

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

ERIK IVAN RODRIGUEZ FLORES,

Petitioner,

v.

Civil Action No. 3:26-cv-00338-DB

PAMELA BONDI, et. al

Respondents.

REPLY BRIEF IN SUPPORT OF WRIT OF HABEAS CORPUS

Petitioner, Erik Iván Rodríguez Flores (“Mr. Rodríguez Flores”) files this Reply Brief in Support of his Writ of Habeas Corpus Petition and asks this Court to grant the requested relief.

INTRODUCTION

Petitioner is a resident of Minneapolis, Minnesota, and a citizen of Venezuela. Petitioner was detained by Immigration and Customs Enforcement (“ICE”) on January 7, 2026 in Minnesota and is currently being detained at ERO El Paso Camp East Montana, located at 6920 Digital Road, El Paso, Texas 79936. On February 5, 2026, this court issued a show cause order, pursuant to which Respondents are required to show no later than February 10, 2026 why this writ of habeas corpus should not issue. ECF No. 2 at 1-3. Specifically, the Court admonished Respondents “should avoid boilerplate arguments this Court has already rejected in one of many immigration habeas cases to date.” *Id.* at 2. Respondents’ brief failed to abide by this guidance. Other than providing a few sentences

about Mr. Rodriguez Flores, Respondents re-state the same boilerplate arguments they have advanced in other similar matters and fail explain why Mr. Rodriguez Flores should not be afforded the same constitutional due process rights promised to every person in this country, regardless of their national origin. For this reason, Petition asks that the writ be granted and all relief requested ordered.

ARGUMENT

A. THE FIFTH CIRCUIT’S *BUENROSTRO-MENDEZ* DECISION.

The *Buenrostro-Mendez* ruling, issued just days ago on February 6, 2026, overrules the substantial body of judicial analysis and authority by holding that §1225(b)’s mandatory detention provisions may be applied to all applicants for admission to the U.S. who entered without inspection, whether they were apprehended at the border or after a period of living in the country. *Buenrostro-Mendez*, 2026 WL 323330 at *1. Importantly, *Buenrostro-Mendez* did not address any issues other than this narrow question of statutory construction. *Id.* In particular, the opinion does not examine any due process challenge to the mandatory detention policy. *Id.*

Moreover, the *Buenrostro-Mendez* ruling almost certainly will generate a circuit split on this issue and reach the Supreme Court, given the broad consensus among courts across multiple circuits that §1225(b) cannot be read so broadly. Indeed, in December 2025, the Seventh Circuit, in ruling on the government’s emergency motion to stay a district court’s decision to order release of detainees, wrote that “given the factual record before us, we conclude that Defendants are not likely to succeed on the merits of their argument that those individuals, whom ICE arrested in Chicago without a warrant, are

subject to mandatory detention under § 1225(b)(2)(A).”¹ *Castanon-Nava v. U.S. Dep’t Homeland Security*, 161 F.4th 1048, 1601 (7th Cir. 2025). Accordingly, Petitioner does not withdraw his claims for relief rooted in challenges to the application of §1225(b) in this case.

B. PETITIONER IS ENTITLED TO RELIEF UNDER DUE PROCESS ANALYSIS.

All persons within the United States possess a cognizable, protectable liberty interest in freedom from physical restraint in the most basic constitutional sense, and habeas corpus remains the fundamental instrument for safeguarding that liberty by ensuring immigration detention is not arbitrary, unlawful, or inconsistent with due process. In line with this principle, multiple federal courts in the Fifth Circuit have granted habeas relief on procedural due process grounds notwithstanding the statutory limitations addressed in *Buenrostro*.

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, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). 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

¹ And, on February 3, 2026, the Seventh Circuit held oral argument on the merits in the *Castanon-Nava* case. See <https://media.ca7.uscourts.gov/oralArguments/oar.jsp?caseyear=&casenumber=&period=Past+month>.

would entail.” *Mathews*, 424 U.S. at 335, 96 S.Ct. 893; *see also Hernandez-Fernandez v. Lyons*, 2025 WL 2976923 at *8 (W.D. Tex. Oct. 21, 2025).

“‘The interest in being free from physical detention’ is ‘the most elemental of liberty interests.’” *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Federal courts in Texas have found that noncitizens have a protected liberty interest in their freedom, regardless of citizenship status, when they have spent time living, working, or supporting a family in the interior of the United States. *See, e.g., Lopez Miranda v. Flores*, No. EP-25-CV-584-KC, 2025 WL 3901908, at *3 (W.D. Tex. Dec. 10, 2025); *Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025) (finding noncitizen has protectable liberty interest because he was “living in the United States for over four years and attends his local church”); *Hernandez-Fernandez*, 2025 WL 2976923 at *9 (“Because he spent nearly three years at liberty in the United States, [petitioner] possesses a cognizable interest in his freedom from detention.”).

