

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Abundio Melo Martinez,

Petitioner,

v.

Civil Action No. 5:26-CV-01156-JKP

Kristi Noem, Secretary, U.S. Department of
Homeland Security, et al,

Respondents.

RESPONSE TO PETITION

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 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-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir. Feb. 6, 2026). The *Buenrostro-Mendez* decision is binding precedent and requires that the Court deny this habeas petition.³

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

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

³ The *Buenrostro-Mendez* 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

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* and held that “applicants for admission” are subject to detention under § 1225(b)(2)(A) and so have no statutory right to a bond hearing. *Buenrostro-Mendez*, 166 F.4th 494, at 498-508.⁴

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

Circuit decision is not controlling because “the mandate has yet to issue, and thus not properly relied upon as precedent.”).

⁴ Petitioner challenges the *Buenrostro* decision as erroneous to preserve the issue for potential en banc rehearing and/or Supreme Court review. However, because Petitioner concedes that *Buenrostro* is binding on this Court, ECF No. 1, ¶ 93, the government does not specifically address those arguments here.

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 Dep’t 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.” *Dep’t of Homeland Sec. 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 Mexico who entered the United States unlawfully, *i.e.* without inspection or admission, in 2007. ECF No. 1, ¶ 1. On September 22, 2005, local law enforcement stopped Petitioner for a traffic violation and contacted ICE to determine Petitioner's immigration status. [REDACTED]. Petitioner admitted to immigration authorities that he was a citizen of Mexico and that he had entered the United States unlawfully. *Id.* He was then detained by immigration authorities for processing and, the following day, ICE issued a warrant for his arrest. *Id.*; *see also* [REDACTED]. Petitioner was served with a notice to appear in immigration court. *Id.* He applied for cancellation of removal, which was denied by an immigration judge after an individual hearing on January 6, 2025. ECF No. 1, ¶ 57. He has appealed from the denial. *Id.* ¶ 59. Petitioner appears to be represented by an attorney in his immigration proceedings. *Id.* at 166 (Order by Immigration Judge addressed to Attorney Jeffrey Peek). Petitioner concedes that he has no statutory right to a bond hearing under § 1226(a) due to *Buenrostro-Mendez*, but maintains that his continued detention without an individualized custody determination violates the Constitution and the APA. *Id.* ¶ 76-77.

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*, 166 F.4th 494, 498; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 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-Mendez*. 166 F.4th at 498. To the extent Petitioners claim they are not properly categorized as an applicant for admission "[t]he text and context of § 1225 contradict the petitioners' reading of the statute." *Id.* at 502.

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." *Id.* at 501. 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 502. 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-Mendez, 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 (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. *Id.* at *1.

The Fifth Circuit is not the only court to so hold. District courts around the country agree. *See Garibay-Robledo v. Noem*, 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); *Rodriguez v. Olson*, 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 Off. Dir. of Enf't & 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); *Paredes 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, Dep't of Homeland Sec.*, 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-MKV, 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. United States*, 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); *Ramirez 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 (JLS), 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-MKV, 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 SEC P, 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); *Hernandez Cruz v. Noem*, No. 8:25-CV-02566-SB-MAA, 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); *Duenas Garcia v. Immigr. & Customs Enft 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) *Alves de 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*, No. 1:25-CV-01519 WBS SCR, 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*, No. 1:25-CV-01550 WBS JDP, 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); *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 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); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 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.), *R. & R. adopted*, No. 6:25-CV-00451, 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-BHL, 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*, 801 F. Supp. 3d 1133 (S.D. Cal. 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 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. 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." *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225.

**ZADVYDAS DOES NOT APPLY BECAUSE PETITIONER'S DETENTION IS NOT
INDEFINITE**

Petitioner argues that the INA "does not authorize prolonged confinement absent a meaningful mechanism to assess whether continued detention is necessary to serve its legitimate aims," citing *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001). ECF No. 1, ¶ 94. Petitioner's reliance on *Zadvydas* is misplaced. The statute at issue in *Zadvydas* was 8 U.S.C. § 1231—not Section 1225(b)(2)(A), the statute under which Petitioner is detained. This is important because

Section 1231 only mandates detention during the 90-day removal period; after this period has concluded, if the alien is still in the United States, DHS may release him. *Zadvydas* also dealt with an issue that is not present in this case: potentially indefinite detention. There, the petitioner had a final-removal order but did not have a country of citizenship and no other country would accept him. *Zadvydas*, 533 U.S. at 684. At the time of the Supreme Court's decision, he had spent over six years in immigration detention. *Id.* Because no country had accepted him, his detention had no foreseeable end date. Thus, the Supreme Court held that, in such situations where there is no end date to detention, the government must release the alien.⁵ *Id.* at 697-99. That is not the case here. Petitioner is only detained for the duration of his immigration proceedings. *See* 8 U.S.C. § 1225(b)(2)(A). And, unlike *Zadvydas*, there is an end date to Petitioner's detention: the conclusion of his removal proceedings. Indeed, in *Zadvydas*, the petitioner's removal proceedings had concluded and he was simply awaiting removal to a third country. Petitioner is still in removal proceedings since he appealed from the immigration judge's order, and as soon as those proceedings conclude, he will either be released into the interior of the United States or Mexico, depending on the result of his proceedings.

