UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ADHANOM DEBRU TESFAMARIAM,

Petitioner,

v.

KRISTI NOEM, et al.,
Respondent.

Civil Action No. 1:26-cv-363-DAE

Immigration No. [redacted]

PETITIONER'S REPLY TO FEDERAL RESPONDENTS' RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner ADHANOM DEBRU TESFAMARIAM ("Mr. Tesfamariam") hereby responds to the Federal Respondents' Response to the Petition for Writ of Habeas Corpus, ECF No. 5, which was filed with the Court on February 24, 2026.

I. BACKGROUND

Mr. Tesfamariam is a citizen of Eritrea only who has lived in the United States for approximately eight years, including continuous residence in Austin, Texas since February 2019. *See* Ex. A, Petitioner's Declaration. Although Petitioner was born in Ethiopia, he is not an Ethiopian citizen. *Id.* Around 2000, when Petitioner was around 8 years old, during a conflict between Eritrea and Ethiopia, he and his family were forcibly deported to Eritrea by Ethiopian authorities. *Id.* Petitioner was separated from his father at that time, as his father was not deported with Petitioner and his mother and they did not know his whereabouts. *Id.*

After experiencing persecution in Eritrea, Petitioner entered the United States on or about eight years ago through San Ysidro, CA. Although a removal order is in place, Petitioner was unrepresented, despite repeated efforts to obtain counsel, so he did not understand the appellate process and waived appeal.

Until his recent arrest and detention, Petitioner lived and worked in Central Texas, where he has resided continuously since February 2019 and developed deep ties to his local community. Prior to his detention, he was under ICE supervision, including electronic ankle monitoring, with which he fully complied, and he maintained steady employment, including work with Uber, Amazon and UPS. He has no criminal history, no disqualifying convictions and no history of violence. Further, he has mailed his motion to reopen his asylum, withholding and protection under the Convention Against Torture claim on March 3, 2026. *See* Ex. B, Petitioner's Motion to Reopen.

Since the entry of the prior removal order, Mr. Tesfamariam has also obtained newly discovered and previously unavailable evidence concerning conditions specific to him in Eritrea. More specifically, [redacted] have repeatedly demanded that his mother [redacted] in retaliation for Mr. Tesfamariam's (and his siblings') [redacted], which is enforced through severe punishment. *See* Ex. A. On August 8, 2020 was when Petitioner learned that his mother had been [redacted] *Id.* Also, for many years, Petitioner and his family did not know the whereabouts of his father, as stated above. *Id.* However, in 2024, Petitioner's mother was informed by [redacted] that Petitioner's father [redacted] *Id.*

These facts were not known to Mr. Tesfamariam at the time of his prior proceedings and were never presented to or considered by the Immigration Court. If returned to Eritrea, Mr. Tesfamariam reasonably fears that [redacted]—facts that materially affect both his eligibility for relief and the equities relevant to reopening and continued detention. Further, Petitioner never had permanent status in Ethiopia and has even been deported from Ethiopia to Eritrea in the past. *Id.*

On December 15, 2025, Petitioner was taken into ICE custody following a planned enforcement action conducted by ICE officers near his home in Travis County, Texas, and was thereafter transferred to the T. Don Hutto Detention Center, where he remains detained. At the time of his arrest, Mr. Tesfamariam was in compliance with ICE supervision requirements, including electronic ankle monitoring, and had been advised at his most recent check-in that he would not be arrested. Mr. Tesfamariam is presently subject to a removal order issued in proceedings under INA § 240, 8 U.S.C. § 1229a, arising from his § 240 removal proceedings at the San Diego Immigration Court, where a hearing was held on May 23, 2018. *See* Ex. B, Documentation of Immigration Case. Mr. Tesfamariam did not previously appeal or seek reopening of that order because he was unrepresented despite diligent efforts to secure counsel and did not understand the appellate process.

