UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS LAREDO DIVISION

Cheikh Ahmed Tidiane Ka, *Petitioner*, v. Orlando Perez, *et al*., *Respondents*.	§ § § § § § § § §	CIVIL ACTION NO. 5:26-CV-00440

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

Petitioner, through undersigned counsel, hereby responds to Respondents' Opposition to the Petition for Writ of Habeas Corpus and respectfully requests that this Court deny Respondents' Motion for Summary Judgment and grant the relief sought in the Petition.

Petitioner's habeas petition is grounded in his due process claims and does not seek to challenge or relitigate the holdings in *Buenrostro-Mendez v. Bondi* or *Matter of Yajure Hurtado*. Rather, Petitioner asserts that his continued detention violates his constitutional right to due process. The Petition focuses on whether, under the specific facts and circumstances of this case, Petitioner's prolonged detention without adequate procedural safeguards is unconstitutional and warrants his release.

RELEVANT BACKGROUND

Petitioner entered the United States on or about October 26, 2023, without inspection, as a refugee seeking protection from persecution in Senegal. Upon entry, Petitioner was apprehended by the Department of Homeland Security ("DHS"). Following his apprehension, DHS exercised its discretion and released Petitioner on an Order of Release on Recognizance

after determining that he was neither a flight risk nor a danger to the community.

Nearly two years later, in December 2025, Petitioner was re-apprehended by DHS despite no material change in circumstances since his initial release in 2023. While in detention, Petitioner continued to pursue his claims for relief. On February 3, 2026, an Immigration Judge denied his applications and ordered him removed to Senegal.

As Respondents acknowledge, Petitioner timely filed an appeal of that decision, which remains pending. Accordingly, Petitioner's removal order is not administratively final. Despite this, Petitioner remains detained at the Rio Grande Detention Center in Laredo, Texas, without having been afforded a meaningful opportunity for an individualized custody determination or adequate procedural due process. Furthermore, Petitioner's removal is not reasonably foreseeable while his appeal remains pending, yet he continues to be subjected to prolonged detention.

I. THE FIFTH CIRCUIT'S DECISION IN BUENROSTRO DOES NOT BAR PETITIONER'S DUE PROCESS CHALLENGE

Respondents rely on the Fifth Circuit's recent decision interpreting 8 U.S.C. § 1225(b)(2)(A) as requiring detention of certain applicants for admission "until the conclusion" of removal proceedings. Petitioner does not dispute that the statute uses mandatory language.

However, Respondents overstate the scope of that decision. The Fifth Circuit's interpretation of § 1225(b)(2) as authorizing mandatory detention is a matter of statutory construction. It does not foreclose constitutional review. Nothing in that decision holds that individuals detained under § 1225(b)(2) are barred from raising due process challenges to prolonged or unreasonable detention.

The facts of Petitioner's case are materially distinguishable from *Buenrostro*. Although Petitioner entered the United States without inspection, he did not evade immigration authorities. To the contrary, he was released on his own recognizance by ICE, filed an asylum application, appeared for all

scheduled immigration proceedings, complied with all court directives, and followed the procedures established by DHS and the Immigration Court.

After being served with a Notice to Appear, Petitioner was released into the interior of the United States on his own recognizance. He remained fully compliant with the conditions of his release for more than two years, during which time he lived openly and established ties in the community, all under the same statutory framework Respondents now rely upon to justify his continued detention. Notably, Respondents do not allege that Petitioner absconded, failed to appear for any proceedings, or otherwise obstructed the removal process during that period.

Even if Respondents are correct that *Buenrostro* interprets § 1225(b)(2) as mandating detention for certain applicants for admission, that decision did not eliminate constitutional protections. Buenrostro addressed statutory interpretation; it did not hold that detainees are barred from raising constitutional challenges to prolonged detention.

The Supreme Court has made clear that even where statue authorizes mandatory detention, such detention remains subject to constitutional limitations. See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Jennings v. Rodriguez*, 583 U.S. 513 (2018). The existence of mandatory statutory language does not extinguish the Fifth Amendment.

