**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF TEXAS**
**SAN ANTONIO DIVISION**

| | |
|---|---|
| Aly Somoury,<br><br>Petitioner,<br><br>v.<br><br>Kristi Noem, Secretary, DHS, *et al.*,<br><br>Respondents. | Civil Action No. 5:26-cv-00275-FB |

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS CONSIDERING RECENT FIFTH CIRCUIT PRECEDENT**

Federal Respondents[1] provide the following response to the petition. Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief sought, including attorney's fees under the Equal Access to Justice Act (EAJA).[2] Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). This conclusion is appropriate under long-standing Supreme Court precedent and recent Fifth Circuit precedent. The Fifth Circuit Court of Appeals recently held that aliens, like the Petitioner, who entered the United States illegally and who are not "clearly and beyond a doubt entitled to be admitted," "shall be detained" under 8 U.S.C. § 1225(b)(2)(A), until the conclusion of their removal proceedings. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir. Feb. 6, 2026). The *Buenrostro-Mendez* decision is binding precedent and requires that the Court deny this habeas petition.[3] The Eighth Circuit also recently

---

1 The Department of Justice represents only federal employees in this action.

2 *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

3 The *Buenrostro-Mendez* decision is a published decision and precedential authority even though the mandate has yet to issue. *See, e.g., Martin v. Singletary*, 965 F.2d 944, 945 n.1 (11th Cir. 1992) (explaining that even a stay in the issuance of a mandate does not impact the precedential value of published opinions); *Acute Care Ambul. Serv., L.L.C. v. Azar II*, No. 7:20-

decided consistent with *Buenrostro-Mendez* in Avila v. Bondi, 25-3248, 2026 WL 819258, ---F.4th-- (8th Cir. Mar. 25, 2026). The Eighth Circuit's decision further supports the Government's arguments.

**Petitioner here, is in a different procedural posture than many of the aliens who file habeas petitions: an immigration judge has denied Petitioner all substantive relief from removal, a decision which Petitioner appealed to the Board of Immigration Appeals (BIA)**. Exhibit (Exh) A (Removal Order); *see also* Executive Office of Immigration Review Automated Case Information (https://acis.eoir.justice.gov/en/caseInformation) (last accessed March 30, 2026). Because Petitioner has appealed the removal order, there is no final order of removal. Under 8 U.S.C. § 1226(a), a **preliminary removal order by an immigration judge weighs heavily against discretionary release on bond**, as it calls into question the alien's likelihood of compliance with any removal order once it becomes final. *See, e.g., Johnson v. Guzman Chavez*, 594 U.S. 523, 544 (2021) (finding that aliens "who have not been ordered removed are less likely to abscond" but those who have been ordered removed pose a higher flight risk).

## INTRODUCTION

The Immigration and Nationality Act, as amended, provides that all aliens who are present within the United States and not admitted—deemed by statute to be "applicants for admission"—"shall be detained" pending their removal proceedings if they cannot show they are "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(a)(1), (b)(2)(A). Detention is mandatory, so they are not entitled to bond hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 297, 300 (2018).

---

CV-00217, 2020 WL 7640206, at *13 (S.D. Tex. Dec. 3, 2020) (rejecting the argument that a Fifth Circuit decision is not controlling because "the mandate has yet to issue, and thus not properly relied upon as precedent.").

Over the last several months, hundreds of habeas petitions have been filed in the Western District of Texas by petitioners who are "applicants for admission" and are being detained under § 1225(b)(2)(A) without bond hearings. Many district courts granted those petitions, holding that the aliens' detentions were governed by the separate authority in 8 U.S.C. § 1226(a), which permits bond hearings. The Fifth Circuit rejected the holdings of those decisions in *Buenrostro-Mendez* and held that "applicants for admission" are subject to detention under § 1225(b)(2)(A) and so have no statutory right to a bond hearing. *Buenrostro-Mendez,* 166 F.4th 494, at 498-508.

Despite *Buenrostro-Mendez* and *Avila*, some petitioners have pivoted to a new theory—*procedural* due process—to order the Government to provide bond hearings or to release individuals who are indisputably detained under § 1225(b)(2)(A). This fallback theory is foreclosed by *Buenrostro-Mendez* and *Avila*. Post-*Buenrostro-Mendez* and *Avila*, Petitioner falls within the terms of § 1225(b)(2)(A); and is an "applicant for admission" who failed to show that he was "clearly and beyond a doubt entitled to be admitted." No additional process is needed to resolve an uncontested issue of fact. As the Supreme Court held, "Plaintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme." *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 9 (2003). But whether Petitioner is a flight risk or a danger is irrelevant to the statutory scheme; thus, a bond hearing to assess those issues would be "a bootless exercise." *Id.* at 7. In the end, the only process due for those who have never "been admitted into the country pursuant to law" is whatever process is "expressly conferred by Congress." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138 (2020).

