

Attorney for Petitioner

SAN ANTONIO DIVISION

CORPUS

TABLE OF CONTENTS

INTRODUCTION.....3

BRIEF SUMMARY OF FACTS.....3

ARGUMENTS.....4

 I. Regarding Petitioner Being Subject to Mandatory Detention.....4

 II. Petitioner Has Both Viable Procedural and Substantive Due Process Claims with
 Merits.....4

 A. Petitioner Has Substantive Due Process Rights.....5

 B. Petitioner Has Procedural Due Process Rights6

 C. Respondent’s Incorrectly State and Compare Cases of Individuals Detained
 Under §1226(c), a Statute That Does Not Apply to Petitioner.....9

 D. Respondents Reliance in *Thuraissigiam* Fails.....10

 III. APA Challenges.....11

 IV. Petitioner’s Remaining Claims of Equal Protection, Suspension Clause and Accardi
 Doctrine Violations Are Not Argued Against.....12

CONCLUSION.....12

CERTIFICATE OF SERVICE.....14

INTRODUCTION

Petitioner, Sergio Diaz-Mar, timely submits his traverse to Respondents' response to his habeas petition. On February 12, 2026, this Court ordered Respondents to respond within five days of service. Dkt. 4. Respondents failed to file their response on time and filed their response on February 24, 2026, urging denial. Dkt. 8. Federal Respondents maintain that Petitioner's detention is lawful and that the habeas petition should be denied. Dkt. 8 at 1.

Respondents first argue that Petitioner is subject to mandatory detention. Dkt. 8 at 4. Respondents then argue that Petitioner is not entitled to Due Process, neither substantive or procedural, and that even if any Due Process claims were made, they lack merit. Dkt. 8 and 6, 10, 13. Respondents also argue that an APA challenge may not be asserted as habeas petitions. Dkt. 8 and 17. Respondents finally claim that because of these reasons, the Court should deny the petition of Habeas Corpus. Dkt. 8 at 18.

BRIEF SUMMARY OF FACTS

Petitioner is a 32-year-old native and citizen of Mexico who entered the United States on or about 1998 as a 5-year-old minor. Dkt. 1 at 3. This was his first and only entry to the United States. Petitioner has resided continuously in the United States for approximately twenty-eight years. *Id.* On November 11, 2025, Immigration and Customs Enforcement ("ICE") took custody of Petitioner during an enforcement operation conducted in a public area, and placed him in immigration detention. His removal proceedings are ongoing. *Id.*

Petitioner and his family have been suffering irreparable harm from his continued detention. Aside from the mere fact that he has been detained unlawfully, his detention is also causing severe harm to his family members, as he is the only provider for his family.

Based on these facts, Petitioner is prima facie eligible for relief, namely, for non-LPR cancellation of removal under INA § 240A(b)(1) (Form EOIR-42B). He satisfies the continuous-physical-presence requirement, having accrued well over ten years even before service of the 2025 NTA (stop-time). 8 U.S.C. § 1229a(b), (d). He has maintained good moral character during the statutory period, there is no bar under 8 U.S.C. 1101(f). He has no prior criminal history nor does he have any controlled-substance or other disqualifying offenses under INA §§ 212(a)(2) or 237(a)(2)–(a)(3).

ARGUMENTS

I. Regarding Petitioner Being Subject to Mandatory Detention

Respondents state that Petitioner is subject to mandatory detention based on the decision of *Buenrostro*. *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701(5th Cir. Feb. 6, 2026). As previously mentioned on his petition, Petitioner respectfully acknowledges that, under *Buenrostro-Mendez*, Petitioner has no statutory right to such a hearing.

However, the Fifth Circuit's decision does not resolve—and expressly did not reach—the independent constitutional and other claims raised in this Petition. The panel in *Buenrostro-Mendez* addressed only the statutory interpretation dispute and left open questions violations of due process, statutory violations, and other regulatory violations. Though Petitioner may not have a statutory right to a hearing, Petitioner has other avenues to which he may be immediately released based on the aforementioned violations.

