UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Phalita Pun, Petitioner, v. Kristi Noem, et al., Respondents.	Civil Action No. 5:26-CV-00534-JKP

SUPPLEMENTAL BRIEF CONSIDERING RECENT FIFTH CIRCUIT PRECEDENT

Federal Respondents provide the following supplemental brief to Petitioner's habeas petition.[1] 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 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 v. Bondi*, No. 25-20496, ---- F.4th ---- 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026). The *Buenrostro* decision is binding precedent and requires that the Court deny this habeas petition.[3]

---

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* 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-CV-00217, 2020 WL 7640206, at *13 (S.D. Tex. Dec. 3, 2020) (rejecting the argument that a Fifth Circuit decision is

BACKGROUND

Petitioner is a native and citizen of Nepal. ECF No. 1 at 5. Petitioner entered the United States unlawfully through San Diego, California. *Id.* On December 30, 2025, Petitioner was provided a bond hearing pursuant to the detention authority found in 8 U.S.C. § 1226. *See* Exh. A (IJ Order). Petitioner was found to be "such a high flight risk such that no amount of money would insure Respondent's presence in court" and bond was denied. *Id.* Petitioner reserved appeal. *Id.*

Respondents inadvertently omitted the fact that Petitioner received a bond hearing pursuant to 8 U.S.C. § 1226 in its abbreviated response to habeas petition [ECF No. 5]. In an effort to bring this material fact to the Court's attention, Respondents subsequently filed a motion to stay the Court's order and an amended answer. *See* ECF Nos. 8, 9. A motion hearing was conducted via Zoom on February 5, 2026, where the Court granted Respondents' motion to stay and ordered the parties to file supplemental briefing, and for Respondents to provide the audio recording of Petitioner's bond hearing. ECF No. 11; *see* Exh. C (Audio Recording of Bond Hearing). Since then, the United States Court of Appeals for the Fifth Circuit issued a published decision in the case of *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 U.S. App. LEXIS 3899 (5th Cir. Feb. 6, 2026).

PETITIONER IS SUBJECT TO MANDATORY DETENTION

Petitioner seeks an order from this Court directing the Department of Homeland Security to immediately release Petitioner from immigration detention. The Court should deny the petition in light of the recent Fifth Circuit precedent. The primary issue raised by Petitioner, namely that

---

not controlling because "the mandate has yet to issue, and thus not properly relied upon as precedent."). As such, each pre-*Buenrostro* district court decision cited in the Court's Order to Show Cause is overruled as it relates to ICE's statutory authority to detain certain aliens on a mandatory basis under 8 U.S.C. § 1225(b). *See* ECF No. 3.

her detention pursuant to 8 U.S.C. § 1225 and the BIA's decision in *Hurtado* is unlawful, was rejected by the Fifth Circuit. *Buenrostro-Mendez v. Bondi*, No. 25-20496, No. 25-40701, 2026 WL 323330 at pg *1 (5th Cir. Feb. 6, 2026).

Petitioner's contention that habeas petition was not mooted; § 1226(e) does not bar review; and that independent Fourth Amendment and Fifth Amendment Due Process violations continue to warrant habeas relief, notwithstanding the Fifth Circuit's intervening statutory holding in *Buenrostro-Mendez v. Bondi*, are meritless. To the extent Petitioner claims she is not properly categorized as an applicant for admission "the text and context of § 1225 contradict the petitioners' reading of the statute." *Id.* at *9.

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." 2026 WL 323330 at *4. 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 *3. 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.* at *4.

Buenrostro, 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. 2026 WL 323330 at * 8. "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, 138 S. Ct. 2105, 2111 (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 * 9.

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. *Buenrostro*, at *1.