In truth, Petitioner is not challenging the *procedures* available under the statute; rather, Petitioner is challenging Congress' *substantive* determination that aliens covered by §

1225(b)(2)(A) are not entitled to a bond hearing. See ECF No. 1 pgs 5-7. Petitioner's claim with respect to *substantive* due process—*i.e.*, that the government cannot constitutionally detain *notwithstanding* the fact that they are subject to mandatory detention by statute—does not satisfy the standard for a substantive due process claim. Petitioner does not purport to identify any fundamental right, so their substantive due process claim must fail, so long as mandatory detention under § 1225(b)(2)(A) is "rationally related to legitimate government interests." *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997). The Supreme Court has long "recognized [that] detention during deportation proceedings [i]s a constitutionally valid aspect of the deportation process," because "deportation proceedings 'would be vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore v. Kim*, 538 U.S. 510 (2003).

Petitioner's due process approach is in reality the same argument with a different label. The initial arguments were at least properly styled—they were statutory claims that actually advanced arguments about statutory construction. But the fallback putative-procedural due process claim actually attacks the *substance* of Congress's policy choice to impose mandatory detention, rather than discretionary detention. This Court should deny the petition.

**BACKGROUND**

Petitioner is a native and citizen of Mauritania. Exh B (Notice to Appear) (NTA). On or about January 27, 2023, Petitioner entered the United States, without admission or parole after inspection. *Id.* Petitioner was detained at or near the time Petitioner entered the United States and later was released. *Id.*; *see also* ECF No. 1 at ¶ 6. Petitioner was issued an NTA on January 29, 2023. On an unknown date(s), Petitioner filed applications for relief from removal. On or about November 12, 2025, Petitioner was detained by U.S. immigration authorities. ECF No. 1 at ¶ 6. While detained, and after Petitioner filed the petition, Petitioner had an immigration hearing, and

on January 30, 2026, the immigration judge denied Petitioner's applications for relief from removal, and ordered Petitioner removed to Mauritania. Exh. A. On February 5, 2026, Petitioner appealed the removal order, and the appeal is currently pending. *See* EOIR Automated Case Information, *supra*. Petitioner is currently detained at the Karnes County Immigration Processing Center in Karnes City, Texas. ECF No. 1 ¶ 6.

**PETITIONER IS SUBJECT TO MANDATORY DETENTION**

Petitioner seeks an order from this Court directing the Department of Homeland Security to release Petitioner from immigration detention. *See* ECF No. 1 ¶ 15. That is not appropriate, and the Court should deny the petition. The primary issue impliedly raised by Petitioner, namely that detention is unlawful, was rejected by the Fifth Circuit. *Buenrostro-Mendez*, 166 F.4th 494, 498.

Petitioner's implied contention that detention should be governed by, 8 U.S.C. § 1226, that Petitioner is being unlawfully detained, and that the detention violates the United States Constitution were rejected in *Buenrostro-Mendez*. 166 F.4th at 498. To the extent Petitioners claim they are not properly categorized as applicants for admission "[t]he text and context of § 1225 contradict the petitioners' reading of the statute." *Id.* at 502.

The Fifth Circuit made clear that aliens present in the United States who have not been admitted by lawful means, remain "applicants for admission" who were "seeking admission." *Id.* at 501. The court explained that "[w]hen a person applies for something, they are necessarily seeking it." *Id.* In so holding, the court rejected the reasoning that the phrase "seeking admission" in § 1225(b)(2)(A) uses the present tense and thus applies only to individuals "currently and actively seeking to be admitted to the United States when [they are] apprehended." *Id.* at 502. The

Fifth Circuit held that "the everyday meaning of the statute's terms confirms that being an 'applicant for admission' is not a condition independent from 'seeking admission.'" *Id.*

*Buenrostro-Mendez*, recognizing that the plain language of the INA controlled the analysis and outcome, also rejected arguments based on the Executive's past interpretation and application of § 1225 and § 1226. 166 F.4th at 506. "Years of consistent practice cannot vindicate an interpretation that is inconsistent with a statute's plain text." *Id.* (citing, *Pereira v. Sessions*, 585 U.S. 198, 204 (2018)). The Fifth Circuit observed that the Government's interpretation and application of § 1225(b)(2) "better honors" the intent of Congress's amendments to the INA—the full enforcement of § 1225(b)(2)'s plain terms "put aliens seeking admission lawfully on equal footing with those who entered without inspection." *Id.* at 508.

Respondents acknowledge that many courts in the Western District of Texas have ruled otherwise in previous habeas cases. However, this significant development in the Fifth Circuit warrants this Court taking a different approach. "After reviewing carefully the relevant provisions and structure of the Immigration and Naturalization Act, the statutory history, and Congressional intent" the Fifth Circuit concluded that the detention authority relied upon by the government is lawful. *Id.* at 498.