II. Petitioner Has Both Viable Procedural and Substantive Due Process Claims with Merits

Respondents claim that *Buenrostro* rejected the argument that detention of individuals in Petitioner's situation violated the United States Constitution. Dkt. 8 at 5. This statement is erroneous as *Buenrostro* did not address, thus did not foreclose, the argument that an immigrant

detained under 8 U.S.C. § 1225 is entitled to release as a matter of constitutional law. In fact, *Buenrostro* was a statutory interpretation opinion only and it did not consider any due process issue at all, contrary to what Respondents are claiming. See Oral Argument, *Buenrostro-Mendez v. Bondi*, No. 25-cv-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 (“We have one issue before the Court now: the statutory question.... There’s not, in other words, a due process claim here.”). Petitioner still has valid claims in not only due process, but other constitutional, statutory, and regulatory violations, all which were initially mentioned in Petitioner’s Habeas Petition. Dkt. 1.

A. Petitioner Has Substantive Due Process Rights

Respondents seem unsure as to whether Petitioner has substantive due process rights or not. Dkt. 8 at 3 and 7. Petitioner does in fact have substantive due process as similarly-situated individuals with strong ties to the community and/or pathways to immigration relief, as well as no or limited criminal history, have been successful in arguing that their detention serves no lawful purpose because they are neither a danger or a flight risk. See *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (“[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.”); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (the only lawful purposes of immigration detention are to prevent flight risk and danger to the community); see also *Jacobo Ramirez v. Noem*, --- F.Supp.3d ----, 2025 WL 3270137, at *8–9 (D. Nev. Nov. 24, 2025) (finding petitioners who entered without inspection likely to prevail on substantive due process claim). Here, Petitioner clearly has strong ties to the community as he has been both present in the United States for over twenty-eight years, has built a family in the United States and has lived majority of his life in the United States. Petitioner has

also demonstrated that he is not a danger as he has no criminal history, nor have Respondent's showed that he is a danger nor come forth with any information that shows that Petitioner would be a danger. As Petitioner is neither a danger or a flight risk, the detention serves no lawful purpose, just as the cases stated above have proven.

B. Petitioner Has Procedural Due Process Rights

Respondents do, however, claim that Petitioner has no procedural due process argument. Dkt. 8 at 7. This is incorrect. To expand on Respondent's mention of *Mathews*, Petitioner can easily overcome the procedural due process analysis that *Mathews* sets forth. To determine whether a civil detention violates a detainee's due process rights, courts apply a three-part test. *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 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 first factor of private interest deems that "[t]he 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)). It has already been 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 same reasoning can be applied for Petitioner as he has lived in the United States for over twenty-eight years, has worked in the United States all of his life and has built a family here, which includes two U.S. Citizen minor children.

The second factor of risk of erroneous deprivation can also be easily met. 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. Petitioner has not been given or afforded the opportunity to be heard nor to have a meaningful assessment of whether he is danger or likely to abscond, thus creating a high risk of erroneous deprivation.

And lastly, the third risk factor of the government’s interest; 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)).

Despite *Buenrostro*, some district courts within the Fifth Circuit have already granted habeas petitions for similarly-situated petitioners solely on procedural due process grounds. *See Hassen v. Noem*, 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026)(Granting habeas relief after acknowledging the Fifth Circuit’s precedential decision in *Buenrostro-Mendez v. Bondi* and noting the case “does not change the case’s outcome on procedural due process grounds”); *Clemente Ceballos v. Garite*, 3:26-cv-00312-DB (W.D. Tex. Feb 10, 2026)(same). This does not include the many district courts who had already granted release based on procedural due process grounds analyzed under *Mathews* even before *Buenrostro* was decided. *See, e.g., Aguila v. Warden, ERO El Paso Camp East Montana*, (W.D. Tex. Feb. 9, 2026); *Singh v. Taylor*, 2026 WL 360913 (W.D. Tex. Feb. 9, 2026); *Cruz-Reyes v. Bondi*, (S.D. Tex. Feb. 3, 2026); *Santiago v. Noem*, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025); *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668 (W.D. Tex. 2025) (Cardone, J.); *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); *Chinchilla v. De Anda-Ybarra*, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025); *Vieira v. De Anda-Ybarra*, 806 F. Supp. 3d 690 (W.D. Tex. 2025) (Briones, J.); *Hernandez-Fernandez v. Lyons*, No. 25-cv-00773, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025) (Pullman, J.); *Parada-Hernandez v. Johnson*, No. 25-cv-2729, 2025 WL 3465958 (N.D. Tex. Oct. 29, 2025), *R. & R. adopted*, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025) (Kinkeade, J.)

