

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

Holding Doney Perdomo-Casana,

Petitioner,

-v-

Todd M. Lyons, Acting Director of US ICE, *et al.*,

Respondents.

Case No: 1:26-CV-345-RP

Petitioner's Traverse

PETITIONER'S TRAVERSE

Petitioner was unlawfully detained by Respondents without due process and remains subject to mandatory detention. Respondents assert that there are no due process protections for those detained in removal proceedings, but this contention is contrary to decades of Supreme Court jurisprudence. The detention at issue here was a violation of Petitioner's Fifth Amendment Due Process rights. For these reasons, Petitioner asks the Court to grant a writ of habeas corpus and order "release from unlawful detention". *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020).

I. Respondents do not dispute any factual matters presented in the Petition

Petitioner has stated sufficient facts to show that they are "in custody in violation of the Constitution or laws or treaties of the United States..." 28 U.S.C. § 2241. The Response does not dispute those facts, and Petitioner has provided all available evidence to support each claim. In particular, Respondents do not contest that Petitioner was detained without a warrant or any legal

process, or that Petitioner is in “full” removal proceedings. The Response relies only on Respondents’ novel interpretation of the law, which this Court and many others have already rejected.

II. The Fifth Circuit panel’s decision in *Buenrostro-Mendez* is not yet final

It is settled law in this circuit that a decision from the Court of Appeals is not final until the mandate has issued. *See United States v. Jackson*, 549 F.3d 963, 980 (5th Cir. 2008) (*quoting Charpentier*, 480 F.3d at 713). A circuit court panel may issue the mandate instantly or after a set period of time. *See* 5th Cir. R. 8.8. As the Fifth Circuit has previously stated, “[b]efore our mandate issues, we have the power to alter or modify our judgment.” *Charpentier v. Ortco Contractors*, 480 F.3d 710, 713 (5th Cir.2007) (*per curiam*) (citing *First Gibraltar Bank v. Morales*, 42 F.3d 895, 897 (5th Cir. 1995) (*per curiam*)). Absent the issuance of a mandate, “the original district court judgment remain [s] in effect.” *Jackson*, 549 F.3d at 980.

According to the Fifth Circuit’s docket, the mandate in *Buenrostro-Mendez* will not issue until March 30, 2026.¹ *See Buenrostro-Mendez v. Bondi*, No. 25-20496, ---- F.4th ---- 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026). The Fifth Circuit’s panel’s decision not to issue the mandate immediately was an intentional decision by that court, as the Fifth Circuit’s rules permit issuing the mandate immediately.

Prior to issuance of the mandate, the decision could be altered whether through a petition to rehear the matter *en banc* or otherwise. For these reasons, the Fifth Circuit panel’s decision in *Buenrostro* is not final and the original judgments from the district courts that the panel reviewed

¹ The Fifth Circuit’s order which appears in the ECF reads: “PUBLISHED OPINION FILED. [25-20496 Reversed 25-40701 Reversed] Judge: EHJ , Judge: SKD , Judge: DMD Mandate issue date is 03/30/2026; [10769107-2] [25-20496, 25-40701]”.

are still in effect. Although the Fifth Circuit's analysis may be informative to the Court and the parties, it is not yet binding in this matter and is subject to modification or appeal.

Furthermore, Petitioner's arguments here go beyond those considered by the Fifth Circuit panel in *Buenrostro*. While that case addressed the issue of statutory interpretation between 8 U.S.C. § 1225 and 8 U.S.C. § 1226, it specifically declined to address constitutional claims like Petitioner's.² While many district courts declined to review the constitutionality of warrantless detention prior to *Buenrostro*, it is now much more important to delineate the due process rights of individuals like Petitioner who have been detained without a warrant and without any change in their circumstances that would give rise to the need to detain them. Numerous courts have considered similar due process claims and granted relief since *Buenrostro*. See, e.g., *Marceau v. Noem*, No. 3:26-cv-237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026); *Hassen v. Noem*, No. 3:26-cv-48-DB, ECF No. 8 (W.D. Tex. Feb. 9, 2026); *Matos Guerrero v. Lyons*, SA-26-CV-00430-FB, ECF No. 8 (W.D. Tex. Feb. 24, 2026); *Cordero Bautista v. Lyons*, 5:26-cv-00550-FB at 2-4 (W.D. Tex. Feb. 25, 2026); *Rivera Munguia v. Lyons*, 5:26-cv-00044-XR at 6-7 (W.D. Tex. Feb. 26, 2026).