The Fifth Circuit is not the only court to so hold. The Eighth Circuit's decision in *Avila* also supports the Government's position. *Avila*, 2026 WL 819258.

First, *Avila* held that "the ordinary meanings of the phrases 'applicant for admission' and 'seeking admission' are the same." *Id.* at *5; *see* Opening Br. 23-25; Reply Br. 3-13. In so holding, the Eighth Circuit explained that the text and statutory context of §1225(b)(2)(A) foreclose interpreting "seeking admission" to refer to a "present-tense, affirmative action." *Id.* at *3; *see* Answering Br. 30-31. In addition, the Eighth Circuit correctly held that the Government's

interpretation does not render any portion of §1225(b)(2)(A) surplusage. *Id.* at *4. Second, *Avila* held that the Government's interpretation is consistent with the "statutory purpose of §1225" of "placing all aliens 'on equal footing'" in immigration proceedings. *Id.* By contrast, Avila's interpretation—like Petitioners' here—"contradicts the statute's goal." *Id.* Third, *Avila* rejected Avila's reliance on language in *Jennings v. Rodriguez*, 583 U.S. 281 (2018)—also relied on by Petitioners here—which "was offered only as general background information" and "does not preclude other statutory provisions—such as §1225(b)(2)(A)—from also applying" to aliens inside the country. *Id.* at *5. Fourth, *Avila* correctly held that prior administrations' decisions to "not exercise their full authority under §1225" does not justify departing from the statute's text, because "'authority granted by Congress cannot evaporate through lack of administrative exercise.'" *Id.* Finally, *Avila* held that the Government's reading of §1225(b)(2)(A) does not render §1226(c) superfluous. *Id.* Although §1225(b)(2)(A) and §1226(c) may overlap, the Eighth Circuit correctly held that such overlap does not give "license to rewrite or eviscerate" clear statutory text. *Id.*

District courts around the country also agree. *See Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2026 WL 81679 (N.D. Tex. Jan. 9, 2026) (Hendrix, J.) (holding that Petitioner, as an applicant for admission, is properly detained without bond under § 1225); *Singh v. Noem*, No. 2:25-CV-00157-SCM, 2026 WL 74558 (E.D. Ky. Jan. 9, 2026) (Meredith, J.) (holding that Petitioner, as an applicant for admission, is properly detained without bond under § 1225); *Rodriguez v. Olson*, No. 1:25-CV-12961, 2026 WL 63613 (N.D. Ill. Jan. 8, 2026) (Pacold, J.) (holding that Petitioner was an applicant for admission seeking entry and thus subject to mandatory detention without bond); *Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026) (Hendrix, J.) (holding that nothing in the INA or Due Process Clause contradicts mandatory detention of applications for admission without bond under § 1225); *Naikpay v. Sukkar*,

No. 2:25-CV-1167-KCD-DNF, 2026 WL 44820 (M.D. Fla. Jan. 7, 2026) (Dudek, J.) (holding that alien released on humanitarian parole and later re-apprehended remained an applicant for admission under § 1225); *Azizzadeh v. Rhoney*, No. 25-CV-1288 (JLS), 2026 WL 44324 (W.D.N.Y. Jan. 6, 2026) (Sinatra, Jr., J.) (holding that despite being in the United States, Petitioner is an applicant for admission and no bond hearing is required); *Zuniga v. Lyons*, No. 1:25-CV-221-H, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025) (Hendrix, J.) (holding that alien residing in U.S. for 25-years remains an applicant for admission and shall be detained by § 1225 without entitlement to a bond hearing); *Montoya v.* Holt, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025) (Dishman, J) (holding that Petitioner is unambiguously an applicant for admission and that detention without a bond hearing does not violate the Due Process Clause); *Masis Lucero v. Field Off. Dir. of Enf't & Removal Operations*, No. 1:25-CV-823, 2025 WL 3718730 (S.D. Ohio Dec. 23, 2025) (Cole, J.) (holding that § 1225 applies to noncitizens present in the US but never admitted and requires detention through the end of removal proceedings); *Rivera Hernandez v. Noem*, No. 9:25-CV-00326, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) (Truncale, J.) (holding that § 1225, as the more specific statute, governs Petitioner's detention, which does not violate due process as it has not been shown to be indefinite); *E.R.J.B. v. Wofford*, No. 1:25-CV-01843-WBS-SCR, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025) (Shubb, J.) (holding that because § 1225 authorizes mandatory detention and is silent on bond hearings, due process is satisfied by the statutory scheme itself); *Paredes Padilla v. Galovich*, No. 25-CV-865-JDP, 2025 WL 3640960 (W.D. Wis. Dec. 16, 2025) (Peterson, J.) (holding that Petitioner, as an applicant for admission, is not entitled to a bond hearing under § 1225 despite an improper release on bond when he was transferred from expedited removal into asylum proceedings); *Coronado v. Sec'y, Dep't of Homeland Sec.*, No. 1:25-CV-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) (Cole,