II. ARGUMENT

A. THIS COURT SHOULD NOT DISSOLVE THE STAY OF REMOVAL.

Petitioner challenges Respondents' argument regarding the purpose of the stay. Petitioner is not challenging his removal order. He challenges only the legality of his ongoing civil detention, a claim that remains fully cognizable under 28 U.S.C. § 2241 even where a final order exists. The stay issued by this Court is a routine, protective measure to preserve jurisdiction over Petitioner's habeas claim. It does not reopen, suspend, or question the validity of the removal order.

B. DETENTION IS NOT LAWFUL UNDER 8 U.S.C. § 1231(a)(6).

Petitioner agrees that the authority to detain aliens after the entry of a final order or removal is set forth in 8 U.S.C. § 1231(a)(6). However, Petitioner does not agree that he falls within that category. Respondents state that extension of the 90-day removal period is warranted where flight risk or other risk to the community is present. This case presents neither risk. In fact, Petitioner must guess at what risk Respondents believe is present in his case because Respondents fail to state it specifically in their response. To the extent that Respondents believe Petitioner is a flight risk because he has a final order of removal, that fear is unwarranted given that Petitioner has had a final order of removal for almost eight years and has not absconded nor failed to comply with the conditions imposed on him. If Respondents believe that Petitioner is a flight risk because of the apparent damage to the GPS equipment mentioned in the Declaration of SDDO Gomez attached to their response, they need to be much more specific about what occurred. Simply stating that damage occurred to the GPS monitor three times does not justify the finding of flight risk, especially considering that Petitioner was not detained any of the three times it was damaged. Thus, any reliance on 8 U.S.C. § 1231(a)(6) for Petitioner's continued detention is clearly unlawful.

C. PETITIONER'S SUBSTANTIVE DUE PROCESS CLAIM UNDER *ZADVYDAS* IS NOT PREMATURE

Respondents contend Petitioner's due process claim under *Zadvydas* is premature because Petitioner has been detained for less than six months. Petitioner does not dispute that he has been detained since December 15, 2025, and thus has not yet reached six months of custody.

Even if one accepts the Fifth Circuit's interpretation that § 1225(b)(2)(A) mandates detention and provides no statutory bond hearing, Petitioner's ongoing and potentially indefinite detention without any individualized custody determination violates the Due

Process Clause of the Fifth Amendment as applied to him. Civil immigration detention is permissible only to the extent it serves the statutory purposes of ensuring appearance at proceedings and protecting the community from danger. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 527–28 (2003). When detention becomes prolonged or indefinite and is no longer tied to those purposes, it becomes punitive and unconstitutional. *Id.*

Here, Petitioner's detention is currently almost three months old—since December 15, 2025. His pending motion to reopen regarding his applications for asylum, withholding of removal, and Convention Against Torture are complex and typically require extended proceedings. Without any mechanism for individualized review, Petitioner faces a substantial risk of indefinite detention under penal conditions despite having no criminal history, no disciplinary infractions, demonstrated compliance, and no individualized finding of danger or flight risk. Numerous district courts, including within the Fifth Circuit, have held post-*Jennings* that due process requires an individualized bond hearing, with the government bearing the burden of proof by clear and convincing evidence, when mandatory detention under §§ 1225(b) or 1226(c) becomes prolonged. While the Fifth Circuit has not adopted a bright-line rule, district courts in this Circuit and others commonly find six months presumptively unreasonable absent individualized justification. *See*, e.g., practice advisories and district court orders cited in post-*Jennings* litigation, collecting cases requiring hearings after 6– 12 months under analogous mandatory detention provisions. Based on the facts of the case and how long it has taken to retrieve a travel document for Petitioner, presumably since he is not an Ethiopian citizen and was deported in the past and also due to the instability in Eritrea and difficulty deporting Eritrean citizens back to Eritrea, **Petitioner should not be**

forced to wait until post 6 months when it is already unlikely that deportation will occur in that period since no document has been obtained for almost 8 years.

