

UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Daniel Herrera Aldana

Petitioner,

V.

CHARLOTTE COLLINS, WARDEN,
T. DON HUTTO DETENTION CENTER

PAMELA BONDI, IN HER OFFICIAL
CAPACITY AS UNITED STATES
ATTORNEY GENERAL;

KRISTI NOEM, IN HER OFFICIAL
CAPACITY AS SECRETARY OF THE
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY;

TODD M. LYONS, IN HIS OFFICIAL
CAPACITY AS DIRECTOR OF UNITED
STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT;

MIGUEL EDUARDO VERGARA-LOPEZ,
IN HIS OFFICIAL CAPACITY AS FIELD
OFFICE DIRECTOR, U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT; AND,

SIRCE E. OWEN, IN HER OFFICIAL
CAPACITY AS ACTING DIRECTOR OF
THE EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW

Respondents.

Civ. No. 1:26-cv-00335

**PETITIONER'S REPLY IN SUPPORT
OF HABEAS CORPUS RELIEF**

I. INTRODUCTION

1. Respondents' opposition to habeas relief rests on their novel theory of mandatory detention, which would subject noncitizens who have not been formally admitted to imprisonment without any possibility of an individualized custody determination hearing. *See* ECF. Dkt 6 at 11. Under Respondents' view, the Government possesses authority to reclassify individuals whom it previously permitted to enter and remain in the United States as "applicants for admission," and to impose mandatory detention on that basis alone. Such reclassification, Respondents contend, eliminates any requirement for a bond hearing, regardless of the duration of confinement, the liberty previously enjoyed, or the individual circumstances of the detainee.

2. Respondents' position goes even further. They assert that because a noncitizen has not been formally admitted, the Due Process Clause imposes no independent procedural constraints beyond whatever process Congress elects to provide. In other words, Respondents argue that the statutory label of "applicant for admission" alone is sufficient to extinguish any constitutional requirement for an individualized hearing. Petitioner disagrees.

3. Petitioner does not challenge Congress's authority to regulate admissions, as alleged by Respondents. Instead, Petitioner raises a narrower question: whether the Respondents may constitutionally re-detain Petitioner pursuant to warrant under 8 U.S.C. § 1226 and then claim 8 U.S.C. § 1225(b) subjects Petitioner to mandatory detention in direct opposition to § 1226. Petitioner submits that Respondents' novel theory of mandatory detention is not only subject to constitutional scrutiny, but cannot withstand it.

4. Respondents' response fails to meaningfully address why this Court should not grant the habeas relief as pleaded in petitioner's writ of habeas corpus for five reasons. Ordinarily, a reply brief would address Respondents' arguments in the sequence presented in their opposition. In this case; however, Petitioner begins by addressing Respondents' most erroneous premise first.

5. First, Respondents' argument rests on an assumption that noncitizens who have not been formally *admitted* into the United States lack due process protections beyond whatever procedures Congress provides. *See*, ECF. Dkt 6 at 11. That assertion conflicts with the plain text of the Fifth Amendment and Supreme Court precedent recognizing that all "persons" physically present in the United States are protected by the Due Process Clause.

6. Second, Respondents' detention framework violates procedural due process because Petitioner has been deprived of physical liberty without access to any meaningful forum capable of conducting an individualized custody determination. Immigration Judges lack jurisdiction to review custody for arriving aliens, while Respondents simultaneously rely on statutory labeling to foreclose bond review. Respondents' position would allow extended detention without individualized review, contrary to controlling precedent and the fundamental liberty interest protected by the Fifth Amendment.

7. Third, Respondents' theory of mandatory detention violates substantive due process because it permits the arbitrary deprivation of physical liberty based solely on categorical statutory labeling, untethered from individualized necessity and contradicted by Respondents' own conduct.

8. Fourth, Respondents characterize Petitioner's claim for relief under the Cuban Adjustment Act as merely an APA claim. That characterization is incorrect because agency delay here is not abstract administrative action — it directly governs the duration of Petitioner's physical confinement and therefore implicates protected liberty interests cognizable in habeas.