III. The detention at issue here was in violation of Petitioner's procedural and substantive due process rights.

Petitioner is a civil detainee who has never been convicted of any crime. As an immigrant, Petitioner is entitled to the same due process protections afforded to civil detainees. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000). Petitioner has a "constitutionally protected interest in avoiding physical restraint". *Zadvydas*, 533 U.S. at 690 (quoting

² 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.").

Kansas v. Hendricks, 521 U.S. 346, 356 (1997)). Petitioner may not be detained as a means of punishment for noncriminal purposes. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

Constitutional due process protections apply even if a statute explicitly authorizes detention. *See Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 338 (S.D. Tex. 2020) (finding that plaintiffs who were at high risk of serious illness or death due to the COVID-19 Pandemic were detained for a purpose that did “not reasonably relate to a legitimate governmental purpose.”); *see also Rivera Munguia v. Lyons*, 5:26-cv-00044-XR at 6-7 (W.D. Tex. Feb. 26, 2026) (finding that “Petitioner’s claim is constitutional, not statutory, in nature”) (citing *Counselman v. Hitchcock*, 142 U.S. 547, 565 (1892)). The Supreme Court has repeatedly left open due process challenges to immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018) (“Consistent with our role as ‘a court of review, not of first view’ . . . we do not reach those arguments. Instead, we remand the case to the Court of Appeals to consider them in the first instance.”) (citations omitted); *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 583 (2022) (“The Government also notes that as-applied constitutional challenges remain available to address ‘exceptional’ cases.”).

Petitioner’s due process rights are both substantive and procedural, and these concepts are not mutually exclusive. *Albright v. Oliver*, 510 U.S. 266, 302 (1994) (noting that “the two concepts are not mutually exclusive, and their protections often overlap.”) (citation omitted) (Souter, J., concurring). In the context of procedural due process, the Supreme Court has repeatedly affirmed that “[w]hen protected interests are implicated, the right to some kind of prior hearing is paramount.” *Bd. of Regents v. Roth*, 408 U.S. 564, 569–70 (1972); *accord Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 848 (1977) (“It is true that before a person is deprived of a protected interest, he must be afforded opportunity for some kind of a hearing, except for extraordinary situations” (citation modified)); *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 624 (1974) (“[Procedural due process] requires that any such

deprivation be accompanied by minimum procedural safeguards, including some form of notice and a hearing.”).

In *Mathews v. Eldridge*, the United States Supreme Court set forth three factors for courts to consider in resolving due process challenges to procedures that would deprive an individual of his life, liberty, or property. 424 U.S. 319, 334–35 (1976). The *Eldridge* 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.” *Id.* at 335. The “essence of due process” is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time. *Id.* at 348.

Recent decisions have consistently found that all three *Mathews* factors support the position that detaining aliens with substantial United States presence without any individualized assessment of flight risk and dangerousness deprives them of their constitutional right to procedural due process. *See, e.g., Rivera Munguia v. Lyons*, 5:26-cv-00044-XR at 6-7 (W.D. Tex. Feb. 26, 2026); *Hernandez-Fernandez*, 2025 WL 2976923, at *10; *Lopez-Arevalo*, 801 F. Supp. 3d at 687; *Ngu v. Olson*, No. CV 26-10-DLB, 2026 WL 370947, at *9 (E.D. Ky. Feb. 10, 2026).

1. *Mathews* Factor 1: Petitioner’s liberty interest is impacted by the ongoing detention

Petitioner has a strong liberty interest in remaining free from detention. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. This civil detention has analogues in the criminal context. For example, 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.” *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482, 92 S.Ct. 2593 (1972)). This reasoning extends to the immigration context, where, once released from immigration custody, noncitizens acquire “a protectable liberty interest in remaining out of custody on bond.” *Diaz v. Kaiser*, No. 25-cv-5071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025); *M.S.L. v. Bostock*, No. 25-cv-1204, 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.”); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025). This factor weights heavily in favor of Petitioner’s release.