J.) (holding that because Petitioner was never lawfully admitted, detention is governed by § 1225 and bond hearings are unavailable as a matter of statute and due process); *Liang v. Almodovar*, No. 1:25-CV-09322-MKV, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) (Vyskocil, J.) (holding that because no immigration officer has decided that Petitioner is clearly and beyond a doubt entitled to be admitted, he is subject to mandatory detention under § 1225); *P.B. v. Bergami*, No. 3:25-CV-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025) (O'Connor, J.) (holding that Petitioner, still awaiting her asylum hearing, is an application for admission that is seeking admission subject to mandatory detention under § 1225); *Delgado v. Noem*, No. 9:25-CV-00329, 2025 WL 3639439 (E.D. Tex. Dec. 12, 2025) (Truncale, J.) (holding that petitioner is validly detained pending removal proceedings under § 1225 and § 1226 and that habeas was an improper means to challenge custody redetermination decisions); *Garcia v. United States*, No. 2:25-CV-1053-KCD-DNF, 2025 WL 3537592 (M.D. Fla. Dec. 10, 2025) (Dudek, J.) (holding that Petitioner, who was apprehended at the border, is an applicant for admission subject to mandatory detention under § 1225, and that one month of detention falls below the constitutional threshold for a potential due process violation); *Rodriguez v. Noem*, No. 9:25-CV-00320, 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025) (Truncale, J.) (holding that Petitioner is properly detained without a bond hearing as an applicant for admission subject to § 1225, that § 1226 would only permit a discretionary hearing, and that habeas relief is improper for the alleged procedural violation); *Oliveria v. Albarran*, No. 1:25-CV-01760 WBS AC, 2025 WL 3525923 (E.D. Cal. Dec. 9, 2025) (Shubb, J.) (holding that because § 1225 authorizes mandatory detention and is silent on bond hearings, due process is satisfied by the statutory scheme itself); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.) (holding that Petitioner, as an applicant for admission, is properly detained without a bond hearing under § 1225, which does

not violate Due Process Clause); *Ramirez Melgar v. Bondi*, No. 8:25CV555, 2025 WL 3496721 (D. Neb. Dec. 5, 2025) (Buescher, J.) (holding that Petitioner is properly detained under § 1225, which does not require the alien to be actively seeking admission, even if he may also be subject to § 1226); *Candido v. Bondi*, No. 25-CV-867 (JLS), 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) (Sinatra Jr., J.) (holding that Petitioner is an application for admission that is seeking admission under § 1225 despite having lived illegal within the United States since 2004); *Chen v. Almodovar*, No. 1:25-cv-08350-MKV, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.) (holding that a § 1225 "applicant for admission" includes both arriving aliens and aliens present in the United States that did not enter lawfully); *Topal v. Bondi*, No. 1:25-cv-01612 SEC P, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.) (holding that Petitioner is unlikely to prevail on the merits of his relief because he is an applicant for admission properly detained under § 1225 that has never received permission to enter the United States); *Hernandez Cruz v. Noem*, No. 8:25-CV-02566-SB-MAA, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) (Blumenfeld Jr., J.) (holding that Petitioner's lengthy presence in the United States after failing to present himself for inspection cannot remove him from § 1225's mandatory-detention framework and that he is still "seeking admission"); *Suarez v. Noem*, No. 1:25-CV-00202-JMD, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025) (Divine, J.) (holding that Petitioner is an alien, present in the United States, who has not been admitted, so § 1225 applies to him and detention without a bond hearing is mandatory); *Duenas Garcia v. Immigr. & Customs Enf't Dep't of Homeland Sec.*, No. 2:25-CV-1004-KCD-NPM, 2025 WL 3277163 (M.D. Fla. Nov. 25, 2025) (Dudek, J.) (holding that release on recognizance following apprehension at the border does not alter Petitioner's legal classification as an applicant for admission) *Alves de Andrade v. Patterson*, No. 6:25-CV-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025) (Joseph, J.) (holding that any alien physically present in the