9. Each is taken in turn.

I.

PAROLEES ARE “PERSONS” UNDER THE DUE PROCESS CLAUSE OF THE 5TH AMENDMENT OF THE US CONSTITUTION.

10. Respondents’ opposition to habeas relief rests on their novel theory of mandatory detention, which would subject all noncitizens who have not been admitted to imprisonment without the possibility of a custody determination hearing. In support of this theory, Respondents assert several legal conclusions, the most consequential of which appears in their Due Process subsection:

“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).”

ECF. Dkt 6. at 11.

11. Notably absent from Respondents’ assertion is a citation. The Supreme Court has not held that noncitizens physically present in the United States are excluded from the protections of the Fifth Amendment unless formally admitted. To the contrary, physical presence and territoriality are words of significant import in the Court’s jurisprudence.

12. The text of the Fifth Amendment protects “persons,” not citizens, and not admitted aliens. U.S. Const. amend. V. The Supreme Court has repeatedly confirmed that noncitizens *physically present* in the United States are “persons” within the meaning of the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

“It is well established that certain constitutional protections available to *persons inside* the United States are unavailable to aliens *outside of our geographic borders*”.

Id.; *United States v. Verdugo Urquidez*, 494 U. S. 259, 269 (1990)(Fifth Amendment’s protections do not extend to aliens *outside the territorial boundaries*)[emphasis added].

13. The Court in *Zadvydas v. Davis* goes on to find that

“... once an *alien enters the country*, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, *including aliens, whether their presence here is lawful, unlawful, temporary, or permanent*. See *Plyler v. Doe*, 457 U. S. 202, 210 (1982); *Mathews v. Diaz*, 426 U. S. 67, 77 (1976); *Kwong Hai Chew v. Colding*, 344 U. S. 590, 596–598, and n. 5 (1953); *Yick Wo v. Hopkins*, 118 U. S. 356, 369 (1886); cf. *Mezei*, supra, at 212 (“*[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law*”).”

Zadvydas v. Davis, 533 U.S. 678, 693 (2001)[internal citations preserved][emphasis added]

14. The Court has also emphasized that freedom from physical imprisonment lies at the core of the liberty protected by the Due Process Clause. *Id.* at 690.

15. Respondents rely on cases discussing the authority to admit or exclude noncitizens, including *Landon v. Plasencia*, 459 U.S. 21 (1982), and *Nishimura Ekiu v. United States*, 142 U.S. 651 (1892). Those cases address Congress’s authority over admission decisions. Such cases do not hold that executive detention of individuals physically present inside the United States is immune from constitutional scrutiny. To the contrary, *Landon* itself recognizes the significance of an entry, in the physical sense. Respondents’ reliance on *Landon v. Plasencia* is misplaced.

16. *Landon* involved a lawful permanent resident returning to the United States after a brief trip abroad and addressed the procedural protections applicable in exclusion proceedings under the pre-IIRIRA statutory framework that distinguished between exclusion and deportation. 459 U.S. 21, 25 to 28 (1982). The Court emphasized that the respondent there had already been admitted for permanent residence and had established substantial domestic ties, explaining that

“once an alien gains admission to our country and begins to develop the ties that go with permanent residence, his constitutional status changes accordingly.”

Id. at 32.

17. This case presents materially different circumstances. Petitioner here is physically present inside the United States pursuant to government authorization and was living in the community for an extended period at the time of he was detained. Unlike the returning resident in *Landon*, Petitioner is not seeking admission at the border following a departure, and the statutory regime governing this case is the post-IIRIRA removal system, not the historical exclusion framework considered in *Landon*. Nothing in *Landon* supports Respondents' attempt to impose categorical mandatory detention without individualized process on a noncitizen detained within the country.