2. Mathews Factor 2: Risk of the erroneous deprivation of Petitioner’s liberty interest

Petitioner’s detention without any cause, warrant, or hearing constitutes a severe deprivation of Petitioner’s liberty interest. Here, there is no indication that Respondents undertook any process prior to Petitioner’s detention or considered alternatives to detention. It is clear from the record number of detentions that Respondents believe there is no need for them to implement such policies. This creates an enormous risk that Petitioner and thousands of other noncitizens will be erroneously deprived of their liberty interests. Without an individualized hearing, there is substantial risk that individuals with a substantial presence in the United States who pose neither flight risk nor danger to the community will be detained. This factor also weights heavily in favor of Petitioner’s release.

3. Mathews Factor 3: The governmental interest here is minimal

Respondents have only a general interest in processing noncitizens for removal which was already being served by Petitioner’s removal proceedings outside of detention. Petitioner’s detention does not further this interest and in fact exacts a considerable cost on the government for each day Petitioner is detained.

Respondents have not pointed to any particular factor that necessitates Petitioner's detention. For example, Respondents have not alleged that Petitioner is a danger to the community or a risk of flight from proceedings. Indeed, Petitioner's earlier release from detention was predicated on Respondents' determination that Petitioner was neither likely to pose a threat to the community nor a risk of flight if released. Such findings are required whether an individual is released under Section 1226(a) or 1182(d)(5)(A). Parole from detention is "justified only on a case-by-case basis for 'urgent humanitarian reasons' or 'significant public benefit,' provided the aliens present neither a security risk nor a risk of absconding". 8 C.F.R. § 212.5(b). Whether release or parole are authorized, the statutes and regulations provide important procedural safeguards including specific procedures for revoking supervised release or terminating parole. *See* 8 C.F.R. § 241.4(l)(2) (procedures for revoking supervised release); 8 C.F.R. § 212.5(e)(2)(i) (procedures for terminating parole). The Court should find that this interest is minimal and does not outweigh Petitioner's liberty interest.

4. Failure to comply with immigration regulations

At a minimum, due process protections require following established statutes and regulations. Respondents failed to do so here. "Multiple courts have held that the government's failure to follow its own immigration regulations may warrant the release of a detained noncitizen." *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *7 (S.D. Tex. Sept. 26, 2025) (collecting cases). The procedures established by regulation must be undertaken *prior* to an individual's detention and cannot be remedied after the fact. As such, Petitioner asks the Court to order release from detention as the most appropriate remedy.

5. Prolonged detention

Petitioner has been detained for more than five months. Extended detention is not permissible even for individuals who have significant criminal history. *See Zadvydas* at 683. Here, Petitioner has

never failed to attend an appointment or hearing with Respondents. Furthermore, Petitioner has a pending appeal before the Board of Immigration Appeals and has every reason to continue to comply with his obligations in order to continue with his pending case. Petitioner asks the Court to find that in these particular circumstances, more than five months detained without the prospect of adjudication or release violates his due process rights.

IV. Respondents violated Petitioner's Fourth Amendment rights

This unlawful detention also violated Petitioner's Fourth Amendment rights. Habeas petitions extend to custody in violation of the Constitution. 28 U.S.C. § 2241(c)(3). The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" U.S. Const. amend. IV. Under the Fourth Amendment, the initial seizure of a person must be reasonable.

The Supreme Court has recognized that the Fourth Amendment extends to noncitizens who have "substantial connections" to the United States. *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271–72 (1990) ("[A]liens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country."); *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1046 (1984) (assuming, without deciding, that the Fourth Amendment applied to illegal aliens in the United States and stressing the importance of "Fourth Amendment rights of all persons"). Several circuit courts have similarly recognized or assumed that the Fourth Amendment applies to noncitizens. *See, e.g., Cotzocay v. Holder*, 725 F.3d 172, 181 (2d Cir. 2013) ("[I]t is uncontroversial that the Fourth Amendment applies to aliens and citizens alike."); *Carcamo v. Holder*, 713 F.3d 916, 921 (8th Cir. 2013) ("We have observed that the Fourth Amendment, which protects '[t]he right of the people to be secure in

their persons, houses, papers, and effects, against unreasonable searches and seizures,’ applies as much to illegal aliens inside this country as it does to citizens.”); *United States v. Murillo-Lopez*, 151 F.4th 584, 589–90 (4th Cir. 2025) (addressing noncitizens’ Fourth Amendment challenge to stop).