The Fifth Circuit is not the only court to so hold. District courts around the country agree. *See Garibay-Robledo v. Noem*, -- F. Supp. 3d --, 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); *Cruz Rodriguez v. Olson*, -- F. Supp. 3d --, 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 Office Director of Enforcement and 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); *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, DHS*, 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, 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. U.S. Attn'y Gen.*, 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); *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, 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, 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, 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); *Cruz v. Noem*, No. 8:25-CV-02566, 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); *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) *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*, -- F. Supp. 3d --, 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*, -- F. Supp. 3d --, 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); *Ramos v. Lyons*, No. 2:25-cv-09785, 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); *Olalde v. Noem*, No. 1:25-cv-00168, 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.), *report and recommendation adopted*, 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, 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*, -- F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 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 Board of Immigration Appeals (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 (B.I.A. 2025). 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." 29 I&N Dec. at 225.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

"A person seeking habeas relief must first exhaust available administrative remedies." *Hinojosa v. Horn*, 896 F. 3d 305, 314 (5th Cir. 2018) (citing, *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (per curiam)). Exhaustion has been a long-standing prerequisite to habeas relief. *Id.*

There are approximately 3.74 million cases pending in immigration court. *See*, https://www.justice.gov/eoir/pr/eoir-announces-significant-immigration-court-milestones (Sept. 4, 2025). Federal district courts are not intended nor equipped to be the reviewing court for all immigration bond determinations or decisions related to the institution of removal proceedings. 8 USC § 1226(e) (district courts do not have jurisdiction to review discretionary decisions made by immigration judges regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole). Challenges to removal proceedings, the government's evidence, and the merits of asylum claims are properly addressed to the immigration court and should be administratively exhausted before presenting in district court. *Hinojosa*, 896 F. 3d at 314 (5th Cir. 2018); *see Cortez v. Lynch*, No. 1:25-CV-822, 2026 WL 82039 (S.D. Ohio Jan. 12, 2026) (McFarland, J.) (declining to review Petitioner's detention-based claims due to his failure to exhaust administrative remedies); *Pastor v. Dir. of Detroit Field Off.*, No. 4:25-CV-02761, 2025 WL 3746495 (N.D. Ohio Dec. 24, 2025) (Calabrese, J.) (holding that Petitioner must first pursue challenge before BIA for exhaustion and that such exhaustion is not futile); *Bartolon v. Bondi*, No. 1:25-CV-747, 2025 WL 3674604 (S.D. Ohio Dec. 18, 2025) (McFarland, J.) (holding that Petitioner's failure to exhaust claims with BIA precluded judicial review of habeas claims); *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2025 WL 3264482 (N.D. Tex. Oct. 24, 2025) (Hendrix, J.) (holding that Petitioner does not demonstrate grounds for excusing exhaustion and must first advance his request for relief to BIA).

Here, Petitioner has already received a bond hearing under 8 U.S.C. § 1226 and the immigration judge determined she is a flight risk, denying bond. *See* Exhs. A, C. Even if the Fifth Circuit had not issued *Buenrostro v. Bondi*, this Court is divested of jurisdiction to review such a challenge to her detention as it is a discretionary judgment related to the Attorney General's

decision on whether to release Petitioner. 8 U.S.C. § 1226(e); *see Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003). 8 U.S.C. § 1226 strips this Court of jurisdiction to hear such a challenge. Section 1226(e) states:

"(e) Judicial review

"The Attorney General's discretionary judgment regarding the application of this section **shall not be subject to review**. **No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole**. [emphasis added]"

The bar to judicial review was discussed and analyzed by the Supreme Court and also found that 8 U.S.C.§ 1226(e) barred challenges to discretionary decisions. *See Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003) (explaining that 8 U.S.C. § 1226(e) bars an alien's challenge to "a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release" (internal quotation marks omitted)); Pensamiento, 315 F. Supp. 3d at 688 ("Congress has eliminated judicial review of discretionary custody determinations); *See Blandon v. Barr*, 434 F. Supp. 3d 30, 36 (W.D.N.Y. 2020) (while the Court may consider whether the IJ complied with the Court-ordered procedural protections, it does not reweigh the evidence nor consider whether it would have made the same determination as the IJ).

Petitioner's detention is governed by 8 U.S.C. 1226 and the immigration judge's decision to detain is discretionary. The immigration judge did not base her finding on any statutory or jurisdictional issues regarding *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Exh. C. To the extent that Petitioner asks the Court to second-guess the IJ's weighing of the evidence, that claim is directed solely to the IJ's discretion and is unreviewable. Petitioner is not entitled to

more process than what Congress provided her by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a). *Id.; see also Jennings*, 583 U.S. at 297–303. She has the right to seek judicial review of the complete record and that decision not only administratively, but also in the circuit court of appeals. *Id.* § 1229a(b)(4)(C), (c)(5). Petitioner is taking full advantage of the due process provided by Congress, and this Court does not have jurisdiction to provide more. Petitioner must first seek relief with the immigration court or the BIA, fully exhausting administrative remedies before coming to this Court.

