

United States District Court
Western District of Texas
Waco Division

Victor Andres Melendez Ortiz,
Petitioner,

v.

No. 6:26-CV-0115-ADA-DNM

Warden, *et al*
Respondents.

**Federal Respondents' Response to
Petition for Writ of Habeas Corpus**

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 EAJA fees. There is no longer any legal dispute that Petitioner is 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 Petitioner during removal proceedings.² See ECF No. 1 at 2 (acknowledging *Buenrostro* and clarifying that Petitioner does not herein challenge the statutory authority).

For the reasons that follow, Respondents urge this Court to also find that Petitioner has not shown that this mandatory detention provision is unconstitutional as applied to him. The petition

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.").

should be denied in its entirety without a hearing.

BACKGROUND

Petitioner is a citizen of El Salvador who is detained in ICE custody in Limestone County, Texas. ECF No. 1 at ¶¶ 25–26. Petitioner concedes that he entered the United States without inspection and that he was transferred to ICE custody from criminal custody in December 2025. *Id.* at ¶ 16. Petitioner concedes that he is in removal proceedings. *Id.* ¶¶ 20–21. His next hearing is scheduled for March 31, 2026. See <https://acis.eoir.justice.gov/en/caseInformation> (last accessed Mar. 5, 2026). Petitioner filed this petition on February 23, 2026, and challenges his continued detention under the Due Process Clause.

ARGUMENT

Federal Respondents provide a full due process response, *infra*, for purposes of appeal, but note for judicial efficiency that **this case presents nearly identical facts to the cases where this Court has already found no due process violations.** See, e.g., *Menjivar Araujo v. Bondi, et al*, No. 26–CV–237–ADA–SH (W.D. Tex. Mar. 2, 2026); *Herrera Cordoba v. Bondi, et al*, No. 1:26–CV–238–ADA–SH (W.D. Tex. Mar. 2, 2026); *Moya Gonzalez v. Collins, et al*, No. 1:26–CV–176–ADA–ML (W.D. Tex. Feb. 26, 2026); *Lechon Cotachachi v. Bondi, et al*, No. 1:26–CV–236–ADA (W.D. Tex. Feb. 26, 2026) (due process does not entitle applicant for admission to a bond hearing). There is no reason for the Court to rule differently in this case.

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; *see also Perez Sanchez v. Vergara, et al*, No. 5:26-CV-626-MA (W.D. Tex. Feb. 24, 2026) (denying habeas petition to alien seeking administrative review of a removal order, finding that no substantive due process right to release attaches and that the sole procedural protection afforded is the review of the underlying removal order itself).

B. Petitioner Does 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). 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). Petitioner here alleges no facts that would be relevant under § 1225(b)(2).

Petitioner has not challenged the adequacy of the procedures for determining whether he is properly described as an “applicant for admission,” a matter determined in immigration removal proceedings, which subjects Petitioner to mandatory detention under § 1225(b)(2)(A). Instead,

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

Petitioner argues that his inclusion within the scope of a mandatory detention provision (§1225(b)(2)(A)) is a constitutionally insufficient basis on which to justify the deprivation of liberty. Petitioner's due process argument is, therefore, substantive, not procedural.

Congress imposed mandatory detention on all applicants for admission, and due process does not require procedures to adjudicate immaterial facts. Because § 1225(b)(2)(A) requires mandatory detention regardless of flight risk or danger, Petitioner's claims challenge the substance of the law, not the procedure. What Petitioner is asking this Court to do is override Congress's substantive judgment that all applicants for admission must be detained regardless of whether they are dangerous or flight risks. Procedural due process can do no such thing.

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 applied

that same rationale to reject a procedural due process challenge to mandatory detention under §1226(c) for removal proceedings 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, Petitioner has 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). Petitioner falls squarely within the plain language of the statute as interpreted by *Buenrostro-Mendez*. Therefore, any claim that Petitioner is 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 Petitioner Were Asserting a Viable Procedural Due Process Claim, It Lacks Merit.

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* 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 presumably forming connections to the United States. *Id.* at 229. Still, because the child 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. *Buenrostro*, 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. The Constitution should not be manipulated to allow an alien to adversely possess additional due process rights by virtue of unlawfully entering the United States and evading inspection for over two decades—especially when the nine years of *lawful* presence of a *child* in *Kaplan* did not suffice.

D. Petitioner Does Not Have a Substantive Due Process Right to a Bond Hearing.

Petitioner does not purport to identify any fundamental right to which he is 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, the 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.