The government’s refusal to provide bond hearings creates a high risk of erroneous deprivation, since the process afforded in removal proceedings does “not ameliorate the risk that [a petitioner] will be erroneously deprived of his liberty while his removability is assessed.” *See Rojas v. Noem*, 2025 WL 3038262 at *3-*4. Bond hearings that “conduct individualized custody determinations considering flight risk and dangerousness” are the precise “type of proceeding that would give [a noncitizen] an opportunity to be heard and to receive a meaningful assessment of whether he is dangerous or likely to abscond.” *Id.* at *4.

Regardless of the government’s purported interest in enforcing its interpretation of the immigration detention statutes, a habeas petitioner’s “constitutional interest in his liberty exists above and apart from the INA.” *Rojas*, 2025 WL 3038262 at *4 (citing *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (“[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.”)). Further, while the government “has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community,” such interest “would be squarely addressed through a bond hearing.” *Id.* (citing *Martinez v. Noem*, 2025 WL 2598379 at *4 (W.D. Tex. Sep. 8, 2025)).

Federal courts in the Fifth Circuit have repeatedly granted release on procedural due process grounds. *Santiago v. Noem*, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025); *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Parada-Hernandez v. Johnson*, 2025 WL 3465958 (N.D. Tex. Oct. 29, 2025), *report and recommendation adopted*, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025); *Rojas v. Noem*, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025); *De Leon Hernandez v. Bondi*, 2025 WL 3217037 (W.D. La. Nov. 18, 2025); *Cruz-Reyes v. Bondi*, Case No. 5:26-cv-0060, WestLaw cite pending (S.D. Tex. Feb. 3, 2026).

More importantly, the Western District of Texas has reviewed these due process issues in the light of the *Buenrostro-Mendez* ruling and have concluded that it “does not change the case’s outcome on procedural due process grounds.” *Hassen v. Noem*, 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026); *Clemente Ceballos v. Garite*, 3:26-cv-00312-DB (W.D. Tex. Feb. 10, 2026).

Courts examining the application of § 1225 to petitioners who, like Mr. Rodriguez Flores were not detained upon entry and who have lived in the United States for some time have routinely found that mandatory detention is unconstitutional as applied to these individuals, because “non-punitive detention in the immigration context violates the Due Process Clause,’ absent ‘adequate procedural protections’ or a ‘special justification’ outweighing a petitioner’s liberty interest.” *Gonzalez-Albornoz v. Olson*, No. CV-25-208-DLB, 2026 WL 251955, at *3 (E.D. Ky. Jan. 30, 2026) (citing *Azalyar v. Raycraft*, No. 1:25-CV-916, 2026 WL 30741, at *3 (S.D. Ohio Jan. 2, 2026) (quoting *Padilla v. United States Immigr. & Customs Enf’t*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2003) and *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001))).

The Western District of Texas thoughtfully analyzed this issue in *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923, at *8. The Petitioner in *Hernandez-Fernandez* was engaged in active asylum proceedings and had not been previously detained. *Hernandez-Fernandez*, 2025 WL 2976923 at *7-8. He lived in the United States for some time, until he was swept up in the recent policy change and detained under the government’s new mandatory detention policy. *Id.* The *Hernandez-Fernandez* court declined to analyze whether the new, expanded interpretation of § 1225(b)’s mandatory detention authority is lawful, noting instead that the policy as applied “fail[s] 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.*” (citing *Lopez-Arevelo v. Ripa*, 801 F.Supp.3d 668, 677–78 (W.D. Tex. 2025) (internal citations omitted)).

The Court applied the familiar three factor test set out in *Mathews v. Eldridge* to determine whether the new mandatory detention policy was unconstitutional as applied to the petitioner. *Hernandez-Fernandez*, 2025 WL 2976923 at *7-8 (citing *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976); *Martinez v. Noem*, No. 5:25-CV-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025)).

As to the first factor, the private interest affected by the challenged action, the *Hernandez-Fernandez* court noted that “[t]he interest in being free from physical detention” is ‘the most elemental of liberty interests.’” *Hernandez-Fernandez*, 2025 WL2976923, at *8 (quoting *Martinez v. Sec. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025)). The court did not reach whether a mandatory detention policy can lawfully cabin that interest for individuals arrested near the border, but instead found that the petitioner, who had been living in the interior of the U.S. and who had an ongoing asylum proceeding, had a protected liberty interest in remaining free while his case continued. *Hernandez-Fernandez*, 2025 WL2976923, at *8 (citing *Lopez-Arevelo v. Ripa*, 801 F.Supp.3d 668, 677–78 (W.D. Tex. 2025); *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at *10 (E.D. Cal. Sept. 5, 2025)). The *Hernandez-Fernandez* court noted that “once released from immigration custody, noncitizens acquire ‘a protectable liberty interest in remaining out of custody on bond.’” *Id.* (quoting *Diaz v. Kaiser*, No. 25-CV-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025) (collecting cases)); accord *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025) (“Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty

interest in remaining out of custody on bond.”) (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025) (same).