DUE PROCESS CLAIMS

To the extent Petitioner raises due process claims those should likewise be denied. Petitioner has received and is receiving due process afforded through removal and bond proceedings in immigration court. Petitioner may appeal her bond decision to the BIA. If any appeal is sustained or remanded, the Petitioner could be granted relief by an immigration judge. She can also seek judicial review in the circuit court of appeals.

In upholding the facial constitutionality of § 1225(b) the Supreme Court in *Thuraissigiam* found that applicants for admission are entitled only to the protections set forth by statute in the INA. *Dep't of Homeland Sec. v. Thuraissigiam,* 91 U.S. 103, 140 (finding aliens who arrive at ports of entry are 'treated' for due process purposes 'as if stopped at the border' and 'only have rights regarding admission that Congress has provided by statute').

In addressing Petitioner's claims of potential abuse of detention pending removal proceedings, the Fifth Circuit found that *Zadvydas v. Davis* did not apply to detained aliens who received due process through removal proceedings. *Buenrostro*, at *9. District courts around the country have also dismissed due process concerns in similar contexts. *See 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); *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 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); *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 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); *Coronado v. Sec'y, DHS*, 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); *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); *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 v. Olson*, No. 25-cv-1437, 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).

Additionally, any claims arising from the length of detention based on Petitioner's choice to continue to litigate matters in removal proceedings should be dismissed. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 15 (W.D. Tex. Aug. 12, 2025) (collecting cases and finding that aliens cannot assert viable due process claims when their detention is caused by their own plight, because delay due to litigation activity does not render detention indefinite).

Lastly, Petitioner raises some novel Fourth and Fifth Amendment due process arguments. *See generally* ECF No. 13. Petitioner argues that her apprehension at or near her residence without a judicial warrant and without exigent circumstances, violates the Fourth Amendment. *See id.* These claims are without merit. *First*, the basis of Petitioner's argument – that her *warrantless arrest* on civil immigration grounds was unlawful – is not cognizable in this habeas petition, which vests jurisdiction in this Court solely to review the legal propriety of Petitioner's *current detention*. *Second*, even if this Court could exercise habeas jurisdiction over Petitioner's initial arrest, the ICE agents who apprehended Petitioner had probable cause to believe that she was unlawfully present in the United States.

Once again, we start with the statute. In this respect, Congress provided as follows, in pertinent part: "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). As the Supreme Court has explained, "there [is] overwhelming historical legislative recognition of the propriety of administrative arrest for deportable aliens" "from almost the beginning of the Nation." *Abel v. United States*, 362 U.S. 217, 233-34 (1960); *see also id.* at 230

("Statutes authorizing administrative arrest to achieve detention pending deportation proceedings have the sanction of time."). It is thus no surprise that courts have repeatedly recognized that, as here, "federal immigration officers may seize aliens based on an administrative warrant attesting to probable cause of removability." *City of El Cenizo v. Texas*, 890 F.3d 164, 187 (5th Cir. 2018) (emphasis omitted); *see also Gonzalez v. ICE*, 975 F.3d 788, 825 (9th Cir. 2020) ("In *Abel*, the Supreme Court opined that, consistent with the Fourth Amendment, immigration authorities may arrest individuals for civil immigration removal purposes pursuant to an administrative warrant issued by an executive official, rather than by a judge."); *Lopez v. INS*, 758 F.2d 1390, 1393 (10th Cir. 1985) (holding that an alien "may be arrested" pursuant to an "administrative warrant without an order of a magistrate").

The relevant statutory language is quite clear – an alien "may be arrested and detained pending a decision on *whether* the alien is to be removed from the United States." 8 U.S.C. § 1226(a) (emphasis added). And thus, courts have repeatedly recognized that the issuance of a NTA, which commences removal proceedings against an alien, is the triggering event that justifies the issuance of an arrest warrant that requires the alien to be taken into custody and detained:

> 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."). Put simply, federal statute authorizes detention during the pendency of removal proceedings against an alien. *See, e.g.*, *Arizona v. United States*, 567 U.S. 387, 407 (2012) ("[T]he Attorney General can exercise discretion to issue a warrant for an alien's arrest and detention 'pending a decision on whether the alien is to be removed from the United States.'" (quoting § 1226(a)); *Velasco Lopez v. Decker*, 978 F.3d 842, 845 (2d Cir. 2020) (recognizing that federal statute authorized "detention of noncitizens during the pendency of removal proceedings"). Here, Petitioner's warrant was issued after DHS made biometric confirmation of Petitioner's identity and issued her an NTA.[4] *See* Exh. B (Form I-200, Warrant for Arrest of Alien). Therefore, Petitioner's arrest was conducted lawfully.

