

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

BARIOS MORALES

Petitioner

v.

NOEM, Secretary of the U.S. Department of
Homeland Security, et al.,
Respondents

Civil Action No. 1:26-CV-00290-RP

**PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS 8 U.S.C. § 2241**

Now comes the Petitioner, Mr. Barios Morales, by and through undersigned Counsel, and hereby files the supplementary Brief on the constitutional grounds for the release of Petitioner from ICE detention. This Brief is being filed timely pursuant the Order granting the Motion for Extension to File Brief.

BACKGROUND

Petitioner is a native and citizen of Guatemala who entered without inspection into the United States in 2005, on October 1st, 2025, he was arrested at Travis County for an unlisted criminal mischief, on October 3rd, 2025, the Travis County Attorney's Office declined the charges against the Petitioner and redirected him for his release (Exhibit B). On the very same day of his release due to the decline of charges, ICE agents arrested the Petitioner and placed him

in Removal Proceedings under INA § 240 (8 U.S.C. § 1229a), please be noted that the Government failed to disclose that the charge against the Petitioner was declined by the Travis County.

The Petitioner applied for Cancellation of Removal pursuant to INA 240A(b), based on his USC son, who is only one-year-old (Exhibit A), please note that the Petitioner is the sole breadwinner for his family of three, as his wife is a full-time homemaker given the young age of their son. Nonetheless, the Immigration Court indeed denied the Petitioner's relief, but this decision has been appealed to the Board of Immigration Appeals, and it remains pending at this moment, with no Brief Scheduling order being issued by the BIA so far.

On February 6th, 2026, the Petitioner filed this Petition for Writ of Habeas Corpus, pursuant to 8 U.S.C. § 2241, challenging his prolonged detention under ICE custody. On the very same date as this petition was initially brought to the Honorable United States District Court for Western District of Texas, the Fifth Circuit issued a decision for the matter *Buenrostro-Mendez v. Bondi*, No. 25-20496 (5th Cir. Feb. 6, 2026), this order addressed that those who have not been admitted by lawful means, remain "applicants for admission" who were "seeking admission.", hence the Circuit decided to apply § 1225 as the governing statute for their detention.

This decision is actively being litigated and a Petition for Rehearing en Banc is expected to be filed shortly before March 24th, 2026, this is should not be treated as speculation, as the parties already filed a Motion for Extension that was recently denied by Circuit on March 2nd, 2026.

Although the Petitioner fits squarely into the Bond Eligible Class, defined in *Maldonado Bautista v. Noem* 5:25-cv-01873-SSS-BFM (C.D. CA), and that *Matter of Yajure-Hurtado* was

recently vacated under violation of the APA on February 18th, 2026, *Buenostro-Mendez v. Bondi* remains the law of the land in the Fifth Circuit, however, the decision was explicitly about the governing statute of detention for persons, whose like the Petitioner, entered the United States without being admitted at entry.

At any moment the *Buenostro-Mendez v. Bondi* decision ever addressed the constitutional grounds, and hence, the Petitioner should be released from custody as pointed by the first count of his petition, his continued detention without consideration for release violates his constitutional rights under the Fifth Amendment, which states “no person shall be deprived of life, liberty, or property without due process of law”, moreover, as decided in *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”.

THE CONTINUED DETENTION OF PETITIONER VIOLATES HIS DUE PROCESS RIGHTS UNDER THE FIFTH AMENDMENT

As aforementioned, *Buenostro-Mendez v. Bondi* never addressed the due process grounds, moreover, the remedy to challenge due process violations is to apply the test as described by the U.S. Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976), here if applied, we see that all three factors heavily sides with the Petitioner: (1) given the significance of his private interests of not being detained, to be able to provide and care for his young family, and also regarding his extensive length of residence in the United States [Petitioner] possesses a cognizable interest in his freedom from

detention.” *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *9 (W.D. TX. Oct. 21, 2025). 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); (2) Petitioner lacks any opportunity to contest the reasonableness of his detention, meaning the risk of erroneous deprivation lies in this “automatic continued deprivation of liberty for a noncitizen.”, Petitioner has a high likelihood of being granted a bond given that he fist squarely into the all the conditions stablished under *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976); and (3) Government interest for this matter should not oppose his release, as he is currently under the proper proceedings established under INA § 240, and he is following al the necessary steps to have his relief granted, moreover, the release of Petitioner should be at the Government’s interest, given that it would reduce the burden upon the taxpayer and free space for actual criminals.