WARRANTLESS ARREST

Petitioner's challenge to his arrest without a warrant lacks a factual basis. ICE did, in fact, issue a warrant for his arrest on September 23, 2025, the day after ICE took him into custody. *See* Ex. A, Form I-200, Warrant for Arrest of Alien. The warrant was served on Petitioner that date. *Id.*

⁵ Indeed, the Supreme Court's decision distinguished *Zadvydas*, who had been admitted to the United States as a child, from aliens like Petitioner who have not been admitted to the United States. *See id.* at 693.

Further, the Department of Homeland Security is authorized to arrest aliens without a warrant if there is “reason to believe that the alien so arrested is in the United States in violation of any [immigration] law or regulation and is likely to escape before a warrant can be obtained for his arrest.” 8 U.S.C. § 1357(a)(2). ICE encountered Petitioner per the request of local law enforcement, as Petitioner had just been detained for a traffic violation. *See* Ex. B, . When ICE officers arrived, he admitted that he was in the United States without authorization, so ICE had reason to believe that he was present in the United States in violation of the immigration laws. *See id.* Given that Petitioner had entered the United States unlawfully and had evaded immigration officials for almost 20 years, there was ample reason to believe that Petitioner was likely to escape before a warrant could be obtained.

THE SUSPENSION CLAUSE

The Suspension Clause provides that “[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” U. S. Const., Art. I, § 9, cl. 2. Here, the writ is not suspended, as no statute, regulation, or other authority deprives Petitioner of “the opportunity to file a habeas petition regarding his detention claim.” *See Mouzgui v. Noem*, No. 4:26-CV-00996, 2026 WL 607993, at *1 (S.D. Tex. Mar. 4, 2026). Petitioner has indeed filed a habeas petition, and Respondents do not assert that this Court lacks jurisdiction to review his core habeas claims.⁶ Thus, Petitioner’s Suspension Clause claim must fail.

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).**

⁶ The Court does, however, lack jurisdiction to review Petitioner’s non-habeas claims, including Petitioner’s APA claims. *See infra*.

Petitioner's due process claims 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 Dep't 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 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.

This Supreme Court’s decision in *Connecticut Dep’t of Pub. Safety*, 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. 538 U.S. 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 Dep’t of Pub. 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 Dep’t of Pub. 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. United States Att’y*, 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.” *Connecticut 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 Dep't of Pub. 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.” *Thuraissigiam*, 591 U.S. at 138 (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 v. Plasencia*, 459 U.S. 21 (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[]*.” *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. *Buenrostro-Mendez*, at 508. 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*, 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 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 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.” *Buenrostro-Mendez*, at 508 (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*, 2026 WL 44683 (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*, 2025 WL 3733302 (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*, 2025 WL 3754434 (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.*, 2025 WL 3683118 (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*, 2025 WL 3628229 (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*, 2025 WL 3514451 (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); *Maceda 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*, 2025 WL 3033967 (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.

APA CHALLENGES MAY NOT BE ASSERTED AS HABEAS PETITIONS

In this proceeding, Petitioner expressly challenges his civil detention. *See, e.g.*, ECF No. 1. Petitioner raises additional arguments under the APA which are not cognizable in habeas, and which is not covered under the \$5 habeas filing fee. As such, the APA claim and any other non-

habeas claim should be dismissed. *See Ndudzi v. Castro*, No. SA-20-CV-0492-JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)); *Lopez Contreras v. Bondi*, No. SA-25-CV-177-OLG, page 2, footnote 1 (W.D. Tex. February 20, 2026). “When a filing contains both habeas and non-habeas claims, ‘the district court should separate the claims and decide the [non-habeas] claims’ separately from the habeas ones given the differences between the two types of claims. *Id.* (collecting cases and further noting the “vast procedural differences between the two types of actions”). Given the differences, the Court should either sever the non-habeas claims or dismiss them altogether without prejudice if severance is not warranted. *Id.* at *3; *see also Montoya v. Noem*, SA-CV-1410-FB (W.D. Tex. Jan. 26, 2026) (dismissing all non-habeas claims without prejudice under Rules 12(b)(1) and (6)).