Because Petitioner remains within removal proceedings, as she was at the time of the Court's consideration of her habeas petition, her current detention is lawful.[5]

APA CHALLENGES MAY NOT BE ASSERTED AS HABEAS PETITIONS

In this proceeding, Petitioners expressly challenge their civil detention. *See, e.g.*, ECF 1. Such a challenge must be brought in the form of a petition for a writ of habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that when a detainee "is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is

---

[4] The Fifth Circuit held in cases involving criminal prosecutions for unlawful reentry after deportation that identity evidence is not suppressible, even when it was discovered after a violation of the Fourth Amendment. *See, e.g,, United States v. Hernandez-Mandujano*, 721 F.3d 345, 354 (5th Cir. 2013); *United States v. Roque-Villanueva*, 175 F.3d 345, 346 (5th Cir. 1999).

[5] With no intent to be flippant about the habeas jurisdiction exercised by the Article III courts, and although not a *legal* basis to deny the instant petition, the pragmatic reality of Petitioner's request for habeas relief here bears mentioning. Put simply, even if the Court ordered her release based on the conclusion that her initial apprehension was unlawful, federal immigration authorities could issue a new administrative arrest warrant based on the continued pendency of her removal proceedings, immediately re-serve the arrest warrant on her the moment she left the detention facility pursuant to the Court's order, and take her back into civil immigration custody.

entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus"); *see also, e.g.*, *Miller v. Commw. of Pa.*, 588 F. App'x 96, 97 n.1 (3d Cir. 2014) ("Relief in the form of . . . release from custody indicates a challenge to 'the very fact or duration of [one's] physical imprisonment' and may be sought *only* through a petition for a writ of habeas corpus[.]" (emphasis added) (quoting *Preiser*, 411 U.S. at 500)). Put simply, "release from ICE custody . . . is a remedy that is *only* available through a habeas petition." *Armando C. G. v. Tsoukaris*, No. 20-5652, 2020 WL 4218429, at *7 (D.N.J. July 23, 2020) (emphasis added).

Some Petitioners purport to assert a claim under the Administrative Procedure Act ("APA")—a civil claim. *Id.* ¶¶ 61–68. This they may not do, as a civil APA claim is not cognizable in the habeas context. *See, e.g.*, *Mesina v. Wiley*, 352 F. App'x 240, 241-42 (10th Cir. 2009) (holding that petition asserting APA claim "does not state a habeas claim").

CONCLUSION

The concerns expressed by district courts in the Western District of Texas in earlier rulings have been decided by the Fifth Circuit Court of Appeals and are pending before federal appellate courts in other circuits. Specifically, this court may be concerned how §1226(e) effects the remedying of harms from illegal detention, but the Third Circuit's reasoning regarding another jurisdictional stripping statute, 8 U.S.C. 1252(b)(9), rings true here. "Congress has the power to balance the orderly adjudication of claims with concerns about remedying harms from illegal detention." *Khalil v. President, United States of Am.*, No. 25-2162, 2026 WL 111933, at *10 (3d Cir. Jan. 15, 2026). The balance that Congress struck in § 1226(e), removed jurisdiction from this Court to review these discretionary determinations.

This Court should follow the Fifth Circuit's reasoning in *Buenrostro*. The orderly legal administration of this issue is now properly before the federal appellate courts. This Court can

trust that the issue will be decided in accordance with proper jurisprudence and the expedience that questions of detention deserve. Respondents respectfully request that the Court deny this petition.

Dated: February 10, 2026

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: */s/ Kenneth Cole Miller*
Kenneth "Cole" Miller
Special Assistant United States Attorney
Florida Bar No. 1048511
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7308 (phone)
(210) 384-7312 (fax)
Kenneth.Miller5@usdoj.gov

Attorneys for Federal Respondents