The constitutional concerns are heightened here because the government's new interpretation—upheld in *Buenrostro-Mendez*—extends mandatory detention without bond or hearing to noncitizens who have lived openly in the United States at or near the border or port of entry, where detention was typically brief pending expedited processing. Extending it to individuals in full § 1229a proceedings with meritorious relief claims and a motion to reopen sent raises far graver liberty interests than the brief detention upheld in Demore or contemplated for true arriving aliens.

D. THERE IS GOOD REASON TO BELIEVE THAT REMOVAL IS UNLIKELY IN THE REASONABLY FORESEEABLE FUTURE

There is good reason to believe that removal is unlikely in the reasonably foreseeable future. The best evidence of this is the government's own actions regarding Petitioner in the nearly eight years since the removal order was issued. While the government initially took steps to effectuate Petitioner's removal in 2018, Petitioner was eventually placed on bond with no Alternatives to Detention close to a year after the removal order was entered. While it is not stated in the SDDO's Declaration, the implication is that removal could not be effectuated and was not reasonably foreseeable and thus they had to place Petitioner in a less restrictive setting. Nothing apparently changed between Petitioner's release in 2019 and August of 2025 other than the current enforcement environment. Respondents have apparently been attempting to secure a travel document in this case since apparently August 2025 and have yet to receive an update of their travel document request or the travel document itself, seven months later.

Additionally, the Respondents cite to the ICE Annual Report for FY2024 as evidence that removal to Eritrea and Ethiopia is possible because ICE has effectuated removals to both places.

What that number does not show is how long it took to finally effectuate those removals, nor does it tell the reader the percentage of Ethiopians and Eritreans with final orders that were removed. Indeed, Petitioner had a final order during all the fiscal years listed in the report and yet he cannot be included in the numbers. Those numbers also do not tell the reader whether those removed to either country were in the same situation as Petitioner – namely, he was born in Ethiopia but has Eritrean descent and was thus forcibly deported to Eritrea from Ethiopia in his childhood, facts which certainly complicate his removal to either country. Therefore, considering the government's own actions over the past eight years, there is very good reason to believe that removal is unlikely in the reasonably foreseeable future.

E. ICE HAS NOT AFFORDED PETITIONER PROCEDURAL DUE PROCESS DURING HIS POST-ORDER CUSTODY PENDING REMOVAL.

Buenrostro-Mendez focuses purely on one's statutory entitlement theory under § 1226(a), **but it does not deprive this Court of habeas jurisdiction or resolve Petitioner's independent constitutional claims and other claims.** *Habeas* jurisdiction remains available to test the legality of detention and the constitutionality of detention procedures; § 1226(e) does not bar review of legal and constitutional claims.

More specifically, on February 6, 2026, a panel of the United States Court of Appeals for the Fifth Circuit issued its published opinion in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026). The panel held that noncitizens who are present in the United States without having been admitted or paroled—including those apprehended years after entry— are "applicants for admission" under 8 U.S.C. § 1225(a)(1) and are subject to mandatory detention under § 1225(b)(2)(A) pending removal proceedings under § 1229a. *Id.* The panel further held that such individuals are not eligible for discretionary release on bond under § 1226(a) and that immigration judges lack jurisdiction to conduct bond hearings in their cases. The panel endorsed the Board of Immigration Appeals' precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and reversed two district court orders that had granted habeas relief on statutory grounds.

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* only addressed the statutory interpretation dispute and reversed the district courts decisions solely because they had granted bond hearings as a matter of statutory entitlement under § 1226(a). The panel never considered due process challenges to prolonged or indefinite mandatory detention without any individualized hearing, nor did it address claims under the Administrative Procedure Act, the equal protection component of the Fifth Amendment, the Suspension Clause, or the *Accardi* doctrine.