In applying the second *Mathews* factor, the *Hernandez-Fernandez* court found that the immigration court’s current policy of mandatory detention without bond under § 1225 creates a “high risk that [Petitioner] has been and will continue to be erroneously deprived of his liberty.” *Hernandez-Fernandez*, 2025 WL 2976923 at *9 citing *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at *11 (E.D. Cal. Sept. 5, 2025)). Because “individualized custody determinations ... consider[ing] flight risk and dangerousness” are a safeguard that is typically available and that would “greatly reduce the risk of an erroneous deprivation of his liberty,” the court found the second *Mathews* factor favored the petitioner. *Hernandez-Fernandez*, 2025 WL 2976923, at *9 (citing *Velesaca v. Decker*, 458 F. Supp. 3d 224, 242 (S.D.N.Y. 2020)).

Finally, the *Hernandez Fernandez* court examined the third *Mathews* factor: “the government’s interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community.” *Hernandez-Fernandez*, 2025 WL 2976923, at *9. The Court found the petitioner’s involvement in ongoing asylum proceedings on a non-detained basis “reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.” *Id.* (quoting *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d* 905 F.3d 1137 (9th Cir. 2018)).

The court further noted that any incremental cost resulting from the need to provide bond hearings to people like petitioner “cannot be terribly burdensome, given the BIA

concedes in *Yajure Hurtado* “[w]e acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection.” *Hernandez-Fernandez*, 2025 WL 2976923, at *10 (quoting *In re: Yajure Hurtado*, 29 I&N Dec. 216, 226 (BIA 2025)); accord *Singh v. Andrews*, No. 25-CV-00801, 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025) (“In immigration court, custody hearings are routine and impose a ‘minimal’ cost.”) (*Doe v. Becerra*, 787 F.Supp.3d 1083, 1094–95 (E.D. Cal. 2025)). The *Hernandez-Fernandez* court thus found this factor also weighs in favor of habeas relief.

Based on this analysis of the *Mathews* factors, the *Hernandez-Fernandez* court ruled that “detaining [the petitioner] without any individualized assessment of his flight risk and dangerousness deprives him of his constitutional right to procedural due process under the Fifth Amendment of the United States Constitution.” *Hernandez-Fernandez*, 2025 WL 2976923, at *10. The Court noted “a growing number of district courts across the country who have found that holding people like Hernandez-Fernandez in mandatory detention without a bond hearing likely constitutes a due process violation.” *Id.* (citing *Espinoza v. Kaiser*, No. 25-CV-01101, 2025 WL 2581185, at *11–12 (E.D. Cal. Sept. 5, 2025); *Kostak v. Trump*, No. CV 3:25-CV-01093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Singh v. Andrews*, No. 25-CV-00801, 2025 WL 1918679, at *8–9 (E.D. Cal. July 11, 2025) (collecting cases)).

Mr. Rodriguez Flores stands in a similar position and is entitled to habeas relief for the same reasons articulated in *Hernandez-Fernandez*. Petitioner has a cognizable due process interest in remaining free while his case is pending, absent some showing that he

is a flight risk or a danger to the community. *Hernandez-Fernandez*, 2025 WL 2976923, at *8. The government's dragnet arrest and policy of blanket detention without bond creates a high risk that he is being deprived of this right in error; an individualized bond hearing would greatly reduce this risk. *Id.* at *9. Finally, the government's interest in ensuring that Mr. Rodriguez Flores appears for his asylum proceedings and poses no danger to the community in the meantime can be satisfied by providing an individualized bond hearing to determine whether detention is appropriate. *Id.* at *10.

CONCLUSION

In sum, the continued detention without bond under a blanket mandatory detention policy violates Petitioner's constitutional due process rights. Accordingly, Ms. Rodriguez Flores respectfully prays that this Court issue a writ of habeas corpus requiring Respondents to release Petitioner under the conditions set forth in his Petition.

Date: February 11, 2026

/s/ María Amelia Calaf
 Jennifer Rappoport
 State Bar No. 24072761
 María Amelia Calaf
 State Bar No. 24081915
 BOTKIN CHIARELLO CALAF PLLC
 1209 Nueces Street
 Austin, Texas 78701
 jennifer@bccAustin.com
 T: (512) 960-4162
 F: (737) 289-4695

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of February 2026, a true and correct copy of this document was served on all counsel of record who have appeared in this case using the Court's CM/ECF system as a Filing User.

/s/ María Amelia Calaf
María Amelia Calaf