

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

ELENA DEL ROCIO SINCHE-
ATARIGUANA,

Petitioner,

v.

PAMELA BONDI, et. al

Respondents.

Civil Action No. 3:26-cv-00471-DB

REPLY BRIEF IN SUPPORT OF WRIT OF HABEAS CORPUS

Petitioner, Elena del Rocio Sinche-Atariguana files this Reply Brief in Support of her Writ of Habeas Corpus Petition and asks this Court to grant the requested relief. Petitioner recognizes that this Court issued an Order granting the Petition in Part (ECF No. 4), and submits this reply brief within the Court’s briefing schedule (ECF No. 2 at 3) to address certain issues raised by Respondent’s Response (ECF No. 3).

LEGAL DISCUSSION

A. RESPONDENTS FAILED TO COMPLY WITH THIS COURT’S SHOW CAUSE ORDER.

On February 17, 2026, this Court issued a show cause order, pursuant to which Respondents were required to show no later than February 20, 2026 why this writ of habeas corpus should not issue. ECF No. 2 at 3. Specifically, the Court admonished Respondents “should avoid boilerplate arguments this Court has already rejected in one of many immigration habeas cases to date.” *Id.* at 2.

Respondents’ brief failed to abide by this guidance. Other than providing a few

sentences about Ms. Sinche-Atariguana's circumstances, Respondents re-state the same boilerplate arguments they have advanced in other similar matters and fail to explain why Ms. Sinche-Atariguana should not be afforded the same constitutional due process rights promised to every person in this country, regardless of their national origin. For this reason, Ms. Sinche-Atariguana asks that the writ be granted and all relief requested ordered.

Specifically, Ms. Sinche-Atariguana 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. *See Avilez Aguinaga v. Warden, Joe Corley Processing Ctr.*, No. CV 4:26-0137, 2026 WL 266510, at *1–2 (S.D. Tex. Feb. 2, 2026) (ordering petitioner's release and declining to order a bond hearing where petitioner argued "that the immigration courts have been systematically transformed and are no longer capable of providing an impartial tribunal and individualized assessment for purposes of § 1226(a)").

B. THE FIFTH CIRCUIT'S *BUENROSTRO-MENDEZ* DECISION.

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.*

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. Sinche-Atariguana does not withdraw her claims for relief rooted in challenges to the application of § 1225(b) in this case.

C. DUE PROCESS ENTITLES PETITIONER TO RELIEF.

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

¹ And, on February 3, 2026, the Seventh Circuit held oral argument on the merits in the *Castanon-Nava* case. See <https://media.ca7.uscourts.gov/oralArguments/oar.jsp?caseyear=&casenumber=&period=Past+month>.

immigration detention is not arbitrary, unlawful, or inconsistent with due process. In line with this principle, multiple federal courts in the Fifth Circuit have granted habeas relief on procedural due process grounds notwithstanding the statutory limitations addressed in *Buenrostro*.²

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. Sinche-Atariguana’s liberty interests. The bond hearings currently offered by the Respondents are not constitutionally compliant, and release is the appropriate remedy. 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.

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

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. 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, Order Granting Motion to Show Cause 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.”).

Should the Court order a bond hearing, Ms. Sinche-Atariguana reserves the right to seek review in this Court of whether the Respondents provided her with a constitutionally compliant bond hearing. *Id.* at 3 (“As an initial matter, the Court concludes that it retains jurisdiction to review whether Respondents provided Petitioner with a constitutionally compliant bond hearing.”).

CONCLUSION

In sum, the continued detention without bond under a blanket mandatory detention policy violates Ms. Sinche-Atariguana’s constitutional due process rights. Accordingly, Ms. Sinche-Atariguana’s 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: February 24, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February 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
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