United States who has not been admitted is an "applicant for admission," regardless of how long they have been in the country or whether they ever intended to apply or enter properly); *Alonzo v. Noem*, No. 1:25-CV-01519 WBS SCR, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025) (Shubb, J.) (holding that "applicant for admission" is a legal designation for purposes of the removal scheme that covers aliens present in the country but not yet admitted); *Valencia v. Chestnut*, No. 1:25-CV-01550 WBS JDP, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) (Shubb, J.) (holding that Petitioner is unlikely to succeed on his challenge to the INA and Due Process clause because an "applicant for admission" is a legal designation not a description of present conduct); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (Eskridge, J.) (rejecting Petitioner's argument that she was not "seeking admission" given her decades-long residence in the United States); *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) (Wilson, J.) (holding that § 1225 applies to an alien who is physically present in the United States but not lawfully admitted, regardless of how long they have been physically present here); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (Divine, J.) (holding that § 1225 does not render the Laken Riley Act superfluous and that Petitioner is detained under § 1225 despite a long-established government practice of detaining under § 1226); *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646 (W.D. La. Oct. 22, 2025), (Whitehurst, M.J.), *R. & R. adopted*, No. 6:25-CV-00451, 2025 WL 3113644 (W.D. La. Nov. 6, 2025) (Joseph, J.) (holding that since Petitioner, who was detained upon entering the United States, is an applicant for admission under § 1225(b), there is no statutory entitlement to release on bond or to a bond hearing); *Oliveira v. Patterson*, No. 6:25-CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (Joseph, J.) (holding that any alien physically present in the United States who has not been admitted is an "applicant for admission," regardless of how long

they have been in the country or whether they intended to apply or enter properly); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.) (holding that any alien physically present in the United States who has not been admitted is an "applicant for admission," regardless of how long they have been in the country or whether they intended to apply or enter properly); *Rojas v. Olson*, No. 25-CV-1437-BHL, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.) ((holding that Petitioner is an applicant for admission despite his prior bond and that his detention does not violate Due Process because it is limited to the conclusion of his removal proceedings); *Chanaguano Caiza v. Scott*, No. 1:25-CV-00500-JAW, 2025 WL 3013081 (D. Me. Oct. 28, 2025) (Woodcock, Jr., J.) (holding that Petitioner is unlikely to succeed on the merits because, upon the automatic expiration of his parole, he was restored to the § 1225 detention status held at the time of parole); *Chavez v. Noem*, 801 F. Supp. 3d 1133 (S.D. Cal. 2025) (Bencivengo, J.) (holding that Petitioner, as an alien present in the United States who has not been admitted, is an applicant for admission subject to mandatory provision under the plain text of § 1225(b)).

The BIA, the highest administrative body charged with interpreting and applying the immigration laws, also agreed in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. There, the BIA examined the plain language of § 1225, the INA's statutory scheme, Supreme Court and BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. No. 104-208, and DHS's prior practices. After doing so, the BIA held that "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission." *Matter of Yajure Hurtado,* 29 I. & N. Dec. at 225.

## THE PETITION DOES NOT ADDRESS DUE PROCESS

Nowhere in the petition does Petitioner refer to due process, the Fifth Amendment or the U.S. Constitution. See ECF No. 1. Thus, Petitioner makes no overt claims regarding alleged deprivation of Petitioner's due process rights. However, to the extent the Court interprets the petition as raising due process arguments, Respondents offer the following arguments.

## IMPLIED DUE PROCESS CLAIMS

### a. Procedural due process does not entitle Petitioner to a bond hearing to determine facts that are irrelevant to § 1225(b)(2)(A).

There is no dispute that Petitioner falls within the scope of § 1225(b)(2)(A). Petitioner is an alien who is "present in the United States" and "ha[d] not been admitted," and so Petitioner is an applicant for admission. 8 U.S.C. § 1225(a)(1). Petitioner has not established that Petitioner is "clearly and beyond a doubt entitled to be admitted." *Id.* § 1225(b)(2)(A). Therefore, as the Fifth Circuit held in *Buenrostro-Mendez,* Petitioner is subject to mandatory detention under § 1225(b)(2)(A).

The Constitution prohibits the federal government and States from "depriv[ing]" a "person" of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. The Supreme Court has recognized two types of due-process claims. *See Dep't of State v. Muñoz*, 602 U.S. 899, 910 (2024). A procedural-due-process claim takes as given the substantive determinations that would justify a deprivation of life, liberty, or property, but challenges the "adequacy of the[] procedures" for making those determinations. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). For example, the statute in *Mathews* made the availability of disability benefits turn on whether a person is "completely disabled" within the meaning of the statute. *Id.* at 323, 336. The procedural due process claim did not challenge the statute's substantive criteria for who may receive benefits, but the adequacy of the procedures available to test whether a person fits

within the criteria. *Id.* at 325-26. By contrast, a substantive due process claim challenges the substance of the determinations themselves, arguing that they are inadequate to justify the deprivation "at all, no matter what process is provided." *Reno v. Flores*, 507 U.S. 292, 302 (1993).

Petitioner has not challenged the adequacy of the procedures for determining whether Petitioner is an "applicant for admission," a matter determined in immigration proceedings and that subjects Petitioner to mandatory detention under § 1225(b)(2)(A). Instead, Petitioner may be interpreted as arguing that the determination Petitioner is an applicant for admission and "not clearly and beyond a doubt entitled to be admitted," 8 U.S.C. § 1225(b)(2)(A), is a constitutionally insufficient basis on which to justify the deprivation of liberty.