Here, it is clear, and agreed upon by many courts within the Fifth Circuit, that Petitioner does in fact have both substantive and procedural due process rights, and that his release can be granted under due process arguments alone.

C. Respondent's Incorrectly State and Compare Cases of Individuals Detained Under §1226(c), a Statute That Does Not Apply to Petitioner

While further arguing that Petitioner holds no procedural or substantive due process, Respondents repeatedly cite cases and make mention of detention under § 1226(c). Dkt. 8 at 9, 13, 14, 15. These parallels and comparisons to the present statute are erroneous and inappropriate. INA § 1226(c) applies to noncitizens who have been arrested, charged with, or convicted of certain crimes that make them subject to mandatory detention. *See* 8 U.S.C. § 1226(c). Respondents also rely on cases such as *Connecticut Department of Public Safety v. Doe*, which pertains to a convicted sex offender, and *Demore v. Kim*, which pertains to an individual convicted of first-degree burglary. Dkt. 8 at 8 and 13. *See Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003); *Demore v. Kim*, 538 U.S. 510 (2003). Creating a parallel with both a different statute in which Petitioner is not detained under, and comparing this current case where Petitioner's lacks any sort of criminal history, with cases of individuals who were detained because of criminal offenses, is both erroneous and nonsensical. The aforementioned cases both relate to the detention of someone who was detained under § 1226(c) and what due process rights those individuals have. The Court was concerned with individuals failing to appear for their removal hearings and mentioned that Congress had the authority to require that persons with *criminal* history be detained for a brief period necessary for their removal proceedings. *Id.* That reasoning does not apply here; Petitioner has no criminal history nor has it been determined that Petitioner will be a flight risk or will pose any type of danger to the community. Respondents cannot claim that Petitioner does not have due process rights and remain detained under § 1225(b)(2)(A), a statute that does not pertain

to individuals with criminal history, and justify it by citing § 1226(c), a statute that speaks of the detention of those who have committed a criminal offense.

D. Respondents Reliance in *Thuraissigiam* Fails

Respondent argues that a person detained under § 1225(b)(2)(A) has no due process rights beyond those provided by statute, reasoning that because they have not been lawfully admitted, they are, under the so-called “entry fiction,” still standing on “the threshold of initial entry.” *DHS v. Thuraissigiam*, 591 U.S. 103 (2020). These arguments have already been rejected by courts in the Fifth Circuit, explaining that this principle (1) only limits noncitizens’ due process rights regarding deportability, not detention, and (2) does not apply to noncitizens who have significant presence in this country. *See, e.g., Santiago v. Noem*, No. 25- cv-361, 2025 WL 2792588, at *7–10 (W.D. Tex. Oct. 2, 2025); *Vieira v. De Anda-Ybarra*, 806 F. Supp. 3d 690, 698–700 (W.D. Tex. 2025); *Hernandez-Fernandez v. Lyons*, No. 25-cv-00773, 2025 WL 2976923, at *7–8 (W.D. Tex. Oct. 21, 2025); *Parada-Hernandez v. Johnson*, No. 25- cv-2729, 2025 WL 3465958, at *3–4 (N.D. Tex. Oct. 29, 2025), R. & R. adopted, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025).

Thuraissigiam also fails because; First, *Thuraissigiam* is a deportability (admission-process) case, not a detention-authority case. The petitioner there sought a second chance at admission-related relief in expedited removal; he did not seek habeas release from civil custody, and the Court framed its analysis around the “scope of habeas” in the admission context. 591 U.S. at 117–20, 140. Nothing in *Thuraissigiam* decided whether—much less how—noncitizens may challenge the fact or length of immigration detention. That question was expressly left open in *Jennings v. Rodriguez*, which resolved only statutory issues and remanded the constitutional due-process questions. 583 U.S. 281, 297–301, 312 (2018). Four years later, the Government told the Court that “as-applied constitutional challenges remain available” in the detention context.

