *8 (W.D. Tex. Oct. 21, 2025). A "second key point of distinction is that *Thuraissigiam* was stopped by Border Patrol 'within twenty-five yards of the border,' immediately detained, and never released. *Id.* "[Mr. Gonzalez-Acero], too, was initially detained shortly after entering the country on [December 27, 2023], but unlike *Thuraissigiam*, he was released on his own recognizance [six] days later." *Id.* "Then he lived in the United States until, [on December 18, 2025], [CBP] detained [Mr. Gonzalez-Acero] when he [passed through a checkpoint returning from work]," which he had done before without incident. *Id.*

"[A]liens who have once passed through our gates, even illegally," are afforded the full panoply of procedural due process protections, and "may be expelled only after proceedings conforming to traditional standards of fairness." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). "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 v. Davis*, 533 U.S. 678, 693 (2001). Respondents' misplaced reliance on *Thuraissigiam* is of a piece with the broader weakness of their position. Respondents cite ten decisions in support of their position. Seven arise outside the Fifth Circuit. The remaining three Texas decisions are far outnumbered by the nine Texas decisions — spanning four federal districts — that have sustained as-applied due process challenges to § 1225(b)(2) on facts closely analogous to Petitioner's. In Texas alone, these include:¹ *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *7 (W.D. Tex. Oct. 16, 2025) (**Briones, D.**) (“In sum, Section 1225(b)(2) as applied to Petitioner violates his Fifth Amendment Due Process rights.”); *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *3 (W.D. Tex. Oct. 21, 2025) (**Cardone, K.**) (“the Court does not reach the statutory interpretation question because, assuming without finding that the Government's new interpretation is correct, Gonzalez Martinez is entitled to due process and succeeds in his as-applied challenge.”); *Ortega-Aguirre v. Noem*, No. 4:25-CV-04332, 2025 WL 3684697, at *3 (S.D. Tex. Oct. 10, 2025) (**Bennet, A.**) (“Here, the Court finds that Petitioner is likely to prevail on the merits of his due process claim because he ‘has been detained since August of 2025 without any individualized assessment of flight risk or dangerousness.’”); *Cruz-Reyes v. Bondi*, 5:26-CV-60, 2026 WL 332315, at *3 (S.D. Tex. Feb. 3, 2026) (**Saldaña, D.**) (“The imposition of mandatory detention under § 1225(b)(2) on Mr. Cruz Reyes, a long-term resident who was arrested in the interior of the United States...violates the

¹ The national picture is equally one-sided. District courts across the country have sustained as-applied due process challenges to § 1225(b)(2) in cases involving long-term residents. *See, e.g., Diaz v. Kaiser*, No. 25-CV-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025) (finding detention without bond violates due process and collecting California cases reaching the same result); *Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (adopting magistrate's finding that § 1225(b)(2) violated due process and ordering immediate release); *Duran Avalos v. Bondi*, No. C25-4063-LTS-KEM, 2025 WL 3530162, at *4 (N.D. Iowa Dec. 9, 2025) (“his continued detention without the opportunity to post bond violates his substantive due process rights”); *Sanchez Alvarez v. Noem*, No. 1:25-CV-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025). A comprehensive accounting of such decisions would occupy multiple additional pages.

most basic principles of due process.”); *Cordova v. Noem*, No. 3:26-CV-97-K-BN, 2026 WL 218938, at *3 (N.D. Tex. Jan. 28, 2026) (Kinkeade, E.) (“the Court holds that denying Petitioner a bond hearing under § 1225(b)(2) deprives him of procedural due process protections under the Fifth Amendment.”); *Camacho-Gutierrez v. Thompson*, No. 5:25-CV-01876-MA, 2026 WL 195758, at *5 (W.D. Tex. Jan. 16, 2026) (Alvarez, M.) (“the Court finds that Petitioner’s detention without any notice or an individualized assessment deprives her of the constitutional right to procedural due process”); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *10 (W.D. Tex. Oct. 21, 2025) (Pulliam, J.) (“the Court finds that detaining him without any individualized assessment of his flight risk and dangerousness deprives him of his constitutional right to procedural due process.”); *Blanco v. Bondi*, No. 5:25-CV-01412-FB-RBF, 2025 WL 3908488, at *6 (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) (Biery, F.) (finding that government’s position “is troubling and stands in considerable tension with fundamental due process guarantees.”); *George v. Noem*, No. 3:25-CV-2935-S-BW, 2025 WL 3852946, at *4 (N.D. Tex. Dec. 19, 2025), report and recommendation adopted, No. 3:25-CV-02935-S-BW, 2026 WL 30829 (N.D. Tex. Jan. 5, 2026) (Gren Scholer, K.) (“detaining Villantes George without a bond hearing violates his Fifth Amendment rights.”).

