UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Lourdes Martinez-Suarez, *et. al.*, Petitioners, v. Kristi Noem, *et. al.* Respondents.	Case No. 5:26-CV-00641-OLG

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Federal Respondents provide the following response to Petitioners' habeas petition.[1] Any allegations that are not specifically admitted herein are denied. Petitioners are not entitled to the relief sought, including EAJA fees. Petitioners are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *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 as it relates to the statutory authority to detain Petitioners during removal proceedings.[2] Respondents aver that *Buenrostro* forecloses all Petitioners' claims in this petition, but to the extent the Court reviews Petitioners' due process claim as an as-applied challenge, Petitioners have not made the required showing. The petition should be denied in its entirety without a hearing.

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

2 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.").

BACKGROUND

Petitioners claim they are detained in ICE custody in Dilley, Texas. ECF No. 1 at ¶¶ 9–10. Petitioners claim they entered the United States without inspection in 2022. *Id.* ¶ 42. They are set for a final removal hearing on April 7, 2026. *See* https://acis.eoir.justice.gov/en/caseInformation (last accessed Apr. 7, 2026). Petitioners argue that their detention under § 1225(b)(2)(A) violates the Immigration and Nationality Act, the accompanying regulations, and the Due Process Clause. *Id.* ¶¶ 47–58. Petitioners filed their habeas petition on February 2, 2026, prior to the issuance of the *Buenrostro* decision, but they have not filed any amended petition or any motion to amend.

DUE PROCESS CLAIMS

A. Mandatory Detention under § 1225(b) Is Facially Constitutional.

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 (2020). Mandatory detention of an applicant for admission during "full" removal proceedings does not violate due process, because constitutional protections are built into those proceedings. *See* 8 U.S.C. § 1229a; *see Demore v. Kim*, 538 U.S. 510, 526 (2003) (recognizing the constitutionality of detention during the limited period of removal proceedings). Consistent with the Supreme Court's long-standing precedent, the Fifth Circuit in *Buenrostro* opined that *Zadvydas* did not apply equally to detained pre-removal-order aliens who received or were receiving due process through removal proceedings. *Buenrostro*, at *9. Indeed, asserting "a right to a hearing under the Due Process Clause" requires a showing 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). Petitioners here allege no facts that would be relevant under § 1225(b)(2).

B. Petitioners Do Not State a Viable Procedural Due Process Claim.

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).[3] 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).

Petitioners have not challenged the adequacy of the procedures for determining whether they are each properly described as an "applicant for admission," a matter determined in immigration removal proceedings, which subjects Petitioners to mandatory detention under §1225(b)(2)(A). Instead, Petitioners argue that their inclusion within the scope of §1225(b)(2)(A) is a constitutionally insufficient basis on which to justify the deprivation of liberty. Petitioners' due process argument is one that is substantive, not procedural, in nature.

Petitioners have 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 a substantive determination about flight risk or dangerousness. Those factors are irrelevant under this statute. Because §1225(b)(2)(A) requires mandatory detention and does not require such determinations, Petitioners' claim is, in reality, a substantive-due-process challenge, not a procedural one. Congress imposed mandatory detention on all applicants for admission, regardless of flight risk or danger. Due process does not require procedures to adjudicate immaterial facts. What Petitioners are asking this Court to do is override Congress's substantive judgment that all

[3] Respondents do not concede that *Mathews* provides the appropriate framework in this case.

applicants for admission must be detained regardless of whether they are dangerous or flight risks. Procedural due process can do no such thing.

The Supreme Court's decision in *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), is definitively on 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, explaining that "due process does not require the opportunity to prove a fact that is not material to [a] statutory scheme...." *Id.* at 7. Whether Doe was currently dangerous was "of no consequence" because the statute required him to register based on his prior conviction alone. *Id.* Without a showing that the law conflicted with the Constitution, any hearing on current dangerousness would be "a bootless exercise." *Id.* at 8.