The Fourth Amendment has been found to prohibit numerous types of unlawful searches and seizures, including random stops and detentions in order to question individuals about their citizenship. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 881–84 (1975) (“For the same reasons that the Fourth Amendment forbids stopping vehicles at random to inquire if they are carrying aliens who are illegally in the country, it also forbids stopping or detaining persons for questioning about their citizenship on less than a reasonable suspicion that they may be aliens.”). Prohibited conduct spans both criminal and civil contexts, including immigration enforcement. *See, e.g., Torres v. Madrid*, 592 U.S. 306, 321 (2021) (detailing the “history of the Fourth Amendment” in civil cases); *Grady v. North Carolina*, 575 U.S. 306, 307–11 (2015) (holding that a civil program that used GPS ankle bracelets to monitor recidivist sex offenders was a violation of the Fourth Amendment and constituted a search); *INS v. Delgado*, 466 U.S. 210, 216 (1984) (explaining that absent a reasonable suspicion of misconduct, detaining an individual to determine his identity when the individual refuses to show his identification violates the Fourth Amendment); *Brown v. Texas*, 443 U.S. 47, 50 (1979) (“[W]hen the officers detained [defendant] for the purpose of requiring him to identify himself, they performed a ‘seizure’ of his person subject to the requirements of the Fourth Amendment.”).

“The touchstone of the Fourth Amendment is reasonableness” *United States v. Knights*, 534 U.S. 112, 118 (2001). This is “generally assessed by carefully weighing ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the

importance of the governmental interests alleged to justify the intrusion.’ ” *County of Los Angeles v. Mendez*, 581 U.S. 420, 427 (2017) (quoting *Tennessee v. Garner*, 471 U.S. 1, 8 (1985)). Overall, reasonableness is an objective inquiry that “is evaluated by looking at the totality of the circumstances.” *Case v. Montana*, 607 U.S. —, 146 S. Ct. 500, 508 (2026) (internal citations omitted). “There is no ‘easy-to-apply legal test’ or ‘on/off switch’ in this context.” *Barnes v. Felix*, 145 S. Ct. 1353, 1358 (2025) (quoting *Scott v. Harris*, 550 U.S. 372, 382–383 (2007)).

V. Administrative exhaustion is not required in these proceedings

Petitioner is not required to exhaust administrative remedies here and such a requirement would be futile because Respondents have already clearly determined that they will not grant Petitioner bond. There is no statutory exhaustion requirement in 28 U.S.C. § 2241. Courts have routinely reviewed the detention of immigrants pursuant to different statutes in habeas proceedings. *See, e.g., Tran v. Mukasey*, 515 F.3d 478 (5th Cir. 2008). Furthermore, exhaustion is inappropriate here because appeal to the Board of Immigration Appeals is futile and inadequate.

The requirement that Petitioner must exhaust all available appeals is subject to exceptions. The Fifth Circuit has held that “[e]xceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action.” *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (citing *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (per curiam)).

Requesting bond and appealing to the BIA are both futile here because the BIA has already issued a precedential decision holding that immigration judges unequivocally have no jurisdiction to entertain granting bond in these exact circumstances. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA stated in that case that “[i]mmigration Judges lack authority to hear bond requests or to grant

bond to aliens who are present in the United States without admission.” *Id.* There is no reason to believe that the BIA would not apply its own recent precedent decision to Petitioner’s case. In light of the above, Petitioner asks the Court to find that requesting bond and appealing any denial to the BIA are not required and would be futile.

VI. This Court has jurisdiction to decide these issues

There are no jurisdictional bars to relief in this case, even considering the jurisdiction-stripping statutes at 8 U.S.C. §§ 1252(a)(5), (b)(9), (g), or 8 U.S.C. § 1226(e). Section 1252(a)(5) narrowly “specifies that the only means of obtaining judicial review of a final order of removal, deportation, or exclusion is by filing a petition with a federal court of appeals.” *Duarte v. Mayorkas*, 27 F.4th 1044, 1051 (5th Cir. 2022). Here, there is no final order of removal which Petitioner seeks review before this Court.