Congress decided as a substantive policy matter to impose mandatory detention on *all* applicants for admission, such as Petitioner. Whether Petitioner is a flight risk or danger is irrelevant under that policy choice. Due process does not require procedures to adjudicate immaterial facts. What Petitioner is asking this Court to do is override Congress's substantive judgment that all applicants for admission must be detained regardless of whether they are dangerous or flight risks. Procedural due process can do no such thing.

This Supreme Court's decision in *Connecticut Dep't of Pub. Safety*, is definitive on this point. The statute in that case required sex offenders to register with the State so their information could be published on a sex-offender registry. 538 U.S. at 4-5. John Doe, who had previously been convicted of a sex offense, claimed that the statute violated his procedural-due-process rights by requiring him to register without a "hearing to determine whether" he was "currently dangerous." *Id.* at 4 (citation omitted).

The Court rejected Doe's claim. It explained that "due process does not require the opportunity to prove a fact that is not material to the State's statutory scheme," and "the fact that

[Doe] seeks to prove—that he is not currently dangerous—[wa]s of no consequence under" the relevant statute, which required him to register based on his prior conviction alone. *Id.* at 7. So "[u]nless [Doe] c[ould] show that that substantive rule of law [wa]s defective (by conflicting with the Constitution), any hearing on current dangerousness [would be] a bootless exercise." *Id.* at 8. Any claim that Doe was entitled to a hearing to adjudicate facts a legislature had not made relevant "'must ultimately be analyzed' in terms of substantive, not procedural, due process." *Id.* at 7-8.

The rule of *Connecticut Dep't of Pub. Safety* is straightforward: "Plaintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme." 538 U.S. at 9. The Fifth Circuit applied that rule in *Duarte v. City of Lewisville, Texas*, 858 F.3d 348 (5th Cir. 2017), in a similar context. *See id.* ("procedural due process does not entitle the Duarte Family to a hearing to 'establish a fact that is not material' under the Ordinance" (quoting *Connecticut Dep't of Pub. Safety*, 538 U.S. at 7)).

The Fifth Circuit later applied that same rationale to reject a procedural due process challenge against mandatory detention under § 1226(c) in *Wekesa v. United States Att'y*, No. 22-10260, 2022 WL 17175818 (5th Cir. Nov. 22, 2022). There, *Wekesa* filed a habeas petition, alleging that "his continued detention without an individualized bond hearing violates his due process rights." *Id.* at *1. The Court rejected that claim. It explained that § 1226(c) "mandates detention of any alien falling within its scope" and allows release "'only if' the alien is released for witness-protection purposes." *Id.* Additionally, "[b]ecause Wekesa d[id] not meet the statutory requirements for release under Section 1226(c)(2)," the Fifth Circuit affirmed the district court's denial of habeas petition. *Id.* In other words, because *Wekesa* indisputably was subject to detention under § 1226(c), nothing he hoped to ascertain through a bond hearing would be "relevant under the statutory scheme." *Connecticut Dep't of Pub. Safety*, 538 U.S. at 9.

*Mathews* articulates a three-part balancing test for analyzing certain "procedural due process" claims. *Nelson v. Colorado*, 581 U.S. 128, 134 (2017). But that test has no application in the realm of substantive due process. After all, *Mathews* takes the "nature of the relevant inquiry" as given, 424 U.S. at 343, and asks only whether the "procedures" for conducting that factual inquiry are adequate. *Id.* at 335. Here, in stark contrast, Petitioner contends that the Constitution requires a different factual inquiry altogether—i.e., one that evaluates factors that Congress chose not to make relevant to the detention issue. Because that is a substantive, rather than procedural, due-process challenge to the statute, any reliance on *Mathews* is misplaced.

**b. Even if Petitioner were asserting a viable due process claim, it lacks merit**

Even if Petitioner was asserting a proper procedural due process claim, that claim contradicts the Supreme Court's longstanding precedent regarding the due process rights of aliens who were never admitted to this country.

For more than a century, the rule has been that for aliens who have never "been admitted into the country pursuant to law, the decisions of executive and administrative officers, acting within the powers expressly conferred by Congress, are due process of law." *Thuraissigiam*, 591 U.S. at 138 (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)). This is true even of aliens "paroled elsewhere in the country for years pending removal" who have developed significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). They are "'treated' for due process purposes 'as if stopped at the border.'" *Id.* This includes those that successfully evade inspection at the border: "[A]n alien who tries to enter the country illegally is treated as an 'applicant for admission'"—*i.e.*, treated the same as if they lawfully presented themselves at a port of entry or were caught at the border. *Id.* at 140.