Furthermore, Petitioner's appeal remains pending, and there is no defined or foreseeable timeline for when it will be adjudicated. Respondents, in their response, provide no information regarding the anticipated adjudication of the appeal or any expected timeline for its resolution. As a result, Petitioner continues to be held in pre-final-order detention with no clear endpoint. In the absence of any predictable timeline for resolution of his appeal, there is likewise no reasonable likelihood of

Petitioner's removal or release in the foreseeable future, rendering his continued detention constitutionally problematic.

II. PETITIONER RETAINS A CONSTITUTIONAL RIGHT TO CHALLENGE THE LAWFULNESS OF HIS PROLONGED DETENTION

Petitioner, although a noncitizen, is entitled to the protections of the United States Constitution. It is well established that individuals within the United States, regardless of immigration status, are afforded due process rights under the Fifth Amendment. Accordingly, Petitioner qualifies as an individual entitled to constitutional protections, including the right to be free from unlawful and prolonged detention without adequate procedural safeguards.

In their own Response, Respondents acknowledge that Petitioner was released into the interior of the United States pursuant to an Order of Release on Recognizance and remained at liberty until he was re-detained in October 2025. This fact alone undermines Respondents' position that Petitioner is subject to rigid, mandatory detention without recourse to procedural due process. If the statutory scheme truly required categorical detention, Respondents would not have exercised discretion to release Petitioner in the first instance.

Moreover, during the period of his release, Petitioner lived openly in the United States, complied with all conditions imposed upon him, and developed substantial ties and expectations of liberty. This period of government-authorized release created a significant liberty interest that cannot be extinguished without constitutionally adequate procedural protections. Respondents cannot now rely on the same statutory framework to justify prolonged detention while disregarding their prior discretionary determination that Petitioner did not pose a flight risk or danger to the community.

Accordingly, even accepting Respondents' reliance on statutory detention provisions, their own actions demonstrate that Petitioner is entitled to individualized due process protections. The re-detention of Petitioner—after years of compliance and without any material change in circumstances—renders his continued detention arbitrary and constitutionally defective.

Petitioner raises this point not to expand the scope of the class litigation, but to clarify the procedural posture of his detention. The present issue before this Court is not merely statutory classification; it is whether continued civil immigration detention without meaningful review comports with the Constitution.

Even if Respondents characterize detention as mandatory under § 1225, the Fifth Amendment does not permit indefinite or unreasonably prolonged civil detention untethered to its purpose. Immigration detention is justified only to ensure appearance at proceedings or to effectuate removal. Where removal is not imminent and appellate proceedings remain pending, the justification for continued detention weakens substantially.

Permitting prolonged detention of an individual in active removal proceedings, without individualized review and without a reasonably foreseeable removal date, raises serious due process concerns. Civil detention must bear a reasonable relationship to its purpose; it cannot become punitive or arbitrary simply because statutory language is mandatory. "Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The fifth amendment entitles detainee in deportation proceedings to due process of law. *Demore v. Kim*, 538 U.S. 510, 523 (2003). Under the Suspension Clause, the writ of habeas corpus guarantees judicial review of executive detention in removal cases, a protection the Constitution requires. *See INS v. St. Cyr*, 533 U.S. 289, 300–05 (2001). Petitioner is entitled to protection under the Fifth Amendment

because his liberty interest is directly at stake. There is presently no defined end date for his detention. When an individual's physical liberty is restrained without a clear termination point, judicial intervention through a writ of habeas corpus is warranted to ensure that the detention remains consistent with constitutional limits. *Id*.

Respondents' argument misunderstands the nature of Petitioner's due process claim. Petitioner does not dispute that 8 U.S.C. § 1225(b)(2)(A) contains mandatory language. Rather, he challenges whether the Government's continued reliance on that statutory language may constitutionally justify prolonged detention without individualized review. Noncitizens in removal proceedings who have established meaningful connections to the United States through prolonged residence possess a constitutionally protected liberty interest in freedom from detention absent adequate procedural safeguards. See *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020).