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.” *Dep’t of State v. Muñoz*, 602 U.S. 899, 910 (2024) (quoting *Glucksberg*, 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. Petitioner does 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 chance 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 § 1229a proceeding. 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*.

While he complains that detention violates due process, Petitioner does not contest that he is removable as charged. Moreover, Petitioner makes no showing that removal proceedings and corresponding detention during those proceedings are unconstitutional as applied. There is no allegation regarding the deprivation of the right to counsel in removal proceedings. The charging document constituted notice of the allegations and charge, and Petitioner may seek judicial review at the Board of Immigration Appeals (BIA) of any adverse removal decision, which can also be challenged at the Fifth Circuit. As applied here to Petitioner, 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 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).

E. Petitioner's Equal Protection Claim Lacks Merit.

Petitioner also raises a claim under the equal protection clause of the Fifth Amendment of the United States Constitution. ECF No. 1 at ¶¶ 52–59. Petitioner's argument is centered around the classification of Petitioner as an applicant for admission. *Id.* at ¶ 55. The Fifth Circuit has held that when a petitioner's claim is focused on a congressionally drawn distinction among aliens, the rational basis review is narrow, because “for ‘over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.’” *Malagon de Fuentes v. Gonzales*, 462 F.3d 498, 503-504 (5th Cir. 2006) (quoting *Rodriguez–Silva*, 242 F.3d at 246 (quoting *Fiallo v. Bell*, 430 U.S. 787, (1977) (punctuation omitted)); *see also Castillo–Avalos v. Gonzales*, 136 Fed. Appx. 629, 630 n. 4 (5th Cir.2005) (*per curiam*) (“Congress may make classifications of aliens as long as it has a facially legitimate reason for making the distinction”). The federal government can enact legislation that would be invalid under the Fourteenth Amendment if enacted by a State, particularly if the legislation relates to immigration. *Id.* at 247.

The Court must begin its rational basis review here with a strong presumption of constitutional validity. *Flores–Ledezma v. Gonzales*, 415 F.3d 375, 381 (5th Cir. 2005) (citing *Heller v. Doe*, 509 U.S. 312, 319, (1993)). The onus is on Petitioner to show that the law, as applied to him, is arbitrary. *Kite v. Marshall*, 661 F.2d 1027, 1030 (5th Cir.1981). Petitioner fails to carry this burden. Petitioner argues that an alien with the same (or worse) criminal record as

Petitioner who entered lawfully, but overstayed the terms of his entry, is equivalent to Petitioner, yet treated by the government “fundamentally differently.” ECF No 1 at ¶¶ 55–57. This argument fails.

Narrowing the application of § 1226(a) to cover only removable aliens under § 1227 is rational, not arbitrary. Those aliens have been *admitted* to the United States; they were inspected and admitted *after* seeking permission to enter the country lawfully. Having already vetted these individuals prior to their admission, they are on a different playing field than aliens like Petitioner, who did not follow the proper channels, choosing instead to enter without inspection and evade such vetting.

The Fifth Circuit recognized this distinction in *Buenrostro*, noting that Congress distinguished between these two classifications to honor the predominant goal in the enactment of IIRIRA. *Id.* at * 9. (“It seems strange to suggest that Congress would have preserved bond hearings exclusively for unlawful entrants”); *see also* H.R. Rep. No. 104-469, pt. 1, at 225. A court must uphold the differential treatment against an equal protection challenge if there is “any reasonably conceivable state of facts that could provide a rational basis for the classification.” *Malagon de Fuentes v. Gonzales*, 462 F.3d 498, 504 (5th Cir. 2006) (quoting *Madriz-Alvarado*, 383 F.3d at 332 (quoting *FCC v. Beach Commc'ns*, 508 U.S. 307(1993))).

Here, the government provides a benefit (bond hearing) in removal proceedings to those who followed the proper channels to enter the United States after inspection and admission, even if they subsequently violate the terms of their entry. The government does not, however, provide that same benefit to those who entered the country without inspection, because they evaded the vetting process altogether. In other words, despite Petitioner’s arguments to the contrary, these two distinct classes of aliens are not “identically situated in all relevant respects.” *See* ECF No. 1 ¶ 56.

One group was vetted upon entry, and the other evaded inspection; there is, therefore, a rational basis for providing them with different privileges during removal proceedings, even if they are otherwise similarly situated.

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. Petitioner fails to show that mandatory detention during removal proceedings is unconstitutional as applied, as Petitioner is receiving the process owed during those 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.

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Respectfully submitted,

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