

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

ANDREA PEDRO-FRANCISCO,

Petitioner,

v.

PAMELA BONDI, et. al

Respondents.

Civil Action No. 3:26-cv-00450-LS

REPLY BRIEF IN SUPPORT OF WRIT OF HABEAS CORPUS

Petitioner Andrea Pedro-Francisco files this Reply Brief in Support of her Verified Petition for Writ of Habeas Corpus (ECF No. 1) and asks this Court to grant the requested relief.

PENDING APPLICATION FOR TRO AND PRELIMINARY INJUNCTION

Ms. Pedro-Francisco is suffering from a large ovarian cyst and other serious health issues. On Friday, March 6, 2026, she filed an Application for Temporary Restraining Order and Preliminary Injunction, seeking (i) access to prescribed medication, (ii) evaluation by a physician, (iii) access to condition-appropriate medical care, and (iv) continuing access to medical care to prevent complications and further deterioration of her health. ECF No. 4. That motion is currently pending before the Court.

LEGAL DISCUSSION

Respondents' Response (ECF No. 5), other than providing a few sentences about Ms. Pedro-Francisco's circumstances, re-states the same boilerplate arguments they have

advanced in other similar matters and fails to explain why Ms. Pedro-Francisco should not be afforded the same constitutional due process rights promised to every person in this country. For this reason, Ms. Pedro-Francisco asks that the writ be granted and all relief requested ordered.

Specifically, Ms. Pedro-Francisco requests that this Court order her release, without the requirement that she be subjected to a bond hearing that will fail to provide her with meaningful process. Recent orders issued in the Western District of Texas indicate that bond hearings are not adequate to protect a detainee's constitutional rights. *See, e.g., Acosta Espana v. Ortega, et al.*, No. 1:26-CV-300-DAE, 2026 WL 594362, at *5 (W.D. Tex. Mar. 2, 2026); *Longoria Mendoza*, No. 5:26-CV-728-JKP, Dkt. #9, at 17–18; *Villegas Angel v. Noem, et al.*, No. 1:26-CV-00384-DAE, 2026 WL 594368, at *5 (W.D. Tex. Mar. 3, 2026); *Azua-Zuniga v. Bondi*, No. 1:26-CV-287-RP, 2026 WL 482453, at *4 (W.D. Tex. Feb. 20, 2026); *Gomez Alvarado v. Vergara, et al.*, No. 1:26-CV-00309-DAE, 2026 WL 594366, at *5 (W.D. Tex. Mar. 2, 2026); *and see Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *13–14 (W.D. Tex. Oct. 2, 2025) (collecting cases and finding that “immediate release appropriately remedies Respondents’ violation of [] due process rights through [] continued detention.”).

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

“The El Paso Division of the Western District of Texas quickly dispelled any notion that *Buenrostro-Mendez* dictated denial of constitutional claims.” *Longoria Mendoza v. Noem, et al.*, No. 5:26-CV-0728-JKP, Dkt. # 9, at *8 (W.D. Tex. Feb. 26, 2026) (citing *Marceau v. Noem*, No. 3:26-CV-237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9,

2026)). The *Buenrostro-Mendez* ruling, issued on February 6, 2026, overrules a 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 v. Bondi*, No. 25-20496, 2026 WL 323330, at *1 (5th Cir. 2026). 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.* Thus, “*Buenrostro-Mendez* does not change this case’s outcome on procedural due process grounds.” *Longoria Mendoza*, No. 5:26-CV-0728-JKP, Dkt. # 9, at *8 (quoting *Hassen v. Noem*, No. EP-26-CV-00048-DB, 2026 WL 446506, at *2 n.1 (W.D. Tex. Feb. 9, 2026)).

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).

Further, since *Buenrostro* was decided, a district court in California has vacated the BIA’s September 2025 decision in the *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 216 (BIA 2025), the very basis for Respondents’ current detention policy. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *10 (C.D. Cal. Feb. 18, 2026). Accordingly, Ms. Pedro-Francisco does not withdraw her claims for relief rooted in challenges to the application of § 1225(b) in this case.

B. DUE PROCESS ENTITLES MS. PEDRO-FRANCISCO TO RELEASE.

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, numerous federal courts in the Fifth Circuit have granted habeas relief on procedural due process grounds notwithstanding the statutory limitations addressed in *Buenrostro*.²

¹ On February 3, 2026, the Seventh Circuit held oral argument on the merits in the *Castanon-Nava* case. 7th Cir., Court Of Appeals 7th Circuit Live Stream - Main Courtroom, YOUTUBE (Feb. 3, 2026), https://www.youtube.com/watch?v=DqIS_x9Ghd4.