Detainees who assert a right to a due process hearing must show that the facts they seek to establish in that hearing are relevant under the statutory scheme. *Conn. Dep't of Pub. Safety,* 538 U.S. at 9; *Duarte v. City of Lewisville, Texas*, 858 F.3d 348 (5th Cir. 2017). The Fifth Circuit later applied that same rationale to reject a procedural due process challenge to 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. 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, Petitioners have no procedural due process right to a bond hearing on flight risk or danger to the community where those issues are irrelevant under §1225(b)(2). Petitioners fall squarely within the statute as interpreted by *Buenrostro-Mendez.* Therefore, any claim that Petitioners are entitled to a bond hearing "'must ultimately be analyzed' in terms of substantive, not procedural, due process." *Conn. Dep't of Pub. Safety*, 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).

C. Even if Petitioners Were Asserting a Viable Procedural Due Process Claim, It Lacks Merit.

Even if Petitioners were asserting a proper procedural due process claim, the Supreme Court has 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. In *Landon v. Plascencia*, 459 U.S. 21, 32 (1982), the Court observed that only "*once an alien gains admission* to our country and begins to develop the ties that go with permanent residence [does] his constitutional status change[]." (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 be required only 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), a habeas case where a child sought release from immigration custody. 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.

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 Petitioners' argument, aliens who violate federal law would enjoy *greater* constitutional protections than those who comply with it.

D. Petitioners Do Not Have a Substantive Due Process Right to a Bond Hearing.

Petitioners do not purport to identify any fundamental right to which they are entitled. *Assaad v. Ashcroft*, 387 F.3d 471, 475–76 (5th Cir. 2004) (collecting cases and finding that the failure to receive discretionary relief in removal proceedings does not amount to a deprivation of a liberty interest). As such, 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). Reversing the lower court's finding that the petitioner in *Demore* had shown an as-applied constitutional challenge while in pre-removal-order detention, the Supreme Court concluded that since removal proceedings were ongoing, detention was "a constitutionally permissible part" of the removal process. *Id.* at 530. Petitioners' 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." *Dep't of State v. Muñoz*, 602 U.S. 899, 910 (2024) (quoting *Washington*, 521 U.S. at 720-21). Accordingly, rational-basis review is the appropriate standard for analyzing respondents' substantive-due-process claims. *Glucksberg*, 521 U.S. at 728. Under that standard, detention under §1225(b)(2) is constitutionally permissible if it is "rationally related to legitimate government interests." *Id.*

Section 1225 clears the rational basis test. Petitioners do not allege that removal is "unattainable" like it was in *Zadvydas*, so detention under §1225(b)(2)(A) serves the same legitimate interest recognized by *Demore* in the context of § 1226(c)—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, Petitioners' detention under § 1225(b)(2) bears a reasonable relation to the legitimate purposes that this Court identified in *Demore*.

While they complain that their detention violates due process, Petitioners do not contest that they are removable as charged on the NTA. *See* ECF No.1 at 22–25 (NTAs). Moreover, Petitioners make no showing that removal proceedings and corresponding detention during those proceedings are unconstitutional as applied to them. They make no allegations that they are being deprived of the right to counsel in removal proceedings. Indeed, the NTA notified them of the allegations and charge against them, and Petitioners may seek judicial review at the Board of Immigration Appeals (BIA) of any adverse removal decision, which they may also challenge at the Fifth Circuit. As applied here to Petitioners, therefore, detention for the purpose of removal proceedings does not violate substantive due process.

District courts in this Circuit have also dismissed due process concerns in similar contexts. *See, e.g., Lopez Jaimes v. Lyons, et al,* No. 26–CV–686–MA (W. D. Tex. Feb. 17, 2026) (Alvarez, J.) (finding no due process violation where applicant for admission with expired parole was taken back into custody on a mandatory basis during removal proceedings); *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); *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); *Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (Eskridge, J.) (rejecting petitioner's argument that mandatory detention without bond hearing violates substantive due process).

CONCLUSION

This case fits squarely within the Fifth Circuit's reasoning in *Buenrostro*, which held that applicants for admission are properly detained on a mandatory basis under § 1225(b)(2). *Buenrostro*, 2026 WL 323330 at *1. Petitioners fail to show that mandatory detention is unconstitutional as applied, as they are receiving the process they are owed during removal proceedings. In any event, the orderly legal administration of this issue is now properly before the federal appellate courts and is being given the urgency that questions of detention deserve. Respondents respectfully request that the Court deny this petition.

Respectfully submitted,

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