UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Jenny Eulalia Figueroa Robels,
Petitioner,

v.

Curtis Taylor, *et al.*,
Respondents.

No. 3:26-CV-00231-LS

SUPPLEMENTAL BRIEFING IN RESPONSE TO PETITIONER'S SUPPLEMENT, ECF No. 9

Buenrostro does not require a warrant for this detention. Furthermore, Petitioner goes on to argue that their detention violates due process, but due process has been satisfied.

a. Buenrostro does not require a warrant for detention.

The *Buenrosto-Mendez*, opinion was not about whether there was a warrant requirement, but rather whether the alien was an applicant for admission and thus mandatory detention applies. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026) has made this fact immaterial to Petitioner's eligibility for bond under 8 U.S.C. § 1226. Whether a warrant has been issued yet in Petitioner's case is also irrelevant. "When a foreign national is suspected of being removable, a federal official issues an administrative document called a "Notice to Appear" ("NTA"). At the time of an NTA's issuance (or at any time thereafter until the removal proceedings are completed), the Attorney General – through specified ICE agents – may issue a warrant of arrest known as a Form I-200 that provides authority for the arrest of the foreign national named in the NTA." *Castañon-Nava v. DHS*, -- F. Supp. 3d --, 2025 WL 2842146, at *3 (N.D. Ill. Oct. 7) (citation omitted), stay denied in part on other grounds, 161 F.4th 1048 (7th Cir. 2025); *see also Prieto-Romero v. Clark*, 534 F.3d 1053, 1058 (9th Cir. 2008) ("The Attorney General may issue a warrant of arrest concurrently with the notice to appear.").

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

Petitioner now raises constitutional concerns. The Constitution prohibits the government 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 Department 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). 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).

Congress decided as a substantive policy matter to impose mandatory detention on all applicants for admission. 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 v. Doe*, 538 U.S. 1 (2003), is definitive on this point. That statute required sex offenders to register so their information could be published on a registry. *Id.* at 4-5. John Doe claimed the statute violated his

procedural-due-process rights by requiring registration without a "hearing to determine whether" he was "currently dangerous." *Id.* at 4 (citation omitted).

The Court rejected Doe's claim, explaining "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. 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.*

The Fifth Circuit later applied the same rationale to reject a procedural due process challenge against mandatory detention under § 1226(c) in *Wekesa v. U.S. Attorney*, No. 22-10260, 2022 WL 17175818 (5th Cir. Nov. 22, 2022). There, *Wekesa* filed a habeas petition, alleging "his continued detention without an individualized bond hearing violates his due process rights." *Id.* at *1. The Court rejected that claim. It explained that under § 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.* "[B]ecause Wekesa d[id] not meet the statutory requirements for release under Section 1226(c)(2)," this Court affirmed the 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." *Conn. Dep't of Pub. Safety*, 538 U.S. at 9.

Accordingly, Petitioner has no procedural due process right to a bond hearing on flight risk or danger to the community. As in *Connecticut Dep't of Pub. Safety*, any claim that Petitioner is entitled to a bond hearing "'must ultimately be analyzed' in terms of substantive, not procedural, due process." 538 U.S. at 7-8.

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, Petitioner contends that the Constitution requires a different factual inquiry altogether—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.

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

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 v. Glucksberg*, 521 U.S. 702, 720-21 (1997)). 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. The Court explained 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.

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.

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.

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Respectfully submitted,

JUSTIN R. SIMMONS
UNITED STATES ATTORNEY

By: /s/ Adrian Acosta

ADRIAN ACOSTA
Assistant United States Attorney
Texas Bar No. 24097275
700 E. San Antonio, Ste. 200
El Paso, Texas 79901
Office: (915) 534-6884
Facsimile: (915) 534-3490
Email: Adrian.Acosta@usdoj.gov
Attorneys for Federal Respondents