

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

	)	No. 1:26-CV-267-RP
CARLOS FRANCISCO REYNOSO OCHOA,	)	
Petitioner,	)	
v.	)	
	)	
MIGUEL VERGARA, et al.	)	
Respondents.	)	
	)	

REPLY TO RESPONDENT'S RESPONSE TO WRIT OF HABEAS
CORPUS CONSIDERING RECENT FIFTH CIRCUIT PRECEDENT

Even in view of the Fifth Circuit’s decision in *Buenrostro-Mendez v. Bondi* it is not obvious that petitioner is subject to its strictures. In this case, the Fifth Circuit found that Board’s decision in *Matter of Yajure Hurtado* was correct in its interpretation of INA § 235(b)(2), which made detention mandatory for all but those who had been admitted after inspection into the United States. 29 I&N Dec. 216 (BIA 2025).

Petitioner is from Guatemala and his case is currently under review by the Board of Immigration Appeals; thus, there is no final order of removal. Petitioner was not encountered by immigration officials when he entered the United States on

April 12, 2024. He was not encountered by immigration officials until October 15, 2025. Thus, his detention is governed by INA § 236(a) rather than INA § 235. He is currently detained at the T. Don Hutto Detention Center in Tyler, Texas.

However, even the recent Fifth Circuit's decision in *Buenrostro v. Bondi* does not change the outcome if it is found that petitioner's case falls squarely within the purview of INA § 236(a) rather than INA § 235(b)(2). *See Pun v Noem*, 5:26-CV-0534-JKP (W.D. Tex. Feb. 18, 2026) (Government argued detention was proper under INA 235(b)(2) even though petitioner had had a previous bond hearing pursuant to 236(a)).

Respondent cites many cases that seem to support its position. *See Response to Petition ("Response")*, pgs 4-8. However, most courts have rejected the interpretation of the Fifth Circuit and the Board of Immigration Appeals. The Fifth Circuit acknowledges as much in *Buenrostro-Mendez v. Bondi*, 2025 WL 2886346, at *4, *see Navarro-Lara v. Noem*, 1:26-CV-218-RP (W.D. Tex. Feb. 06, 2026).

Nevertheless, the Court did not consider due process and constitutional arguments challenging the lawfulness of the petitioners in that case. *See Buenrostro-Mendez v. Bondi*, 2025 WL 2886346. Moreover, petitioner's argument is based on procedural due process. *Buenrostro-Mendez* notwithstanding, the question remains: what process is due petitioner before he can be deprived of his liberty.

The Fifth Amendment Due Process Clause prevents the government from depriving any person of his liberty without due process of law. U.S. Const., amend. V. This right to due process under the Fifth Amendment extends to noncitizens. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025); *Denmore v. Kim*, 538 U.S. 510, 523 (2003). Freedom from unlawful detention by the government is what lies at the core of the clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Respondents argue that petitioner is only allowed the protections set forth in the INA. **Response, pg 9.** However, respondent's reliance on *DHS v. Thuraissigiam* for this is misguided. 140 S.Ct. 1959 (2020). In this case the petitioner was attempting employ habeas to challenge removability, not detention. 140 S.Ct. at 1972. Furthermore, the petitioner was properly in expedited removal proceedings. *Id.* at 1965-66. In this situation, the Court said that the petitioner's procedural rights were limited to those afforded by the statute. *Id.* at 1964. Petitioner was not caught at the border and was encountered for the first time by immigration officials more than a year after he entered the United States without inspection. He was never placed into expedited removal proceedings.

Petitioner is challenging the process that is due him before he can be deprived of his liberty. See *Mathews v. Eldrige*, 424 U.S. 319, 332-22 (1976). Due process is denied when an individual is deprived of the opportunity to be heard in a

meaningful manner. *Id. at 333*. In this case, the three-part test of *Mathews* applies. The factors to be considered 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 additional or substitute procedural requirements would require. *Mathews*, 424 U.S. at 335.

The interest in being free from detention is at the core of liberty interests. *Martinez v. Noem*, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). Petitioner was at liberty for over a year before he was encountered by immigration officials. He has no criminal record. Here the risk of an erroneous deprivation of liberty is great since he is being deprived of a custody hearing. The government's interest could be secured by providing Petitioner with a bond hearing.

Given all this, it is appropriate for the Court to order his release. The Immigration will apply *Matter of Yajure Hurtado* and deny Petitioner a custody hearing.

CONCLUSION

Buenrostro-Mendez v. Bondi dealt only with an interpretation of the statute. Due process and constitutional issues were not dealt with in this case. Petitioner

will be improperly denied a custody hearing in Immigration Court. Thus, this Court should order Petitioner's immediate release.

Date: March 2, 2026

Respectfully submitted,

/s/ Stephen A. Lagana

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Stephen A. Lagana

Dated: March 2, 2026

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