

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Juan Carlos Orduna Martinez,



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;

CHARLOTTE COLLINS, Warden, T. Don Hutto
Detention Center, Taylor, Texas;

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY;

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT;

EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW;

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 5, filed on February 13, 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 5, 2026, Petitioner filed his initial habeas petition under 28 U.S.C. § 2241 (ECF 1). In light of the Fifth Circuit's intervening decision in *Buenrostro-Mendez v. Bondi*, Petitioner filed an amended petition (ECF 4). Respondents filed their response on February 13, 2026 (ECF 5).

II. 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 has no history of violence, no criminal convictions, has cooperated fully with authorities, has lived in the U.S. since 2007, his wife and children are U.S. citizens, he has an approved I-130 Petition, he is eligible to file a I-601A waiver, and 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 February 3, 2026) 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*.

III. 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.

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).

Here, Petitioner has been detained since February 3, 2026—over two weeks as of this filing—with no end in sight. His first initial master calendar hearing is on March 2, 2026, almost a month after initial 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, 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.

Furthermore, Petitioner has strong equities, including almost twenty years of U.S. residence, no history of violence, no criminal convictions, has cooperated fully with authorities, his wife and children are U.S. citizens, he has an approved I-130 Petition, he is eligible to file a I-601A waiver, and has a legal pathway to gain lawful immigration status. Respondents offer no evidence that his detention serves a legitimate purpose or that he poses any danger or flight risk. Instead, they impose categorical detention without review, violating the *Mathews v. Eldridge*

balancing test: (1) Petitioner's profound liberty interest in freedom from indefinite detention; (2) the high risk of erroneous deprivation without a hearing; and (3) minimal government burden in providing one. 424 U.S. 319, 335 (1976). As applied, this violates due process.

The Western District of Texas has granted habeas petitions under procedural due process grounds. See *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, I-130 approved, 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 20, 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 20, 2026


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