This very same Honorable Court and other U.S. District Courts across Texas have previously sided with others in similar situation as the Petitioner in regards to due process claims, look no further than *Mauricio-Ramirez v. Collins* 1:26-CV-210-RP (W.D. TX); *Martinez v. Noem*, No. EP-25-CV-430-KC (W.D. TX); *Ortega-Aguirre v. Noem*, No. 4:25-CV-04332 (S.D. TX); *Cordova v. Noem*, No. 3:26-CV-97-KBN (N.D. TX); *Camacho-Gutierrez v. Thompson*, No. 5:25-CV-01876-MA (W.D. TX); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP (W.D. TX); *George v. Noem*, No. 3:25-CV-2935-S-BW, (N.D. TX).

Moreover, multiple Federal district courts in Texas have also made this finding subsequent to the Fifth Circuit issuing its opinion in *Buenrostro-Mendez*. See, e.g., *Hassen v. Noem*, No. EP-26-CV-00048-DB (W.D. TX) (holding that Buenrostro-Mendez “does not change this case’s outcome on procedural due process grounds”); *Clemente Ceballos v. Garite*, No. EP-

26-CV00312-DB, 2026 WL 446509, at *2 & n.2 (W.D. TX), *Marceau v. Noem*, No. EP-26-CV-237-KC, 2026 WL 368953 (W.D. TX) (“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 [petitioner] is being detained in violation of [his] constitutional right to procedural due process.”); See also *Casas-Mondragon v. Bondi* 1:26-CV-231-RP (W.D. TX); *Reynoso Ochoa v. Vergara* 1:26-CV-266-RP (W.D. TX); *Reynoso Ochoa v. Vergara* 1:26-CV-267-RP (W.D. TX); *Orduna Martinez v. Bondi* 1:26-CV-280-RP (W.D. TX); *Aldana Alvarado v. Bondi* 1:26-CV-411-RP (W.D. TX).

EXHAUSTION IS FUTILE

The Government insists in the exhaustion argument, however, given that the government itself argues that Petitioner’s detention should be mandatory, the exhaustion requirement should not apply and be deemed futile, “[b]ecause Respondents argue the detention of Petitioner is mandatory, claiming no one, including the [immigration judge], can review the detention issue, any attempt to require Petitioner to exhaust any administrative remedies [would be] futile.” *Lorenzo C. P., v. Noem*, No. 1:25-CV-181, 2025 WL 3684859, at *5 (S.D. Tx); See Also *Shi v. Lyons*, No. 1:25-CV-274 (S.D. TX) (holding that administrative exhaustion would be futile in light of Matter of Yajure Hurtado).

CONCLUSION

Multiple U.S. District Court in the Great State of Texas have previously sided with other in similar situation as the Petitioner regarding the violation of his due process rights under the Fifth Amendment, moreover, *Buenrostro-Mendez v. Bondi* does not address due process claims, also the balancing test from *Mathews v. Eldridge* heavily sides with the Petitioner, hence, given the

extensive litigation that favors the Petitioner across multiple districts and even other States across the United States, this Honorable Court should grant this Petition and order the Petitioner to be released from DHS Custody and back to his family.

/s/ Stephen A. Lagana

Dated: March 6th, 2026

Stephen A. Lagana, Esq.
Law Offices of Stephen A. Lagana
145 Essex Street
Lawrence, MA 01840

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 6th, 2026

Stephen A. Lagana, Esq.
Law Offices of Stephen A. Lagana
145 Essex Street
Lawrence, MA 01840