² 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*, 2025 WL 2976923; *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; *De Leon Hernandez v. Bondi*, 2025 WL 3217037 (W.D. La. Nov. 18, 2025); *Cruz-Reyes v. Bondi*, No. 5:26-CV-60, 2026 WL 332315, at *7 (S.D. Tex. Feb. 3, 2026) (“The Court is now persuaded that a post-deprivation bond hearing cannot cure the core violation of Mr.

While some courts have ordered that a bond hearing or release can provide adequate constitutional protection, the bond process currently in place does not adequately protect Ms. Pedro Francisco’s liberty interests. *See supra* at 2. The bond hearings currently offered by the Respondents are not constitutionally compliant, and release is the appropriate remedy. *Id.*

The government’s refusal to provide meaningful 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*, No. EP-25-CV-443-KC, 2025 WL 3038262, at *3–4 (W.D. Tex. Oct. 30, 2025). Bond hearings that actually “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.

But the bond hearings currently provided by the government are not these proceedings. Rather, the bond hearings are typically scheduled on one or two days’ notice with little or no advance notice to the petitioner. The petitioner is in custody and has little or no ability to engage immigration counsel to represent him or her in the bond hearing. *Advocs. for Hum. Rts. v. U.S. Dep’t of Homeland Sec.*, No. 26-CV-749 (NEB/DLM), 2026 WL 404457, at *8 (D. Minn. Feb. 12, 2026) (“On the record before the Court, Defendants’ policies and practices prevent AHR attorneys from effectively representing their clients.

Cruz Reyes’s due process rights that occurred when he was unlawfully detained under a mandatory detention provision without any process for such determination.”).

Defendants have prohibited AHR and its volunteer attorneys from visiting or speaking confidentially with clients.” (footnote omitted)).

The (often pro bono) attorney who filed the habeas is unable to represent the petitioner in the bond hearing before an immigration judge. *See* 8 C.F.R. § 1292.1(a)(1), (f) (“an immigration judge may, under *extraordinary and rare* circumstances, permit an unregistered attorney or accredited representative to appear at *one* hearing if the immigration judge first acquires from the attorney or accredited representative, on the record, the required registration information” (emphasis added)). The petitioner does not have access to his or her records, and thus is likely unable to present evidence that he or she is not a danger or a flight risk. Further, although the burden is on the government to prove danger or flight risk, the immigration court often does not provide an explanation or reasoning for its decision, making it impossible to determine on what basis the decision was made. *See Trigueros v. Guadian*, No. 1:26-cv-00205-AJT-WBP, Dkt. No. 13 at 2, 6 (E.D. Va. Feb. 18, 2026) (ordering release or second bond hearing where respondents did not provide immigration court’s reasoning and U.S. district judge listened to bond hearing audio recording and concluded that “the considerations upon which it was determined that [p]etitioner constitutes a flight risk were so lacking in probative value as to that issue that their use in determining flight risk failed to provide the [p]etitioner with constitutionally sufficient due process.”).

For these reasons, courts in the Fifth Circuit and Western District of Texas have concluded that “a post-deprivation bond hearing cannot cure the core violation of [petitioners’] due process rights.” *Cruz-Reyes*, 2026 WL 332315, at *7; *accord Acosta*

Espana v. Ortega, et al., No. 1:26-CV-00300-DAE, 2026 WL 594362, at *5 W.D. Tex. Mar. 2, 2026) (citing Western District of Texas cases).

Accordingly, Ms. Pedro-Francisco, respectfully requests the Court “follow other district courts that have declined to order Respondents to conduct a bond hearing when Respondents maintain that 8 U.S.C. § 1226 is inapplicable to Petitioner’s detention,” *Longoria Mendoza*, No. 5:26-CV-728-JKP, Dkt. #9, at 17–18 (quoting *Cruz-Reyes*, 2026 WL 332315, at *5), and order her immediate release.³

CONCLUSION

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

Date: March 11, 2026

/s/ Jennifer Rappoport
 Asra Syed
 State Bar No. 24119398
 Jennifer Rappoport
 State Bar No. 24072761
BOTKIN CHIARELLO CALAF PLLC
 1209 Nueces Street
 Austin, Texas 78701
 asra@bccaaustin.com
 jennifer@bccaaustin.com
 T: (512) 960-4162
 F: (737) 289-4695
Attorneys for Petitioner

³ Should the Court order a bond hearing, Ms. Pedro-Francisco reserves the right to seek review in this Court of whether the Respondents provided her with a constitutionally compliant bond hearing.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March 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/ Jennifer Rappoport
Jennifer Rappoport