Even if the APA claim were cognizable, there is no final action for this Court to review. When review of an agency action is sought “under the general review provisions of the APA, the ‘agency action’ in question must be ‘final agency action.’” *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 882 (1990) (quoting 5 U.S.C. § 704) (“Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review”) (emphasis added). “Agency action must meet two conditions to be final: (1) ‘the action must mark the ‘consummation’ of the agency’s decisionmaking process’ and (2) ‘the action must be one by which ‘rights or obligations have been determined,’ or from which ‘legal consequences will flow.’” *Patterson v. Def. POW/MIA Acct. Agency*, 343 F. Supp. 3d 637, 651 (W.D. Tex. 2018) (citing *Am. Airlines, Inc. v. Herman*, 176 F.3d 283, 287 (5th Cir. 1999)). If, as in this case, there is no final agency action, federal courts lack subject matter jurisdiction. *Qureshi v. Holder*, 663 F.3d 778, 781 (5th Cir. 2011).

Qureshi is relevant and binding precedent. *Qureshi* affirmed dismissal of an APA challenge to USCIS's termination of asylum, finding that termination of asylum is not a final agency action because it is "only an intermediate step in a multi-stage administrative process, succeeded (or accompanied) by removal proceedings." 663 F.3d at 781. The Court noted that "the IJ and BIA lack jurisdiction to review asylum terminations, they both retain the power to halt removal proceedings altogether, either by an alien's successful contest to removability . . . or by a successful new asylum application . . ." *Id.*

Petitioner has appealed the immigration judge's order of removal, and thus the BIA retains authority to grant relief or order removal in this case, thereby demonstrating that "further administrative relief" is available, and detention is not the final decision in ICE or EOIR's decision making process. *See* 8 U.S.C. § 1229a; *see also* 8 C.F.R. § 1003.1. At least one Court in the Western District of Texas and one other district court within the Fifth Circuit have applied *Qureshi's* reasoning regarding agency decisions in the immigration detention context. *See Santiago Santiago v Noem*, 3:25-CV-361-KC, 2025 WL 2792588 at *5-6 (W.D. Tex. Oct. 2, 2025) (finding no jurisdiction to rule on an APA claim due to lack of final agency decision); *Bhatia v. United States*, No. 16-cv-11, 2016 WL 6127799, at *2 (S.D. Miss. Sept. 19, 2016), *report and recommendation adopted*, 2016 WL 6126666 (Oct. 20, 2016) (citing *Qureshi*, 663 F.3d at 781); *see also Gamez Lira v. Noem*, No. 25-cv-855, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025).

But even if Petitioner's APA claim could proceed, it lacks merit. The immigration judge's determination that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is not arbitrary, capricious, or contrary to law, because the Fifth Circuit confirmed that Section 1225(b)(2)(A) requires detention of all applicants for admission for the duration of proceedings, regardless of when the alien entered the United States. *Buenrostro-Mendez*, 166 F.4th at 502.

Because the immigration judge's decision was consistent with administrative authority and Fifth Circuit precedent, Petitioner's APA claim must fail.

I. BAUTISTA DOES NOT APPLY HERE.

Petitioner's argument that this Court should order Petitioner to be released under the Central District of California's injunction in *Bautista*, 2025 WL 3678485, at *1, contravenes federal-case law. A district court is "not free to overturn" the circuit court's precedent. *Green v. Thomas*, 129 F.4th 877, 890 (5th Cir. 2025). Likewise, the federal-immigration agencies located within the Fifth Circuit must follow Fifth Circuit precedent. *Arce-Vences v. Mukasey*, 512 F.3d 167, 172 (5th Cir. 2007). As explained *supra*, the Fifth Circuit in *Buenrostro* held that aliens who are "applicants for admission"—*i.e.* aliens who have not been inspected, admitted, or paroled—are subject to mandatory detention under 8 U.S.C. § 1225(b)(2), regardless of when they entered the country. *Buenrostro-Mendez*, 166 F.4th at 502. Because this Court sits within the Fifth Circuit, it is bound to apply *Buenrostro*. Likewise, since Petitioner's immigration case is being reviewed in Texas, the federal-immigration agencies must follow Fifth Circuit precedent. *Arce-Vences*, 512 F.3d at 172. Accordingly, *Buenrostro* controls here, and to the extent it conflicts with *Bautista*'s holding and judgment, federal Respondents and this Court must follow *Buenrostro*.

Not only does *Bautista* conflict with binding Fifth Circuit precedent, but on March 6, 2026, the Ninth Circuit granted a temporary administrative stay of *Bautista* vacatur and declaratory judgment "insofar as the district court's judgment extends beyond the Central District of California," pending adjudication of the motion to stay pending appeal. No. 26-1044, Dkt. No. 5.1, at 1 (9th Cir. Mar. 6, 2026). As a result, as of March 6, 2026, the BIA's decision in *Yajure Hurtado* is not currently vacated as to aliens who are outside the jurisdiction of the Central District of California. Additionally, the *Bautista* vacatur and declaratory judgment are 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*. *See supra*.

