

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DIVISION**

Fabricio Benitez Pena,

Petitioner,

v.

Pamela Bondi, Attorney General of the United
States et al,

Respondents.

Civil Action No. 1:26-cv-00429-RP

RESPONSE TO AMENDED 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 an "arriving alien" who is ineligible for bond from an immigration judge by both statute and regulation.** See ECF No. 1 at 33 (Notice to Appear (NTA) charging Petitioner as an arriving alien); 8 C.F.R. § 1003.19(h)(2)(i); *see also Goguev v. Noem*, et al, SA-25-CA-01593-XR (W.D. Tex. Jan. 13, 2026) (Rodriguez, J.) (denying habeas petition to an arriving alien).

INTRODUCTION

The Immigration and Nationality Act, as amended, provides that all aliens who arrive in the United States without inspection or admission and who seek asylum "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B). Detention is mandatory, so they are not entitled to bond

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

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

hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 297, 300 (2018).

As the Supreme Court held, “Plaintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme.” *Connecticut 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)(1) 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).

BACKGROUND

Petitioner claims he is detained in ICE custody in Taylor, Texas. ECF No. 7 at ¶ 8. Petitioner is charged as an arriving alien after he applied for admission on or about March 30, 2022. *Id.* at 33. On that same day, Petitioner was released from custody on parole for a period of one year. *Id.* at 30. At the end of January 2026, Petitioner was apprehended by ICE and taken into custody. *Id.* ¶ 24. Petitioner is in removal proceedings and has an immigration hearing on March 24, 2026. *See* <https://acis.eoir.justice.gov/en/caseInformation> (last accessed Mar. 9, 2026). Petitioner argues that his mandatory detention under § 1225(b)(2)(A) violates the Due Process Clause. ECF No. 7 ¶¶ 71–80.3 He also claims that the *Maldonado Bautista* litigation provides him relief. *Id.* ¶¶ 61–63.

PETITIONER IS AN ARRIVING ALIEN

The term “arriving alien” means an applicant for admission coming or attempting to come into the United States at a port-of-entry” 8 C.F.R. § 1001.1(q). Arriving aliens are inspected immediately upon arrival in the United States and, unless “clearly and beyond a doubt entitled to be admitted,” are placed in “removal proceedings to determine admissibility.” *Clark v. Martinez*, 543 U.S. 371, 373 (2005) (quoting 8 U.S.C. § 1225(b)(2)(A)).

Since Petitioner presented himself for inspection at the port of entry, he is an arriving alien. 8 C.F.R. § 1001.1(q). Pursuant to 8 U.S.C. § 1225(b)(2)(A), arriving aliens are to be detained unless released by ICE on a discretionary parole. 8 C.F.R. § 1235.3(c); *Clark*, 543 U.S. at 373 (explaining that detention of an “alien arriving in the United States” is “subject to the Secretary’s discretionary authority to parole” him into the United States); *see also* 8 U.S.C. § 1182(d)(5)(A). Whether the government decides to parole an arriving alien or keep him detained, the regulations state that an immigration judge does not have authority to review the custody determination of an

arriving alien in removal proceedings. 8 C.F.R. § 1003.19(h)(2)(i)(B). This regulation pre-dates *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) and is well-settled law. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see also Garibay-Robledo v. Noem*, --- F.Supp.3d ---, No. 1:25-CV-177-H, 2026 WL 81679 at *4 (N.D. Tex. Jan. 9, 2026). As an arriving alien, the regulations bar Petitioner from seeking bond from an immigration judge. *See Buenrostro*, 2026 WL 323330 at *1 (applying more widely to all applicants for admission, which necessarily includes arriving aliens).

Petitioner contends that he is not an “arriving alien” subject to detention under 8 U.S.C. 1225(b)(1) because he entered as a minor with his mother and was paroled. ECF No. 1, ¶ 22. However, Petitioner fails to acknowledge that his parole expired³ one year after it was issued; thus, Petitioner was no longer paroled as of March 2023. *See* ECF No. 7 at 36. Once parole expires, the alien is returned to the status he was in before he was paroled. 8 U.S.C. 1182(d)(5); *see also Karastoian v. Bondi*, No. 5:25-CV-00233, 2026 WL 194391, at *3 (S.D. Tex. Jan. 22, 2026) (“However, humanitarian parole does not change arriving alien status. Once the purpose of parole has been served or the parole period expires, the noncitizen is returned to custody and continues to be classified as an arriving alien.”) (citations omitted). In addition, Petitioner’s status as an accompanied minor when he entered the United States does not change his current status as an arriving alien; no legal authority prohibits accompanied minors (*i.e.* minors who enter with a parent or legal guardian) from being classified as “arriving aliens,” regardless of the relief that they or their family members seek. *See, e.g.,* 8 U.S.C. § 1225 (no distinction for accompanied alien

³ Petitioner appears to argue that his parole was unlawfully revoked. ECF No. 1, para.58. Petitioner’s parole was not revoked; it expired. *See* ECF No. 7 at 36. Thus, to the extent that Petitioner argues that his parole was unlawfully revoked, this claim must fail.

minors). Petitioner cites no authority to the contrary. Thus, Petitioner is an “arriving alien” subject to mandatory detention under 8 U.S.C. § 1225(b)(1).