The Supreme Court has elsewhere made clear that *lawful admission*—not physical entry—is the touchstone for when aliens gain due process interests that could potentially require procedures beyond what Congress has provided (and thus all that the due process clause requires under the entry fiction doctrine). For example, in *Landon v. Plasencia*, 459 U.S. 21 (1982), the Court observed that only "*once an alien gains admission* to our country and begins to develop the ties that go with permanent residence [does] his constitutional status change[]." *Id.* at 32 (emphasis added). "Th[is] rule," the Court explained, "rests on [the] fundamental proposition" that "the power to admit or exclude aliens is a sovereign prerogative," and "the Constitution gives the political department of the government plenary authority to decide which aliens to admit." *Id.* at 32; *see also Nishimura Ekiu*, 142 U.S. at 659.

This understanding that additional procedures can only be required for those who have been lawfully *admitted* (and not even lawfully paroled) was confirmed years before in *Kaplan v. Tod*, 267 U.S. 228 (1925). There, the Supreme Court held that a child lawfully *paroled* into the care of relatives *for nearly nine years*—but never lawfully *admitted*—must be "regarded as stopped at the boundary line" and "had gained no foothold in the United States." *Id.* at 230-31. That was so even though the child had been living in the interior of the country with her naturalized-citizen father and thus was presumably forming connections to the United States. *Id.* at 229. Still, because she had never been lawfully admitted, the Due Process Clause did not require *any* additional procedures beyond what Congress provided. *Id.* at 229-30.

The same result should follow here. Petitioner's entry and presence in the United States have been unlawful. The moment of entry into the United States constituted a criminal act under 8 U.S.C. § 1325(a).

As the Fifth Circuit recognized, by enacting § 1225(b)(2)(A), Congress sought to eliminate the preferential treatment of aliens who violate the country's immigration laws. *Buenrostro-Mendez,* 166 F.4th at 508. Under what may be viewed as Petitioner's implied argument, aliens who violate federal law would enjoy *greater* constitutional protections than those who comply with it. Nothing in law allows an alien to adversely possess additional due process rights by virtue of unlawfully entering the United States and successfully evading enforcement for some length of time—especially when the nine years of *lawful* presence in *Kaplan* did not suffice.

Petitioner is appealing the removal order, has the right to be represented by counsel in those proceedings, and is receiving all the process due under the statute; that is, "due process of law." *Thuraissigiam*, 591 U.S. at 138.

**c. Petitioner does not have a substantive due process right to a bond hearing**

In contrast to a *procedural* due process claim, which takes as a given the substantive determination that would justify a deprivation of life, liberty, or property, a *substantive* due process claim challenges the substance of the determinations themselves, arguing that they are inadequate to justify the deprivation "at all, no matter what process is provided." *Flores,* 507 U.S. at 302.

Petitioner's detention without a bond hearing during the pendency of removal proceedings does not implicate any fundamental rights. "[P]rior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings," *Demore*, 538 U.S. at 523 n.7, so such a right cannot possibly be "objectively, deeply rooted in this Nation's history and tradition." *Muñoz*, 602 U.S. at 910 (quoting *Washington*, 521 U.S. at 720-21). Accordingly, rational-basis review is the appropriate standard for analyzing respondents' substantive-due-process claims. *Glucksberg*, 521 U.S. at 728. Under that standard, detention under § 1225(b)(2) is

constitutionally permissible as long as it is "rationally related to legitimate government interests." *Id.*

Section 1225 clears the rational basis bar. In *Demore*, the Supreme Court considered a "substantive due process" challenge to detention under § 1226(c). 538 U.S. at 515. Like Petitioner here, Hyung Joon Kim "argued that his detention under § 1226(c) violated due process because the [government] had made no determination that he posed either a danger to society or a flight risk." *Id.* at 514. The Court rejected that claim. The Court explained that its cases had long "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process," because "deportation proceedings 'would be vain if those accused could not be held in custody pending the inquiry into their true character.'" *Id.* at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *see also id.* at 526 (reiterating the "Court's longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings"). Therefore, because "[d]etention during removal proceedings is a constitutionally permissible part of that process," the Court held that the aliens substantive due process "claim must fail." *Id.* at 531.

In reaching its holding, *Demore* distinguished its prior decision in *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), which addressed the constitutionality of indefinite detention after a final order of removal under a different provision of the INA. *Id.* at 682, 690, 692. First, the aliens challenging their detention in *Zadvydas* were aliens for whom removal was "no longer practically attainable." *Id.* at 690. Under the circumstances, the Court explained, "the detention … did not serve its purported immigration purpose." *Id.* at 690. By contrast, § 1226(c) applies to aliens "pending their removal proceedings," and so "necessarily serves the purpose of preventing" those aliens "from fleeing prior to or during their removal proceedings, thus increasing the chance that,

if ordered removed, the aliens will be successfully removed." *Demore*, 538 U.S. at 528. As *Demore* noted, Congress "had before it evidence suggesting that permitting discretionary release of aliens pending their removal hearings" would result in "large numbers" of aliens "skipping their hearings and remaining at large in the United States unlawfully." *Id.* at 528.

