

United States without inspection, around April 2024, the Petitioner fled his home country for out of fear for his life and is claiming asylum in the United States, sadly, he was stopped by law enforcement and turned over to ICE.

THE FIFTH CIRCUIT DECISION DOES NOT REACH DUE PROCESS QUESTION

The Respondents argues unsuccessfully that the primarily issue raised on the petition is regarding the misclassification of Petitioner under 8 U.S.C. § 1225, this argument ignores the very first count on the Petitioner's claim for relief, Petitioner clearly brought the due process violation on its petition as the main question. Most importantly, the government forgets that although published, the mandate for *Buenrostro-Mendez v. Bondi* has yet to issue, there is still time for petition for rehearing *en banc*, FRAP 40. Moreover, Government's counsel itself stated it during oral arguments that "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.

The Fifth Amendment provides that "no person shall be deprived of life, liberty, or property without due process of law", moreover, as established by the Supreme Court on *Zadvydas v. Davis*, 533 U.S. 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".

Moreover, this very own court has rejected the boilerplate arguments raised by the Respondents following *Buenrostro-Mendez v. Bondi*, look no further than *Cumbe Lema v. De Anda-Ybarra et al*, No. 3:26-cv-00249-KC (W.D. TX), and *Ibbrahim Hassen v. Kristi Noem*, et

al. 1:26-cv-00048-DB (W.D. TX), a parallel regarding due process violation in this matter can be drawn from *Martinez v. Noem*, No. 3:25-cv430-KC, 2025 WL 2965859, at *1–5 (W.D. Tex. Oct. 21, 2025).

Petitioner once again reiterated that *Buenrostro-Mendez* does not change this case's outcome on procedural due process grounds. See, e.g., *Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025, WL 3239526 (W.D. Tex. Nov. 20, 2025) (“The parties argue about Respondents' novel interpretation regarding mandatory detention under Section 1225(b) and whether Petitioner falls within it. Even assuming without deciding Respondent's reading is correct, the Court will not address these arguments because the Court finds Petitioner is entitled to procedural due process in his as-applied challenge.”).

The Supreme Court already held that noncitizens who have “established connections” in the United States by virtue of living in the country for a substantial period acquire a liberty interest in being free from government detention without due process of law. *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020), here we have a Petitioner that has clearly fulfilled the “stablished connections” requirement as set forth in the aforementioned case.

In sum, the Honorable Court should not disregard this petition solely based on a decision that has yet to issue, moreover, this Honorable Court should grant this petition based on the clear Due Process Violation suffered by the Petitioner.

As for the other arguments raised by the Respondents, this very same Honorable Court has rejected them in hundreds of similar cases, look no further *Tisighe v. De Anda-Ybarra*, No. 3:25-cv-593, at *2 (W.D. Tex. Dec. 5, 2025), ECF No. 4 (citing *Lala Barros v. Noem*, No. 3:25-cv-488-KC, 2025 WL 3154059, at *1–6 (W.D. Tex. Nov. 10, 2025); *Erazo Rojas v. Noem*, No. 3:25-cv-443-KC, 2025 WL 3038262, at *1–5 (W.D. Tex. Oct. 30, 2025); *Martinez*, 2025 WL

2965859, at *1–5; *Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 WL 2792588, at *1–14 (W.D. Tex. Oct. 2, 2025); *Lopez-Arevelo v. Ripa*, No. 3:25-cv-337-KC, 2025 WL 2691828, at *1–13 (W.D. Tex. Sept. 22, 2025)), *Rodriguez Cortina v. De Anda-Ybarra*, No. EP-25-CV-00523-DB, 2025 WL 3218682 (W.D. Tex. Nov. 18, 2025); *Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526 (W.D. Tex. Nov. 20, 2025); *Chinchilla v. De Anda-Ybarra*, No. EP-25-CV00548-DB, 2025 WL 3268459 (W.D. Tex. Nov. 24, 2025); *Escobar – Arauz v. Noem*, No. EP-25- CV-00619-DB, 2025 WL 3543648 (W.D. Tex. Dec. 10, 2025); *Espinoza v. Noem*, No. EP-25-CV00618-DB, 2025 WL 3543646 (W.D. Tex. Dec. 10, 2025).

CONCLUSION

Because the Fifth Amendment’s guarantee of Due Process applies to all persons within the United States, and because Petitioner’s challenge involves a protected liberty interest that remains unaddressed by current appellate mandates, this Court should reject the Respondent’s arguments, and grant the petition, in part as to due process violation. .

Respectfully Submitted,

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By and through undersigned counsel.

/s/ Stephen A. Lagana

Dated: February 12th, 2026

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent to the registered participants as identified on the Notice of Electronic Filing (NEF).

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