Johnson v. Arteaga-Martinez, 596 U.S. 573, 583 (2022). The Western District of Texas has already drawn this precise line: in *Santiago v. Bondi*, the court explained that *Thuraissigiam* concerns admission and removal, “not whether noncitizens mandatorily detained under § 1225(b) have a constitutional due process right to challenge the fact or length of their detention”—which is exactly what *Santiago* (and here, Petitioner) asserted. No. 3:25-cv-00361-KC, slip op. at 10–13 (W.D. Tex. Oct. 15, 2025). Respondents’ answer never engages that distinction.

Santiago also explains that *Thuraissigiam* “constrain[ed] itself” to the admission process and does not foreclose due-process challenges to detention; indeed, the Supreme Court “has not addressed the viability of constitutional due-process challenges to mandatory immigration detention,” and recent authority reaffirms that “the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.” *Santiago*, slip op. at 11–14 (citing *Jennings*, 583 U.S. at 312; *Arteaga-Martinez*, 596 U.S. at 583; and *Reno v. Flores*, 507 U.S. 292, 306 (1993)). The Government’s heavy dependance on *Thuraissigiam* thus collapses the crucial line between deportability and detention. Petitioner, like *Santiago*, challenges only the lawfulness of his civil confinement and the Government’s refusal to afford a bond hearing—not any entitlement to remain in the United States. In short, *Thuraissigiam* does not carry the Government’s burden. This Court should therefore reject Respondents’ *Thuraissigiam* argument.

III. APA Challenges

Respondents state that Petitioner cannot assert a claim under the Administrative Procedure Act (“APA”) as it is not cognizable in the habeas context. Dkt. 8 at 17. This argument is incorrect. The APA itself provides that APA review may proceed in “any applicable form of legal action, including . . . writs of . . . habeas corpus.” 5 U.S.C. § 703. Habeas relief is available to any person who is “in custody in violation of the Constitution or laws or treaties of the United States.” 28

U.S.C. § 2241(c)(3). As mentioned in Petitioner's Habeas petition The Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2), requires courts to "hold unlawful and set aside" agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. An agency acts arbitrarily and capriciously when it fails to examine relevant factors, ignores important aspects of the problem, departs from settled practice without reasoned explanation, or treats discretion as categorically unavailable where Congress has not so provided. *Judulang v. Holder*, 565 U.S. 42, 53–55 (2011).

DHS's actions are arbitrary, capricious, an abuse of discretion, and not in accordance with law within the meaning of 5 U.S.C. § 706(2)(A). The agency has effectively nullified its own discretionary authority through categorical non-exercise, which the APA prohibits. As such Habeas relief is warranted to remedy this unlawful agency conduct.

IV. Petitioner's Remaining Claims of Equal Protection, Suspension Clause and Accardi Doctrine Violations Are Not Argued Against

Petitioner included claims of violations of his Equal Protection Guarantee under the Fifth Amendment, violations of the Suspension Clause of the United States Constitution, and a Violation of the *Accardi Doctrine* with respect to 8 C.F.R. § 287.8(C)(2)(I) and (II). Dkt. 1 at 31, 34, 36. Respondent has not response on these claims. Petitioner repeats re-alleges these claims and respectfully requests that this Court immediately release Petitioner under these undisputed claims, along with all of the claims mentioned in this response.

CONCLUSION

Petitioner has alleged viable causes of action, and he has sought injunctive relief from this Court, under Constitutional, statutory, and regulatory violations. The writ of habeas corpus should be granted. His detention is illegal. The writ is reduced to a sham if the trial courts do

not act within a reasonable time. *Rhueark v. Wade*, 540 F. 2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978); *Fay v. Noia*, 372 U.S. 391, 400 (1963) (“The writ must be construed to afford “a swift and imperative remedy in all cases of illegal restraint or confinement.”)

Respectfully submitted on this 3rd day of March, 2026.

/s/ Dianisa Erica Sosa

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONSE OF PETITIONER TO RESPONDENTS' ANSWER TO HIS PETITION FOR WRIT OF HABEAS CORPUS in the case of *Sergia Diaz-Mar v. Pam Bondi, et al.*, Civil Action 5:26-cv-918-FB, was sent to the United States Attorney's Office, Western District of Texas, 601 NW Loop 410, Suite 600, through the District Clerk's electronic case filling system on this the 3rd day of March, 2026.

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

Dated this 3rd day of March, 2026

/s/ Dianisa Erica Sosa

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