18. The Supreme Court has upheld certain forms of immigration detention only where confinement was closely tied to removal proceedings and limited in duration. *See Demore v. Kim*, 538 U.S. 510, 529–30 (2003). Respondents' theory, by contrast, would permit prolonged detention based solely on categorical statutory labeling without individualized review, despite prior government-authorized liberty. The Constitution does not permit such a result.

II.

RESPONDENTS CONFLATE SUBSTANTIVE AND PROCEDURAL DUE PROCESS CLAIMS

19. Respondents attempt to recast Petitioner's claim as a purely substantive due process challenge to Congress's detention authority. However, the Petition expressly invokes both procedural and substantive due process principles. In the Argument section, the Petition recognizes that "the breadth and scope of substantive and procedural due process afforded to noncitizens depends in part on the applicable statutory context," and alleges that "the Due Process Clause does not permit executive detention to rest solely on categorical statutory labeling" and that civil detention "must bear a reasonable relation to its purpose." ECF No. 1 at 14–15. These allegations challenge the constitutional sufficiency of detention itself as applied to Petitioner, which is the hallmark of a substantive due process claim.

20. At the same time, the Petition separately pleads procedural due process violations, alleging that Petitioner was detained “without providing a meaningful individualized custody determination before a neutral decisionmaker” and without “constitutionally sufficient procedures,” and expressly invoking the *Mathews v. Eldridge* framework. ECF No. 1 at 2–3, 16–19, 24–25. Respondents’ assertion of waiver is therefore incorrect. Indeed, Respondents themselves acknowledge that Petitioner’s claim “is in reality a substantive-due-process challenge,” confirming that the Petition raises substantive constitutional concerns. Because the Petition challenges both the adequacy of procedures and the constitutional permissibility of detention as applied, both procedural and substantive due process claims are preserved.

(1)

PROCEDURAL DUE PROCESS VIOLATIONS

21. Petitioner incorporates his claims (*see*, ECF. Dkt 1. at 10 Sub(A)) under *Mathews v. Eldridge* and limits this reply to Respondents’ contention that procedural protections are inapplicable.

22. The Supreme Court has repeatedly held that when the Government deprives an individual of physical liberty, constitutionally adequate procedures must be available to test the legality and necessity of that confinement. The core injury alleged here is the absence of any forum capable of conducting an individualized custody assessment. Immigration Judges lack jurisdiction to conduct bond hearings for arriving aliens.

23. In support of their novel position regarding mandatory detention, Respondents cite *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003) where the Court reasons that

“[p]laintiffs 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.”

ECF No. 6 citing *Id.* at 7–8.

24. As a threshold matter, Respondents have yet to reconcile their own records with the statutory scheme they contend governs Petitioner's detention. For example the Respondents procured an Administrative Warrant, Form I-200, by invoking 8 U.S.C. § 1226, a statutory scheme which specifically allows for custody redetermination hearings. Similarly, Respondent's issued the Petitioner an I-94, paroling him into the United States. Both undermine Respondents' theory that Petitioner is subject to the statutory scheme which Respondents claims governs this case.

25. Additionally, Respondents fail to articulate the full holding of *Connecticut Department of Public Safety v. Doe*. That case regards Connecticut's sex offender registry statute (often referred to as Megan's Law,) which required publication of the names on the registry upon conviction. Connecticut's statute did not require a hearing prior to publication of the names of convicted sex offenders. The *Connecticut Department of Public Safety* case is distinguishable because (A) the government action in that case flowed from a prior criminal conviction obtained through constitutionally sufficient procedural safeguards and (B) implicated only reputational interests, whereas Petitioner has received no comparable process and challenges the deprivation of physical liberty itself — the core liberty protected by the Due Process Clause.

(A)

26. The Court emphasized that “a convicted offender has already had a procedurally safeguarded opportunity to contest” the fact of their conviction. *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003) at 2. The Court goes on to state that “[u]nless respondent can show that the substantive rule of law is defective (by conflicting with the Constitution), any hearing on current dangerousness is a bootless exercise.” *Id.* Because the predicate fact, in that

case a conviction, had been established through constitutionally sufficient procedures, an additional hearing on dangerousness would have been irrelevant under the statutory scheme.

