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

Alberto de los Santos Martinez,

Petitioner,

v.

Pamela Bondi, Attorney General; Daren K. Margolin, Director for Executive Office for Immigration Review; Kristi Noem, Secretary, U.S. Department of Homeland Security; Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Mary de Anda Ybarra, Field Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement, and; Warden of the ERO El Paso Camp East Montana,

Respondents.

No. 3:26-CV-00409-LS

Supplemental Memorandum and Request to Enter Judgement

SUPPLEMENTAL MEMORANDUM AND REQUEST TO ENTER JUDGEMENT

On February 13, 2026, this Court entered an order requiring that "Respondents shall show cause by March 5, 2026, why the Court should not grant the relief Petitioner seeks by filing an answer or other responsive pleading." ECF No. 2, at 2. Respondents have not done so. As such, the Court should grant the relief Petitioner seeks, which is to grant Petitioner "a bond hearing in which [Respondents] bear the burden to justify Petitioner's ongoing detention by clear and convincing evidence of either danger to the public or flight risk within three days." ECF No. 1, at 16 ¶ 7.

As the Court seems to have tacitly recognized in issuing its show cause order, this petition remains viable, despite *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), as it is predicated on due process arguments that courts in this district have embraced in the wake of *Buenrostro-Mendez*. *See, e.g.*, *Zamudio Sanchez v. Noem, et al.*, No. EP-25-CV-00403-DCG, 2026 WL 596133 (W.D. Tex. Mar. 2, 2026) (J. Guaderrama); *Garcia Hernandez v. De Anda-Ybarra et al.*, No. EP-26-CV-318-KC, 2026 WL 560337 (W.D. Tex. Feb. 13, 2026) (J. Cardone); *Noyola v. Bondi*, No. 1:26-CV-405-RP, 2026 WL 607266 (W.D. Tex. Mar. 4, 2026) (J. Pitman); *Acosta Espana v. Ortega et al.*, No. 1:26-CV-00300-DAE, 2026 WL 594362 (W.D. Tex. Mar. 2, 2026) (Ezra); *Rodriguez v. Bondi*, No. EP-26-CV-00292-DB, 2026 WL 523055 (W.D. Tex. Feb. 25, 2026) (J. Briones).

As set forth in Petitioner's opening filing, "[t]he *Buenostro-Mendez* court made no mention of the Fifth Amendment, due process, *Mathews v. Eldridge*, 424 U.S. 319 (1976), or the constitutionality of mandatory detention without any sort of hearing or bond determination as it applied to long present noncitizens like Petitioner at all." ECF No. 1, at 11 ¶ 47. This is important because courts are "not bound by a previous decision if that decision did not consider an issue raised in the subsequent case." *United States v. Ramirez*, 507 F. App'x 353, 354 (5th Cir. 2013) (citing *Matter of Swift*, 129 F.3d 792, 796 n. 18 (5th Cir. 1997)).

I. Legal Standard

"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 (1976)." *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, *8 (W.D. Tex. Oct. 21, 2025). The relevant 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 would entail." *Mathews*, 424 U.S. at 335. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333 (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

a. Petitioner Has a Substantial Interest in Physical Liberty.

"The interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Even if the statute proscribes Petitioner's mandatory detention, he still possesses a "liberty interests created by the fact that the Petitioner[ ] in this case [was] released on recognizance prior to the manifestation of this interpretation." *Hernandez-Fernandez*, 2025 WL 2976923, at *8 (citing *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 685 (W.D. Tex.

2025)). This is consistent the longstanding principle that due process requires a pre-deprivation hearing before the revocation of parole. *See Young v. Harper*, 520 U.S. 143, 147–49 (1997) ("The parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions."). Just as parolees have a protected interest in their "continued liberty," once released from immigration custody, noncitizens acquire "a protectable liberty interest in remaining out of custody on bond." *Hernandez-Fernandez*, 2025 WL 2976923, at * 9 (citing *Diaz v. Kaiser*, No. 25-CV-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025)). Just as in *Hernandez-Fernandez*, Petitioner has spent "years at liberty in the United States, [so he] possesses a cognizable interest in his freedom from detention." *Id.* Indeed, Petitioner's decade plus exceeds the three years in *Hernandez-Fernandez*, further emphasizing his liberty interests.

b. Mandatory Custody Poses a Profound Risk of Erroneous Deprivation while a Bond Hearing Creates Little Burden.

Pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. at 216 and *Buenostro-Mendez*, 2026 WL 323330, at *4 (5th Cir. Feb. 6, 2026), the immigration court will not provide Petitioner with any "opportunity to contest the existence, nature, or significance of [any] supervision violations" or otherwise make an individualized assessment of the need to re-detain him." *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)). Instead, the Immigration Judge is administratively

required to find that they "lack authority to hear [Petitoner's] bond request." *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 216; 8 C.F.R. § 1003.1(g)(1). In the absence of any hearing or venue to challenge his detention at all, "there is a high risk that [Petitioner] has been and will continue to be erroneously deprived of his liberty." *Hernandez-Fernandez*, 2025 WL 2976923, at * 9.

"In terms of available alternatives and their probable benefits, agency decisionmakers regularly 'conduct[ ] individualized custody determinations ... consider[ing] flight risk and dangerousness.'" *Id.* (internal citation omitted). *See also* 8 C.F.R. §§ 236.1(c)(8); 1003.19(h)(3). "[U]ntil recently, these bond hearings were afforded with regularity," *Pineda Parada v. Rice*, No. 25-CV-1660, 2025 WL 3146250, *3 (W.D. La. Nov. 4, 2025), so they pose no real burden on the government, and "[b]ecause such a proceeding would give [Petitioner] the opportunity to be heard and receive a meaningful assessment of whether he is dangerous or likely to abscond, it would greatly reduce the risk of an erroneous deprivation of his liberty." *Hernandez-Fernandez*, 2025 WL 2976923, at * 9. Thus, this factor also illustrates the violation of Petitioner's due process rights.

c. The Government's Interest Is Minimal.

While "Respondents have an interest in ensuring that Petitioner appears for his removal hearings and poses no danger to the community, … if such concerns exist, they would be squarely addressed if the Court were to grant the petition and

order a bond hearing." *Id.*; ECF No. 1, at 16 ¶ 7 (requesting bond hearing to determine flight risk and danger). If the immigration court determines that Petitioner poses such a risk, his detention will continue. If not, he will be released while his proceedings play out. Petitioner is not asking that the Court order his release. He is merely asking for a chance to be heard as to his eligibility for release. All three factors illustrate a due process violation.

CONCLUSION

Respondents have not, and indeed cannot, justify Petitioner's detention consistent with the Fifth Amendment and Respondents should be ordered to hold a bond hearing within 3 days.

DATED: March 10, 2026

Respectfully submitted,

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AFFIDAVIT OF SERVICE

The forgoing Supplemental Memorandum and Request to Enter Judgement have been filed through the CM/ECF system, thereby notifying counsel for all parties as the United States Attorney for the Western District of Texas, which serves as counsel for Respondents, is filed into the case.

DATED: March 10, 2026

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