Most notably, even after *Buenrostro-Mendez*, the Western District of Texas has continued to grant habeas relief on due process grounds. See, e.g., *Hassen v. Noem*, No. EP-26-CV-00048-DB, at 4, n.1 (W.D. Tex. Feb. 9, 2026) (“*Buenrostro-Mendez* does not change this case’s outcome on procedural due process grounds.”); *Clemente Ceballos v. Garite*, 3:26-cv-00312-DB (W.D. Tex. Feb. 10, 2026) (same); *Aguila v. Warden*, EP-26-CV-241-KC at

3-4 (W.D. Tex. Feb. 9, 2026) (“The Court’s conclusion is not changed by the Fifth Circuit’s recent decision in *Buenrostro-Mendez*...*Buenrostro-Mendez* has no bearing on this Court’s determination of whether Duran Aguila is being detained in violation of his constitutional right to procedural due process.”)

THE APPLICATION OF 1225(b)(2) TO PETITIONER VIOLATES DUE PROCESS

“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 v. Davis*, 533 U.S. 678, 695 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Supreme Court has repeatedly affirmed that “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987); *see also Foucha*, 504 U.S. at 80, 112 S.Ct. 1780 (“We have always been careful not to minimize the importance and fundamental nature of the individual’s right to liberty.”). For this reason, “civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protections.” *Addington v. Texas*, 441 U.S. 418, 425 (emphasis added).

While “detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process...the fact that some detention is permissible does not change the fact that a detainee suffers significant liberty deprivations.” *Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021) (citing *Demore*, 538 U.S. at 522). “Moreover, the government’s exercise of its power to detain immigrants pending removal ‘is subject to important constitutional limitations.’” *Id.* at 28-29 (citing *Zadvydas*, 533 U.S. at 695). “That is because due process ‘applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.’” *Id.* at 29 (citing *Zadvydas*, 533 U.S. at 693 and *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (explaining that due process “protects every [person]...Even one whose

presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection”)).

In the immigration detention context, due process requires that immigration detention “bear[] a reasonable relation to the purpose for which the individual was committed.” *Demore v. Kim*, 538 U.S. 510, 527 (2003) (quoting *Zadvydas*, 533 U.S. at 690). Specifically, immigration detention must be reasonably related to the government’s goals of preventing flight and protecting the community from harm, and be accompanied by adequate procedural protections to ensure that those goals are being served. *See Zadvydas*, 533 U.S. at 690-91.

“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, 96 S.Ct. 893.

A. All three Mathews factors weigh in Petitioner’s favor.

First, “Respondents fail to contend with the 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 v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *9 (W.D. Tex. Oct. 21, 2025) (citations omitted). Courts have held that once released from immigration custody, noncitizens acquire a “protectable liberty interest in remaining out of custody on bond.” *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 686 (W.D. Tex. 2025) (citations

omitted) (collecting cases). “Because he spent [two years] at liberty in the United States, [Petitioner] possesses a cognizable interest in his freedom from detention.” *Id.* 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) (citations omitted).

Second, the risk of erroneous deprivation—that is, the risk that an individual will remain detained despite that detention bearing no reasonable relationship to the government's legitimate goals of preventing flight and protecting community safety—was examined at length by the First Circuit in *Hernandez-Lara v. Lyons*, 10 F.4th 19, 28–31 (1st Cir. 2021). There, the First Circuit concluded that bond hearings that placed the burden on the detained noncitizen inherently carried a high risk of error for five reasons: (1) detainees are not provided counsel and often cannot obtain counsel; (2) detainees experience great difficulty obtaining evidence; (3) detainees often lack full proficiency in English; (4) immigration law and procedures and judge preferences are likely much better known to government representatives than to detainees; and (5) the inherent difficulty in proving a negative. *Id.* The Court explained that the case before it “evidences how the allocation of the burden of proof can affect the likelihood of such error. With a record of employment, family relations, a settled place in the community, and no arrests, Hernandez would seem to have been a good candidate for conditional release on bail.” *Id.* at 31. Yet she was denied bond. The Court concluded that due process required that the burden be placed on the government in § 1226(a) bond proceedings.

If the risk that detention will lack a reasonable relationship to the government's regulatory purposes is already high in a standard § 1226(a) bond hearing—where the detainee at least has an opportunity to be heard—then that risk must be exponentially greater under § 1225(b)(2), which deprives Petitioner of any opportunity whatsoever to contest whether his continued detention

serves any legitimate purpose. “The risk lies in the automatic continued deprivation of liberty for a noncitizen who has already been determined to not be a flight risk nor a danger to the community, and has lived in the United States for a prolonged period of time, especially where there are no facts in the record to reflect material changes in Petitioner’s dangerousness or flight risk.” *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *7 (W.D. Tex. Oct. 16, 2025). Accordingly, this factor strongly favors Petitioner and compels Court intervention that can actually address the risk of error.