Section 1252(b)(9) limits judicial review of “questions of law and fact...arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter”. 8 U.S.C. § 1252(b)(9). This provision is a jurisdictional channeling provision intended to prevent review of issues prior to the end of administrative proceedings. *See Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *7 (D. Minn. Aug. 15, 2025) (citing *Aguilar v. U.S. Immigr. & Customs Enf’t*, 510 F.3d 1, 11 (1st Cir. 2007)). Petitioner is not challenging the initiation of removal proceedings or any action that occurred during those proceedings.

Section 1252(g) strips jurisdiction over “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” 8 U.S.C. § 1252(g). Here, Petitioner does not seek this review, and Congress did not intend to sweep in additional claims that were not explicitly included here. *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *4 (W.D. Tex. Sept. 22, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281 (2018)). Additionally, this provision carves out

habeas petitions; the jurisdictional bar is “notwithstanding any other provision of law (statutory or nonstatutory), including section 2241”. 8 U.S.C. § 1252(g).

Section 1226(e) does not apply to Petitioner’s claim because it “challenges to the statutory framework that permits the alien’s detention without bail.” *Jennings*, 583 U.S. at 295, 138 S.Ct. 830 (cleaned up) (quoting *Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708 (2003)); *see also Zadvydas v. Davis*, 533 U.S. 678, 688, 121 S.Ct. 2491 (2001). Petitioner is not challenging an individualized bond hearing determination but rather Respondents’ novel interpretation of the statutory framework at issue here.

VII. Release is the only appropriate relief in habeas proceedings

While courts have at times ordered bond hearings for immigrant detainees in habeas proceedings, release is the only appropriate remedy in habeas proceedings. *See generally Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (U.S. 2020). In *Thuraissigiam* the court examined the history of habeas proceedings in the United States and concluded that “[h]abeas has traditionally been a means to secure release from unlawful detention”. *Id.* at 107. The writ “simply provided a means of contesting the lawfulness of restraint and securing release.” *Id.* at 117. The Court rejected the idea that habeas proceedings can be used as a vehicle for obtaining other relief besides release. *Id.* at 126-27.

Additionally, immigration bond hearings are currently devoid of due process. Respondents have engaged in mass purges of immigration judges³, including appellate judges at the Board of Immigration Appeals, replaced those judges with temporary military judges,⁴ recruited partial “deportation judges” rather than neutral arbiters,⁵ and even ordered immigration judges to defy court orders under penalty of

³ *See Politico: Immigration courts thrown into chaos as Trump administration purges dozens of judges (available at <https://www.politico.com/news/2025/12/06/trump-immigration-court-judge-purges-00679376>)*

⁴ *See American Immigration Council: Trump Administration Appoints Hundreds of Unqualified Military Lawyers to Serve as Immigration Judges (available at <https://www.americanimmigrationcouncil.org/blog/trump-appoints-military-lawyers-to-serve-as-immigration-judges/>)*

⁵ *See The Guardian: US justice department recruiting legal experts to serve as ‘deportation’ judges (available at <https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges>)*

termination.⁶ In these circumstances, ordering a bond hearing is not only contrary to the history of habeas proceedings, it is an ineffective remedy that merely allows Respondents to deny and delay until they can remove the immigrant from the United States.

VIII. Conclusion

Because Respondents have unlawfully detained Petitioner in violation of the law and regulations, Petitioner respectfully asks this Court to grant this Petition and issue a writ of habeas corpus ordering immediate release.

Respectfully submitted,

/s/ Joseph Krebs Muller

Joseph Krebs Muller
Counsel for Petitioner
Bar: MO #65066, TX #24117397
Law Office of Joseph Muller
9600 Great Hills Trl. Ste. 150W
Austin, TX 78759
Email: joseph@jkmlaw.cc
Phone: (512) 593-8258
Fax: (512) 361-4938

⁶ See Seattle Times: WA federal court orders action as immigration judges defy bond order (*available at* <https://www.seattletimes.com/seattle-news/wa-federal-court-orders-action-as-immigration-judges-defy-bond-order/>)