27. Accordingly, *Connecticut Department of Public Safety* is readily distinguishable from the present case. The petitioner in that case had been convicted through the criminal process, presumably by a jury or through a constitutionally valid plea, and therefore had already received the full panoply of procedural protections guaranteed by the Constitution, including the right to counsel, the rules of evidence, confrontation, and proof beyond a reasonable doubt.

28. The statutory scheme at issue here is materially different. Petitioner has not been afforded comparable procedural safeguards. Comparability here takes into account that Immigration detention is civil in nature, not punitive, and Petitioner does not contend that the Government must provide the full panoply of criminal procedural safeguards. Rather, the Due Process Clause requires procedures that are constitutionally adequate for the deprivation at stake — namely, physical liberty. At a minimum a hearing, before a neutral magistrate, given an opportunity to be heard, present evidence, and be represented by counsel, precisely the kind of safeguards a grant of habeas corpus would confer.

29. Respondents' reliance on *Connecticut Department of Public Safety* therefore undermines, rather than supports, their position. The Supreme Court's analysis presumes the existence of prior constitutionally adequate process. Where such a process is absent, due process concerns are heightened, not diminished.

(B)

30. Moreover, the liberty interest at stake in *Connecticut Department of Public Safety* was fundamentally different from the liberty interest implicated here. The plaintiff there alleged reputational harm arising from publication on a registry. The Court reiterated that:

“Mere injury to reputation, even if defamatory, does not constitute the deprivation of a liberty interest.”

Id. at 6 (citing *Paul v. Davis*, 424 U.S. 693 (1976)).

31. Here, by contrast, Petitioner is subject to literal physical confinement — the most severe deprivation of liberty recognized under the Constitution. The Supreme Court has repeatedly emphasized that freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

32. Justice Scalia’s concurrence in Connecticut Department of Public Safety further confirms this distinction. He explained that a statute may eliminate a liberty interest only where the interest is not fundamental:

“Absent a claim (which respondents have not made here) that the liberty interest in question is so fundamental as to implicate so-called ‘substantive due process, a properly enacted law can eliminate it.’”

Id. at 8 (Scalia, J., concurring)[internal citations preserved].

33. Physical liberty — freedom from imprisonment — is unquestionably a fundamental liberty interest. Accordingly, Justice Scalia’s reasoning supports Petitioner’s position that constitutional safeguards cannot be eliminated by reference through statutory scheme alone.

34. For these reasons, Respondents’ reliance on Connecticut Department of Public Safety v. Doe not only fails to defeat Petitioner’s claims, but instead underscores that habeas relief is warranted where the Government seeks to impose physical detention without prior constitutionally adequate safeguards or any meaningful opportunity to test the legality of confinement.

35. Independently, Respondents' detention theory also violates substantive due process because it permits the arbitrary deprivation of physical liberty untethered from individualized necessity or the regulatory purposes of immigration detention.

(2)
SUBSTANTIVE DUE PROCESS VIOLATIONS

36. The Supreme Court has repeatedly recognized that freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Even in the immigration context, civil detention must remain reasonably related to its nonpunitive purposes and may not become arbitrary or excessive in relation to those purposes. *Id.*; see also *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Substantive due process therefore imposes constitutional limits on executive detention independent of statutory authorization. See *Reno v. Flores*, 507 U.S. 292, 302 (1993).

37. Those constitutional limits are violated here. Petitioner was affirmatively paroled into the United States, permitted to reside in the community for nearly two years pursuant to government authorization, and is actively pursuing congressionally authorized relief through a pending adjustment application. Respondents now seek to impose mandatory detention based solely on statutory classification, while the duration of confinement is tied to the pace of agency adjudication outside Petitioner's control and without any individualized determination of necessity. Detention under these circumstances is arbitrary and excessive in relation to its regulatory purpose.