Petitioner's due process claim seeking to require Respondents to provide an individualized justification for his continued detention — including an assessment of whether he poses a flight risk or danger to the community — is constitutionally warranted. While the statute may authorize detention in the first instance, it does not eliminate the Courts nor the Government's obligation to ensure that continued detention remains reasonable and constitutionally permissible.

Petitioner's detention cannot become indefinite. The Supreme Court has expressly cautioned that any statute authorizing indefinite detention would raise serious constitutional concerns. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Additionally, Respondents' reliance on *Connecticut Dep't of Public Safety v. Doe*, 538 U.S. 1 (2003), is misplaced, and in fact the comparison is unwarranted. That case involved a statute that

required registration based solely on the historical fact of a prior criminal conviction. The statutory consequence flowed automatically from that conviction. This case is fundamentally different.

Petitioner is not detained because of a prior criminal conviction. He has no criminal history in the United States or abroad. He entered the United States seeking protection from persecution, was released by ICE into the interior of the country and timely applied for asylum. His detention is civil, not punitive, and is justified by the Government solely on regulatory grounds — namely, ensuring appearance and protecting the community.

Unlike the registry statute in *Doe*, immigration detention under § 1225(b)(2)(A) is justified by forward-looking regulatory purposes. The Supreme Court has consistently recognized that civil immigration detention must bear a reasonable relationship to those purposes. See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 513 (2018). Flight risk and dangerousness are not foreign to the immigration detention framework — they are the very regulatory interests that justify civil detention in the first place.

Respondents attempt to treat detention under § 1225(b)(2)(A) as though it were triggered by an immutable historical fact, like a criminal conviction. It is not. It is justified as a regulatory measure pending removal proceedings. When detention becomes prolonged, the Constitution requires that the Government demonstrate that continued confinement remains reasonably related to its regulatory purposes. That inquiry necessarily involves whether the individual presents a flight risk or danger.

Moreover, ICE itself exercised discretionary authority to release Petitioner into the United States. Having determined at one point that Petitioner did not require physical custody to satisfy statutory purposes, the Government cannot now claim that those purposes are categorically irrelevant. The

Government's own actions demonstrate that individualized custody determinations, or release under their own discretion are neither foreign nor incompatible with the statutory scheme.

This case therefore presents the classic question of whether prolonged civil detention without individualized review violates the Fifth Amendment.

Respondents' contention that *Mathews v. Eldridge* is inapplicable here is incorrect. *Mathews* provides the Supreme Court's general framework for determining what process is constitutionally required before the Government may deprive a person of a protected liberty or property interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). That framework is not confined to any particular statutory scheme; it is a universal balancing test applied whenever due process is invoked, including in the context of civil detention. Respondents' reliance on mandatory statutory language does not eliminate the constitutional requirement to assess whether the procedures afforded are sufficient under the Fifth Amendment.

III. CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that this Court deny Respondents' Motion for Summary Judgment and grant the Petition for Writ of Habeas Corpus.

Petitioner's continued detention—despite his full compliance, the absence of any material change in circumstances, and the Government's own prior determination that he posed no flight risk or danger—has become arbitrary and untethered from any legitimate regulatory purpose. His appeal remains pending, his removal is not administratively final, and Respondents have failed to provide any foreseeable timeline for adjudication or removal.

Under these circumstances, Petitioner's prolonged detention without a meaningful opportunity for individualized review violates the Due Process Clause of the Fifth Amendment. Civil immigration detention cannot become indefinite, punitive, or constitutionally unchecked simply because it is authorized by statute.

Accordingly, Petitioner respectfully requests that this Court order his immediate release. In the alternative, Petitioner requests that this Court order Respondents to provide him with a prompt, individualized custody hearing before a neutral decision-maker, at which the Government bears the burden of justifying his continued detention.

Respectfully Submitted

Gurvinder Kaur

March 31, 2026

Gurvinder Kaur, Esq.

Certificate of Service

I certify that on March 31, 2026, the foregoing was filed and served through the Court's CM/ECF system

Respectfully Submitted

Gurvinder Kaur

Gurvinder Kaur, Esq.