The Supreme Court in *Jennings v. Rodriguez,* 583 U.S. 281 (2018), similarly held that there is no statutory right to periodic bond hearings under §§ 1225(b), 1226(a), or 1226(c), but it explicitly remanded for the lower courts to consider constitutional arguments in the first instance. *Id.* at 302–03. The Fifth Circuit's statutory holding in *Buenrostro-Mendez* leaves those constitutional questions open, just as *Jennings* did.

Habeas jurisdiction remains available to test the legality of detention and the constitutionality of detention procedures; § 1226(e) does not bar review of legal and constitutional claims. Nothing in *Buenrostro-Mendez* strips this Court of jurisdiction under 28 U.S.C. § 2241 to adjudicate constitutional challenges to immigration detention or to review whether the Executive's custody scheme violates governing law. *Jennings* itself distinguishes unreviewable discretionary custody judgments from reviewable questions of law and constitutional claims. Likewise, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Demore v. Kim,* 538 U.S. 510 (2003), both proceeded through § 2241 *habeas* and underscore that civil immigration detention must remain tethered to lawful purposes and must satisfy due process.

Here, Petitioner challenges DHS' asserted authority to hold him in prolonged civil detention without any meaningful individualized custody determination by a neutral decisionmaker empowered to order release, and he challenges the lawfulness of the government's detention process as applied to him.

Further, as stated above, Petitioner was previously detained upon his entry and during his removal proceedings. Petitioner was subsequently released on bond with no Alternatives to Detention conditions attached. This release on bond occurred under INA § 236(a)(2)(A), 8 U.S.C. § 1226(a)(2)(A). The decision to release Petitioner on bond represents a formal adjudication of custody status, reflecting DHS' determination that the individual falls under the discretionary detention framework of § 236 rather than the mandatory detention provisions of § 235(b). The Supreme Court has "long favored application of the common law doctrines of collateral estoppel (as to issues) and res judicata (as to claims) to those determinations of administrative bodies that have attained finality." *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991) (citing *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966)). As the Court explained in *Utah Construction*, "[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." 384 U.S. at 422. This presumption applies because "Congress is understood to legislate against a background of common-law adjudicatory principles." *Astoria*, 501 U.S. at 108 (citing *Briscoe v. LaHue*, 460 U.S. 325 (1983); *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952)). Accordingly, DHS' presumed prior § 236 determination constitutes a binding judgment for purposes of collateral estoppel and cannot be disturbed absent materially changed circumstances or new facts.

F. PETITIONER IS A MEMBER OF THE NATIONALLY CERTIFIED BOND ELIGIBLE CLASS AND *MALDONADO BAUTISTA'S* RULING HAS A PRECLUSIVE EFFECT.

The Court in *Maldonado Bautista* certified a nationwide class of individuals who are being subject to the government's new bond policy and "extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, ---F.Supp.3d---, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). More specifically, in *Maldonado Bautista*, the district court certified the following Bond Eligible Class:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United states without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Maldonado Bautista, 2025 WL 3288403, at *9. First, there are those who entered the United States, were not apprehended at or near the border or close in time to their entry, and who were later arrested by immigration authorities. Second, there are those who were apprehended at or near the border and close in time to their entry, were released on recognizance, and then were re-detained by immigration authorities after residing in the U.S. Here, Petitioner falls under category two for his most recent arrest. Therefore, this declaratory relief granted in *Maldonado Bautista v. Santacruz* affects Petitioner's current claim because Petitioner has been categorically denied access to any administrative custody review, and no adequate alternative remedy exists; exhaustion is either satisfied or excused as futile. A *writ of habeas* *corpus* is the sole avenue to remedy Petitioner's constitutional, statutory, and regulatory rights and to restore his liberty.

