UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LUIS FERNANDO NAULA JUCA, Petitioner, v. MARY DE ANDA-YBARRA, IN HER OFFICIAL CAPACITY AS FIELD OFFICE DIRECTOR OF ENFORCEMENT AND REMOVAL OPERATIONS, EL PASO FIELD OFFICE, IMMIGRATION AND CUSTOMS ENFORCEMENT; TODD M. LYONS, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, IN HER OFFICIAL CAPACITY AS SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA JO BONDI, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE UNITED STATES; and WARDEN, ERO EL PASO CAMP EAST MONTANA, et al, Respondents.	Civil Action No. 3:26-CV-00271-LS

RESPONSE TO AMENDED PETITION
ADDRESSING CONSTITUTIONAL CLAIMS

Federal Respondents provide the following response 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

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

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

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 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]

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).

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 v. Bondi*, ---F.4th---, 2026 WL 323330 (5th Cir. Feb. 6, 2026), and held that "applicants for

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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 not controlling because " the mandate has yet to issue, and thus not properly relied upon as precedent.").

admission" are subject to detention under §1225(b)(2)(A) and so have no statutory right to a bond hearing. *Id.* at *1-10.

Despite *Buenrostro-Mendez*, 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*. Post-*Buenrostro-Mendez*, 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 Department 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." *DHS v. Thuraissigiam*, 591 U.S. 103, 138 (2020).

In truth, Petitioner is not challenging the *procedures* available under the statute, but Congress's *substantive* determination that aliens covered by §1225(b)(2)(A) are not entitled to a bond hearing. Petitioner's true claim sounds in *substantive* due process—*i.e.*, that the government cannot constitutionally detain *notwithstanding* the fact that they are subject to mandatory detention by statute. But Petitioner has not attempted to 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 new 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 attack 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 citizen of Ecuador who entered the United States without inspection on or about June 5, 2024. Exh. A (Notice to Appear "NTA"). A border patrol agent served Petitioner with an NTA on June 6, 2024, and he was charged as removable under INA § 212(a)(6)(A)(i). *Id.* Subsequently, he was released on an Order of Recognizance. Exh. B ("I-213"). On October 30, 2024, Petitioner filed an application for relief from removal, Form I-589. *Id.* Upon information reviewed on the Executive Office for Immigration Review Courts and Appeals System (ECAS), on November 8, 2024, through his attorney of record, Petitioner entered written pleadings admitting the allegations on the NTA and conceding the charge. On January 27, 2026, Petitioner was detained by immigration authorities. ECF No. 1 at pg 2, ¶ 2.

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, alternatively Petitioner asks this Court to order a bond hearing in immigration court. Neither is appropriate and the Court should

deny the petition. The primary issue raised by Petitioner, namely that his detention pursuant to 8 U.S.C. § 1225 and the Board of Immigration Appeals (BIA) 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 * 1 (5th Cir. Feb. 6, 2026); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025)

Petitioner's contention that detention should be governed by, 8 U.S.C. § 1226, that Petitioner is being unlawfully detained and deprived of a bond hearing, and that the detention violates the United States Constitution were rejected in *Buenrostro*. *Id.* To the extent Petitioners claim they are 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.

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).

To the extent Petitioner raises due process claims those should likewise be denied. 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 this Court held in *Buenrostro-Mendez,* Petitioner is subject to mandatory detention under §1225(b)(2)(A).

Recognizing the claim is foreclosed, Petitioner now raises procedural due process. 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 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). 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 argues that the determination that 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. Petitioner's due process argument is one that is substantive, not procedural, in nature.

Petitioner has requested that this Court find that due process requires additional procedures in the form of a bond hearing. But a bond hearing is merely the vehicle for making the substantive determination about flight risk or dangerousness. Those factors are irrelevant under the statute. Because §1225(b)(2)(A) requires mandatory detention and does not require such determinations, Petitioner's claim is in reality a substantive-due-process challenge, not a procedural one.

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 Cour 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 Department of Public Safety v. Doe*, 538 U.S. 1 (2003), 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. *Id.* 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 Department of Public 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. This Court 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 Department of Public 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. U.S. Attorney*, 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 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.* And "[b]ecause Wekesa d[id] not meet the statutory requirements for release under Section 1226(c)(2)," this Court 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." *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. Individualized findings about flight risk and danger are irrelevant to §1225(b)(2), which subjects Petitioner to mandatory detention based on Petitioner's uncontested status as an "applicant for admission" who has not shown he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. §1225(a)(1), (b)(2)(A).

Petitioner falls within the terms of the statute as interpreted by *Buenrostro-Mendez.* Therefore, as in *Connecticut Department of Public 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; *see Flores*, 507 U.S. at 308 (holding that a challenge to a regulation on the ground that it failed to require a determination of a detainee's "interests" was "just [a] 'substantive due process' argument recast in 'procedural due process' terms"); *Michael H. v. Gerald D.*, 491 U.S. 110, 119, 121 (1989) (plurality opinion) (treating a request for an "evidentiary hearing" on an issue that the statutory scheme deemed "irrelevant" as a "substantive due process" claim).

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." *DHS v. Thuraissigiam*, 591 U.S. 103, 138 (2020) (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*, 459 U.S. 21, 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 has been unlawful. The moment of entry into the United States constituted a criminal act under 8 U.S.C. §1325(a). And Petitioner's presence from that moment forward stands in open defiance of federal immigration law.

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. 2026 WL 323330, at *9. Under Petitioner's 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's theory of procedural due process is incompatible with longstanding precedent. Petitioner is in full immigration proceedings, 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 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. 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.

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." 2026 WL 323330, at *9 (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 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).

Petitioner in this case has not established that his detention during removal proceedings violates due process. Petitioner's claim that detention during removal proceedings will be unconstitutionally prolonged is speculative.

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).

Petitioner has either chosen not to seek bond before the immigration court, or Petitioner has received a bond determination from an immigration judge that Petitioner contests. Either way Petitioner must first seek relief with the immigration court or the BIA, fully exhausting administrative remedies before coming to this Court.

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 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).

Petitioner purports 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").

APPLICATION OF BAUTISTA

To the extent Petitioner invokes the December 18, 2025 partial final judgment in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92, it is neither binding nor applicable here and presents no basis for granting the petition. First, the *Bautista* declaratory judgement is void with respect to petitioners and custodians outside the Central District of California because it was issued despite a palpable lack of jurisdiction. Second, the *Bautista* declaratory judgement has no preclusive effect outside the Central District of California and is on appeal, creating a serious risk of inconsistent judgments and unfair results if the *Bautista* judgment is reversed or vacated on appeal. That is especially true where the judgment in *Bautista* now stands in direct conflict with the Fifth Circuit's decision on the underlying issue raised in *Baustista*. *Buenrostro* at *8-9.

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. This Court should follow the Fifth Circuit's reasoning in *Buenrostro*. Respondents respectfully request that the Court deny this petition.

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Respectfully submitted,

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