PETITIONER FAILS TO STATE AN EQUAL PROTECTION CLAIM

To state a claim for equal protection, “the plaintiff must prove that similarly situated individuals were treated differently.” *Beeler v. Rounsavall*, 328 F.3d 813, 816 (5th Cir. 2003) (quoting *Bryan v. City of Madison*, 213 F.3d 267, 276 (5th Cir. 2000)). Where people are not similarly-situated, equal treatment is not required. *Malagon de Fuentes v. Gonzales*, 462 F.3d 498, 507 (5th Cir. 2006).

Petitioner's equal-protection claim must fail because aliens who entered the United States unlawfully are not similarly situated to aliens who entered the United States lawfully but who are now removable. Aliens who are admitted (i.e. entered the United States lawfully) are fully vetted before they are permitted to enter the country. They must demonstrate to the satisfaction of a consular officer, *inter alia*, that they do not pose a security threat, they are not likely to remain in the United States at the expiration of their authorized stay, and they are unlikely to be a public charge. *See generally* 8 U.S.C. § 1202; 8 U.S.C. § 1182. And, even after they are vetted by a consular officer, they must go through Customs and be formally admitted before they may lawfully enter. Customs confirms admissibility and checks to ensure that the alien is not bringing anything unlawful into the United States, such as drugs or weapons, and they obtain biometrics data of the alien to confirm identity. 8 C.F.R. § 235. On the other hand, aliens without inspection and admission (i.e. who enter the country unlawfully) do not undergo the vigorous vetting process required for lawful admission. They have not proven that they are unlikely to be a public-safety threat or a public charge. The government has not had the opportunity to confirm their identities

and criminal history through the consular process. Even worse, if they are not caught at the border, they could bring in various illicit items into the country, such as drugs, or be otherwise engaged in unlawful activity, such as trafficking. There is no doubt that aliens like Petitioner who fail to undergo consular processing are not similarly situated to those who do.

But even if this Court were to find that both groups of aliens are similarly situated, Petitioner's claim would still fail because the distinction easily passes rational-basis review. Because Petitioner challenges a statute that distinguishes detention procedures among different classes of aliens, "equal protection review is necessarily narrow; for 'over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.'" *Malagon de Fuentes*, 462 F.3d at 507 (quoting *Fiallo v. Bell*, 430 U.S. 787 (1977)); *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."). Rational-basis review presumes constitutional validity. *Flores-Ledezma v. Gonzales*, 415 F.3d 375, 381 (5th Cir. 2005). "Under rational basis review, differential treatment 'must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.'" *Madriz-Alvarado*, 383 F.3d 321, 332 (5th Cir. 2004) (quoting *FCC v. Beach Commc'ns*, 508 U.S. 307 (1993)).

As the Fifth Circuit has already explained, Congress sought to eliminate the preferential treatment of aliens who violate the country's immigration laws. *Buenrostro-Mendez*, at 508. This, by itself, is a rational basis for disparate treatment: aliens, like Petitioner, violated the immigration statutes by bypassing the inspection-and-admission requirements.

Additionally, because of the vetting that admitted aliens must undergo before they may enter the United States, Congress rationally determined that they may be granted bond while they

await the conclusion of their removal proceedings. A consular officer has already confirmed their identity, reviewed their history, and determined that they do not pose a threat to the United States. On the other hand, as to aliens who have not been inspected and admitted, the government often does not have sufficient information about the alien to determine whether they will be a security threat. It is similar to a homeowner: if a homeowner invited a friend over for dinner but that friend stayed beyond the dinner hour, the homeowner could use her discretion in determining whether to allow the friend to stay in her house longer. However, if a stranger broke into the homeowner's house, the homeowner would rationally treat that person differently because they do not know them. Because the United States has not vetted aliens who entered the country unlawfully, Congress rationally determined that these aliens should be detained for public-safety reasons while the government vets them via removal proceedings.

STAYS AND ORDERS NOT TO TRANSFER

The Court in this case entered an order staying removal. That order should be vacated. The Fifth Circuit recently stated in an unpublished decision that district courts lack jurisdiction to enter stays of removal. *Imran v. Harper*, No. 25-30370, 2026 WL 93131 (5th Cir. 2026).

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-Mendez*. The orderly legal administration of this issue is now properly before the federal appellate courts. This Court can trust that the issue will be decided in accordance with proper jurisprudence and the expedience that questions of detention deserve. Respondents respectfully request that the Court deny this petition.

Dated: March 9, 2026

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