In the same vein, *Demore* emphasized that "the period of detention at issue in *Zadvydas* was 'indefinite' and 'potentially permanent,'" whereas detention under § 1226(c) pending removal proceedings "is of a much shorter duration" and "ha[s] a definite termination point." *Demore*, 538 U.S. at 530. Thus, Petitioner's claim that her detention is "excessive, arbitrary, and no longer reasonably related to any regulatory purpose" is without merit. See ECF No. 1 pg. 1

The same reasons for upholding mandatory detention under § 1226(c) apply to § 1225(b)(2)(A). Petitioner does not allege that removal is "unattainable," so detention under § 1225(b)(2)(A) serves the same legitimate interest recognized by *Demore*—preventing" aliens "from fleeing prior to or during their removal proceedings, thus increasing the change that, if ordered removed, the aliens will be successfully removed." 538 U.S. at 528. As *Buenrostro-Mendez* recognized, "the Department of Justice Inspector General found in 1997 that 'when aliens are released from custody, nearly 90 percent abscond and are not removed from the United States," and "[t]hat situation exists today at a much larger scale." *Buenrostro-Mendez,* 166 F.4th at 508 (quoting 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)).

Nor is detention under § 1225(b)(2)(A) "indefinite" or "permanent." *Demore*, 538 U.S. at 530. As with § 1226(c), detention under § 1225(b)(2)(A) lasts only for the duration of "a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A); *see Jennings*, 583 U.S. at 302-03. While the immigration proceedings remain pending, Petitioner's detention under §

1225(b)(2) bears a reasonable relation to the legitimate purposes that this Court identified in *Demore*.

District courts around the country have dismissed due process concerns in similar contexts. *See Calderon Lopez*, 2026 WL 44683 (Hendrix, J.) (holding that nothing in the INA or Due Process Clause contradicts mandatory detention of applications for admission without bond under § 1225); *Gutierrez Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026) (Wyrick, J.) (holding that Petitioner is unambiguously governed by § 1225 and his due process claim coming three months after arrest is denied as premature); *Montoya*, 2025 WL 3733302 (Dishman, J) (holding that Petitioner is unambiguously an applicant for admission and that detention without a bond hearing does not violate the Due Process Clause); *A.M. v. Joyce*, No. 2:25-CV-00615-LEW, 2025 WL 3706922 (D. Me. Dec. 22, 2025) (Walker, J.) (holding that Petitioner's approximately one-month detention without a prompt bond hearing is consistent with the INA and the Due Process Clause); *Rivera Hernandez*, 2025 WL 3754434 (Truncale, J.) (holding that § 1225, as the more specific statute, governs Petitioner's detention, which does not violate due process as it has not been shown to be indefinite); *E.R.J.B.*, 2025 WL 3683118 (Shubb, J.) (holding that because § 1225 authorizes mandatory detention and is silent on bond hearings, due process is satisfied by the statutory scheme itself); *Coronado*, 2025 WL 3628229 (Cole, J.) (holding that because Petitioner was never lawfully admitted, detention is governed by § 1225 and bond hearings are unavailable as a matter of statute and due process); *Ugarte-Arenas*, 2025 WL 3514451 (Griesbach, J.) (holding that Petitioner, as an applicant for admission, is properly detained without a bond hearing under § 1225, which does not violate Due Process Clause); *Maceda Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (Eskridge, J.) (rejecting Petitioners argument that mandatory detention without bond hearing

violates substantive due process); *Rojas*, 2025 WL 3033967 (Ludwig, J.) ((holding that Petitioner is an applicant for admission despite his prior bond and that his detention does not violate Due Process because it is limited to the conclusion of his removal proceedings).

Petitioner in this case has not established that detention during removal proceedings violates due process.

**CONCLUSION**

This Court should follow the Fifth Circuit's reasoning in *Buenrostro-Mendez* and the Eighth Circuit's reasoning in *Avila*. Respondents respectfully request the Court deny this petition.

Dated: March 30, 2026

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: */s/ Gerald R. Krimbill*
Gerald R. Krimbill
Assistant United States Attorney
Minnesota Bar No. 0220437
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7300 (phone)
(210) 384-7312 (fax)
jerry.krimbill@usdoj.gov

*Attorneys for Federal Respondents*

**Certificate of Service**

I hereby certify that on March 30, 2026, I sent this document to the following by Certified First Class Mail:

Aly Somoury
[redacted]
Karnes County Immigration Processing Center
409 FM 1144
Karnes City, TX 78118
PRO SE

*/s/ Gerald R. Krimbill*
Gerald R. Krimbill
Assistant United States Attorney