38. Respondents' own conduct underscores the constitutional defect. In October 2023, DHS exercised discretionary authority under 8 U.S.C. § 1182(d)(5) to parole Petitioner into the United States following inspection at a port of entry, necessarily reflecting an individualized

determination that detention was not required. Respondents later revoked that liberty without individualized process and arrested Petitioner pursuant to an administrative warrant, Form I-200, issued under 8 U.S.C. § 1226(a), (*See*, CFM No. 6 Exh. B.) a discretionary detention statute governing interior arrests that contemplates individualized custody determinations and possible release. Having invoked discretionary detention authority to take Petitioner into custody, Respondents now attempt to retroactively characterize detention as mandatory under 8 U.S.C. § 1225(b) in order to foreclose individualized review.

39. Respondents' own records confirm that Petitioner's arrest and detention were effectuated pursuant to an administrative warrant issued under 8 U.S.C. § 1226(a). That statute expressly governs the arrest and detention of noncitizens within the interior of the United States and provides that the Secretary "may issue a warrant for the arrest and detention of an alien pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Respondents' attempt to retroactively reclassify Petitioner as subject to mandatory detention does not reflect congressional command, but rather an abuse of discretion that eliminates individualized review after liberty was previously granted.

40. The statutory text is discretionary, not mandatory, and contemplates individualized custody determinations, including the possibility of release on bond or conditional parole. *Id.* By invoking § 1226 warrant authority to take Petitioner into custody, Respondents necessarily exercised discretionary detention authority applicable to interior arrests. Having done so, Respondents now argue that 8 U.S.C. § 1225(b) not only forecloses the individualized review permitted under 8 U.S.C. § 1226 but also divests the Petitioner of his due process rights under the Fifth Amendment of the US Constitution. The Respondents are not the gatekeepers of the Due Process Clause of the Fifth Amendment.

41. When the Government grants conditional liberty and later withdraws it, due process concerns are heightened because the individual suffers a “grievous loss” of liberty. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)(regarding parole revocation hearings generally.)

42. Arbitrary governmental action resulting in the loss of liberty is incompatible with the Due Process Clause. *See, County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998).

43. Additionally, Estoppel principles are grounded in the basic notion that a party should not be permitted to adopt a position inconsistent with its own prior conduct when another person has relied on that conduct to his detriment. That principle is especially compelling where governmental action affects physical liberty.

44. Here, Respondents paroled Petitioner into the United States, permitted him to live in the community for nearly two years, and later arrested him pursuant to discretionary custody authority. Having taken those steps, Respondents now seek to characterize detention as “mandatory” under 8 U.S.C. § 1225(b) in order to foreclose individualized custody review. Respondents cannot now retroactively argue that mandatory detention was required after all. Respondent’s conduct demonstrates that detention was not compelled, but rather the result of discretionary governmental choices. That inconsistency underscores why due process requires meaningful procedural safeguards before previously granted liberty may be withdrawn.

45. What Respondents are truly seeking from this Court is judicial approval of their own arbitrary conduct, allowing them to apply conflicting statutes to the same circumstance to retroactively justify constitutional violations.

46. The consequence of allowing Respondents to arbitrarily recategorize a person as an “applicant for admission” is to create a gatekeeping regime in which the Executive Branch itself

determines who is entitled to due process and who is not. The Constitution does not tolerate such unfettered authority over physical liberty.

47. Detention cannot depend on shifting statutory labels untethered from the specific facts of a given case. Where the Government has previously exercised discretion to release an individual into the community and later withdraws that liberty without meaningful procedural safeguards, judicial intervention is required to prevent arbitrary deprivation of freedom.

48. Accordingly, Respondents' theory of mandatory detention, as applied to Petitioner, violates substantive due process and independently warrants habeas relief.