Further administrative exhaustion would be futile. More specifically, on or about January 13, 2026, Chief Immigration Judge Teresa L. Riley issued nationwide guidance instructing all immigration judges that: "*Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay or enjoin *Yajure Hurtado*." Immigration judges are instructed to treat the BIA's decision in *Matter of Yajure Hurtado* as binding precedent. EOIR guidance further states that a "declaratory judgment" is not binding and lacks authority to compel specific action.[1] Under these circumstances, no administrative body within EOIR has authority to provide the relief sought. DHS' discretionary parole authority does not constitute an available or adequate administrative remedy that must be exhausted prior to *habeas* review. Parole decisions are committed to agency discretion, are not subject to neutral adjudication, and provide no mechanism for Petitioner to challenge the legality of his detention. Courts have consistently held that discretionary parole is not an exhaustion prerequisite to *habeas corpus* relief. A *writ of habeas corpus* is now the sole avenue for Petitioner's constitutional, statutory, and regulatory rights and to restore his liberty.

G. PETITIONER IS ENTITLED TO RELIEF UNDER THE APA.

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

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[1] *See* https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista

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).

Here, The APA claim remains viable because DHS' abrupt 2025 policy reversal—announced via internal memo without notice-and-comment or reasoned explanation for departing from 28 years of practice—is arbitrary and capricious under 5 U.S.C. § 706(2)(A). Further, *Buenrostro-Mendez* did not address this administrative law challenge. By treating *Yajure Hurtado* as an absolute bar to any form of individualized custody consideration, DHS has unlawfully transformed a discretionary detention framework into a blanket detention rule, substituting categorical inaction for the case-by-case decision-making required by the INA and the APA. DHS has failed to consider relevant factors in Petitioner's case, including but not limited to:

1. Petitioner's lack of criminal history and non-dangerousness;
2. His demonstrated compliance with immigration authorities;
3. His pending humanitarian protection claims;
4. The absence of any individualized flight-risk finding; and
5. The availability of less restrictive alternatives to detention.

DHS has also failed to provide a reasoned explanation for its abrupt departure from decades of settled administrative practice (1997–2025), during which noncitizens in Petitioner's posture routinely received individualized custody determinations and were considered for release under supervision or bond. Such an unexplained reversal of course is arbitrary and capricious under the APA. *Judulang*, 565 U.S. at 55. 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.

Habeas relief is warranted to remedy this unlawful agency conduct. Petitioner respectfully requests that this Court order his immediate release or, in the alternative, direct DHS to conduct a prompt, individualized, and reasoned custody determination consistent with the Administrative Procedure Act, the Immigration and Nationality Act, and governing constitutional principles.

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court deny Respondents'/Government's request for summary judgment and take the following actions:

1. Issue a writ of habeas corpus ordering Respondents to provide Petitioner with an individualized bond hearing under INA § 236(a), 8 U.S.C. § 1226(a) within seven (7) days of the Court's order;
2. Petitioner respectfully requests that the Court grant a TRO and preliminary injunction requiring an individualized bond hearing or, alternatively, Petitioner's immediate release;
3. Issue a declaration that DHS may not initiate or pursue expedited removal against Petitioner while his § 240 removal proceedings remain non-final and while he seeks relief from removal before an Immigration Judge;
4. Issue a declaration that the plain language of INA § 236(a) permits immigration judges to consider bond requests of noncitizens who are present without admission and are not classified as arriving aliens;
5. Grant permanent injunctive relief as appropriate;
6. Award Petitioner reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 552(a)(4)(E), and any other applicable provision of law; and
7. Grant such other relief as this Court deems just and proper.

DATE: March 3, 2026.

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this day, I served a true and correct copy of the above and foregoing *Petitioner's Reply to Federal Respondents' Response In Opposition to Petition for Writ of Habeas Corpus*, as well as any and any/all attachments thereto, on Counsel for Respondents by serving the same by filing the same using the Court's CM/ECF system.

/s/John Bray
JOHN M. BRAY
LEAD COUNSEL FOR PETITIONER

DATE: March 3, 2026.