On the final 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.” *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *6 (W.D. Tex. Oct. 16, 2025) “But that interest, in this case, seems particularly diluted given Respondents’ own decision to release Petitioner on his own recognizance once before.” *Id.* Further, there have been no “material changes to Petitioner’s actions in appearing for any immigration related matters, nor [has he] since acquired a criminal record to jeopardize the safety of others while released.” *Id.* On the contrary, if anything, Petitioner’s actions and circumstances *decreased* any possible flight risk concerns: he has built ties he did not have before, he dutifully complied with the conditions of release, he secured stable employment, fixed residence, and has a vested interest in presenting his timely filed asylum claim. To the extent the Government asserts an interest in avoiding “the incremental cost resulting from the increased number of hearings,” that argument is unavailing: “such costs cannot be terribly burdensome, given Respondents’ concession that the Government conducted them for decades until its reinterpretation of the law earlier this year.” *Id.* (citations omitted). And of course, his release would save the government a

significant financial expenditure incurred from Petitioner's detention. The third *Mathews* factor therefore weighs in Petitioner's favor.

"Habeas is at its core a remedy for unlawful executive detention. The typical remedy for such detention is, of course, release." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). "In recent months, courts across the country have ordered the release of detainees in similar situations." *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) **(given that the government's repeated use of unlawful detention policies across the country, causing petitioners to "sit in jail waiting for a judicial decision," the court would order immediate release instead of causing additional delay through a bond hearing)**. (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025); *Cruz-Reyes v. Bondi*, 5:26-CV-60, 2026 WL 332315, at *13 (S.D. Tex. Feb. 3, 2026) ("due process concerns weigh heavily in favor of granting immediate release."); *J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025). *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025)("Without a legitimate interest in her detention, immediate release appropriately remedies Respondents' violation of [Petitioner's] due process rights through her continued detention."))

Petitioner respectfully urges this Court to consider the thoughtful reasoning of S.D. Tex. Judge Diana Saldaña, who has moved from ordering bond hearings to ordering immediate release as the appropriate remedy. *See Cruz-Reyes v. Bondi*, 5:26-CV-60, 2026 WL 332315 (S.D. Tex. Feb. 3, 2026). Judge Saldaña identified three factors supporting immediate release on due process grounds. First, she emphasized that the "opportunity for [an] initial [pre-deprivation]

determination is imperative," reasoning that a post-deprivation hearing provides no genuine relief for an unjustified deprivation of liberty. *Id.* at 6 (citations omitted). Second, she recognized the significant human cost already borne by the petitioner and those that may rely on him. *Id.* Third, she noted that the petitioner had previously been released on his own recognizance based on a finding that he posed no flight risk or danger, and that there was "no evidence before the Court that circumstances have changed." *Id.* Each of these factors applies with equal force here.

In the alternative, if the Court determines that some custody determination is warranted, the Court should order a bond hearing, *but with additional safeguards*. **First**, the Government should bear the burden of proving by clear and convincing evidence that Petitioner poses a danger to the community or is a flight risk to "[reflect] the concern that '[b]ecause the alien's potential loss of liberty is so severe ... he should not have to share the risk of error equally.'" *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 688 (W.D. Tex. 2025) (also noting that "as of 2020, the 'vast majority'—an 'overwhelming consensus'—of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk"). This is also consistent with the Supreme Court's civil detention jurisprudence, where it has always required the government to bear the burden of proof. *Addington v. Texas*, 441 U.S. 418, 433 (1979) (holding that in civil commitment proceedings, the government's burden of proof must be "equal to or greater than the 'clear and convincing' standard" to meet due process guarantees.) **Second**, the Court should require the immigration judge to set forth with specificity the factual and legal bases for any danger or flight risk determination. **Third**, the Court should retain jurisdiction to review the immigration judge bond decision to ensure compliance with the court's order and due process. **Fourth**, the Court should prohibit the government from invoking the automatic stay provisions

under 8 C.F.R. § 1003.19(i)(2) because courts have ruled that their application violates the procedural due process rights of noncitizens granted bond. *See, e.g. Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521, at *8 (S.D. Tex. Nov. 14, 2025).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus and order his immediate release from custody. *Buenrostro-Mendez* resolved a question of statutory construction; it did not address—much less foreclose—the constitutional challenge Petitioner raises here. Petitioner’s years at liberty, his steady employment, and his unblemished record establish that his mandatory detention without any individualized assessment of flight risk or dangerousness violates the Fifth Amendment. The overwhelming weight of authority in this District and across the country confirms that result. In the alternative, should the Court determine that some form of custody review is appropriate, Petitioner requests a bond hearing with the procedural safeguards set forth above.

Respectfully submitted,

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Dated: February 13, 2026