III. LIBERTY INTERESTS ARE IMPLICATED WHERE BARRIERS TO RELIEF ARE ERECTED

49. Respondents attempt to characterize Petitioner's claim concerning his eligibility for adjustment of status under the Cuban Adjustment Act as merely an Administrative Procedure Act ("APA") dispute. That characterization misunderstands the nature of Petitioner's claim. Petitioner does not seek abstract review of agency action detached from custody. Rather, he challenges a detention regime that directly implicates protected liberty interests because the duration and legality of his confinement depend on administrative processes that are structurally insulated from meaningful review.

50. The procedural posture of this case highlights the constitutional significance of adjustment status applications as defensive claims from relief of removal and consequently release from detention. Because Petitioner is classified as an arriving alien, Immigration Judges lack jurisdiction to conduct bond hearings. At the same time, U.S. Citizenship and Immigration Services ("USCIS") retains exclusive authority over Petitioner's adjustment-of-status application — the very relief that could terminate removal proceedings and eliminate the asserted basis for

detention. No single decisionmaker possesses authority to both adjudicate custody and resolve the underlying eligibility for relief. As a result, Petitioner remains detained while the agency with exclusive adjudicatory authority proceeds without a statutory timeline.

51. The constitutional concerns are heightened by agency policies that may suspend or delay adjudication altogether. On January 1, 2026, USCIS issued Policy Memorandum PM-602-0194 directing officers to place adjudicative holds on pending immigration benefit applications filed by nationals of designated countries while enhanced screening and review procedures are conducted. Ex. 1. The memorandum applies broadly to adjustment-of-status applications and may prevent final adjudication even where preliminary processing continues. *Id.* These policies confirm that the timeline for adjudicating Petitioner's Form I-485 is governed by discretionary executive action rather than any statutory deadline or judicially reviewable schedule.

52. Where continued physical confinement depends on agency adjudication that may be suspended or delayed pursuant to internal policy, detention risks becoming arbitrary and excessive in relation to its regulatory purpose. See *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001). The duration of confinement is therefore tied not to any individualized determination of necessity, but to agency timing and jurisdictional compartmentalization beyond Petitioner's control.

53. This framework creates a structural due process failure. Administrative barriers foreclose meaningful custody review while the only agency capable of granting relief operates without a defined timeline. The Due Process Clause does not permit continued confinement in the absence of a forum capable of evaluating whether detention remains justified. Where detention persists under such circumstances, the risk of erroneous deprivation becomes constitutionally significant.

54. Accordingly, Petitioner's Cuban Adjustment claim is not merely an APA dispute. It is inextricably intertwined with the legality and duration of detention, and this structural defect independently supports habeas relief.

IV. CONCLUSION

Respondents' response fails to identify any legally sufficient basis for this Court to deny the habeas relief requested in Petitioner's writ of habeas corpus. Respondents' detention theory rests on an unprecedented premise that executive officials may invoke discretionary arrest authority under 8 U.S.C. § 1226, revoke previously granted liberty, and then retroactively impose mandatory detention under 8 U.S.C. § 1225(b) to foreclose any individualized custody review. That position is inconsistent with the statutory framework, contradicts Respondents' own conduct in this case, and cannot be reconciled with the Fifth Amendment's protection of physical liberty.

Petitioner has demonstrated that he is a "person" protected by the Due Process Clause, that the absence of any meaningful forum capable of conducting an individualized custody determination violates procedural due process, that Respondents' theory of categorical mandatory detention produces an arbitrary deprivation of liberty in violation of substantive due process, and that the agency-controlled barriers to adjudicating Petitioner's Cuban Adjustment Act relief directly implicate the legality and duration of his confinement. Respondents' opposition does not meaningfully rebut these constitutional defects.

Because continued detention under these circumstances lacks constitutionally adequate justification, habeas relief is warranted. Petitioner respectfully requests that this Court grant the writ and order such relief as is just and proper, including immediate release from custody or, at minimum, a prompt individualized custody determination before a neutral decisionmaker.

RESPECTFULLY SUBMITTED,

/s/ Jesus Dario Elizondo

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