DUE PROCESS CLAIMS

- a. **As an “arriving alien,” Petitioner is only entitled to the processes authorized by Congress, which do not include a bond hearing.**

As an arriving alien who has not been inspected or admitted, Petitioner is “treated . . . as if stopped at the border” and thus “only ha[s] rights regarding admission that Congress has provided by statute.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020); *see also Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015) (for noncitizen who “never technically ‘entered’ the United States,” “procedural due process is simply whatever the procedure authorized by Congress happens to be”). Accordingly, as the Supreme Court held in *Thuraissigiam*, applicants for admission are entitled only to the protections set forth by statute in the INA. *Id.* It follows that Petitioner’s detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) does not violate due process because the “procedure authorized by Congress” in 8 U.S.C. § 1225(b)(1)(B)(iii) constitutes procedural “due process.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Thuraissigiam*, 140 S. Ct. at 1983; *De La Cruz Bejarano v. Robbins*, No. 1:25-CV-01537, 2025 WL 3187623, at *2 (E.D. Cal. Nov. 14, 2025) (finding that detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii) does not violate due process); *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151, 2023 WL 3103811, at *4 (S.D. Cal. Apr. 25, 2023) (same). And because 8 U.S.C. § 1225(b)(1)(B)(ii) does not “say[] anything whatsoever about bond hearings,” petitioner is not entitled to one. *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (declining to construe Section 1225(b)(1) as implicitly requiring a limitation on the duration of detention); *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); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.) ((holding that Petitioner is an applicant for admission despite his prior bond and that his detention does not violate Due Process because it is limited to the conclusion of his removal proceedings).

b. Procedural due process does not entitle Petitioner to a bond hearing to determine facts that are irrelevant to § 1225(b)(1).

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 requested that this Court find that due process requires additional procedures outside of what is provided by Congress in the INA 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)(1) 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 arriving aliens, 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)(1), which subjects Petitioner to mandatory detention based on Petitioner’s uncontested status as an arriving alien 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). 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.

c. 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.*

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 he 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 in the United States was unlawful. The moment of entry into the United States constituted a criminal act under 8 U.S.C. § 1325(a). 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—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 expedited removal proceedings, and is receiving all the process due under the statute; that is "due process of law." *Thuraissigiam*, 591 U.S. at 138.

d. 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 expedited-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)(1) 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)(1). Petitioner does not allege that removal is “unattainable,” so detention under § 1225(b)(1) 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*, 2026 WL 323330, at *9 (quoting 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)).

Nor is detention under § 1225(b)(1) “indefinite” or “permanent.” *Demore*, 538 U.S. at 530. As with § 1226(c), detention under § 1225(b)(1) lasts only for the duration of Petitioner’s expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (“Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”); see *Jennings*, 583 U.S. at 302-303. While the immigration proceedings remain pending, Petitioner’s detention under

§ 1225(b)(1) 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.

APPLICATION OF BAUTISTA

To the extent Petitioner invokes the December 18, 2025 partial final judgment in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92, it is neither binding nor applicable here and presents no basis for granting the petition. First, *Bautista* involves aliens who are detained under 8 U.S.C. 1225(b)(2)—not 1225(b)(1). *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025), *judgment entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). Thus, Petitioner is not a *Bautista* class member. Second, the *Bautista* declaratory judgement is stayed with respect to petitioners and custodians outside the Central District of California. *See Maldonado Bautista v. Noem*, No. 26-1044, Dkt. No. 5.1, at 1 (9th Cir. Mar. 6, 2026) (granting 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). 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. Third, the *Bautista* vacatur and declaratory judgement 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. Buenrostro-Mendez*, at 498-508.

**DEFENDANTS ARE NOT JUDICIALLY ESTOPPED FROM DETAINING
PETITIONER UNDER 8 U.S.C. 1225(B)(1)**

Judicial estoppel applies in civil cases where there is “multiple litigation” between the “same parties,” and one party proffers an argument that is inconsistent with its position in “the prior litigation.” *Retro Metro, LLC v. City of Jackson by & through City Council*, 147 F.4th 551, 558 (5th Cir. 2025) (citation omitted); *See also Sinclair Refining Co. v. Jenkins Petroleum Process Co.*, 99 F.2d 9, 13 (5th Cir.1938), *cert. denied*, 305 U.S. 659 (1939) (“The general rule is that one may not to the prejudice of the other deny any position taken in a prior judicial proceeding between the same parties or their privies involving the same subject matter, if successfully maintained”).

Here, Petitioner points to no federal-court proceeding between the same parties, *i.e.* the government and Petitioner, wherein the government asserted that Petitioner was not subject to detention under 8 U.S.C. 1225(b)(1). Nor does Petitioner cite any federal-court litigation in which the government argued that Petitioner could be released or provided a bond hearing. Thus, the government is not estopped from arguing now that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and is ineligible for a bond hearing.

Even if judicial estoppel were applicable here (it is not), “there is no indication in the authorities that it is constitutionally mandated.” *Nichols v. Scott*, 69 F.3d 1255, 1272 (5th Cir. 1995). On the other hand, complying with the lawful statutes, such as 8 U.S.C. § 1225(b)(1)—which requires mandatory detention of arriving aliens like Petitioner—is constitutionally mandated. *United States v. Texas*, 599 U.S. 670, 678 (2023) (“Article II of the Constitution . . . provides that the President ‘shall take Care that the Laws be faithfully executed.’”) (quoting U.S. Const., Art. II, § 1, cl. 1; § 3). Thus, even if this Court were to find that judicial estoppel is

applicable, it should decline to apply it here where the Executive Branch's decision to detain Petitioner "faithfully execute[s]" the mandatory-detention provision in 8 U.S.C. 1225(b)(2).

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.

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Respectfully submitted,

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