UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Elmer Omar Chaj Pastor, Petitioner, v. Mary De Anda-Ybarra, *et al.*, Respondents.	Civil Action No. 3:26-CV-02171-KC

RESPONSE TO PETITION

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STATEMENT OF ISSUES

1. Whether mandatory detention under 8 U.S.C. § 1225(b) is unconstitutional as applied to petitioner.

2. Whether the writ of habeas corpus under 28 U.S.C. § 2241 provides any relief other than release.

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 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. The Eighth Circuit also recently decided consistent with *Buenrostro-Mendez* in *Joaquin Herrera Avila*, 170 F.4th 1128 (8th Cir. Mar. 25, 2026).[3] The Eighth Circuit's decision further supports the Government's arguments.

I. PRECEDENTIAL STAY BARRING RELIEF ON DUE PROCESS GROUNDS

The Court should either deny habeas relief on due process grounds or hold in abeyance any pending habeas petition challenging 1225(b)(2)(A) detention on due process grounds until the en banc Court's decision in *Sosnava Rodriguez*. The en banc Court's published order is binding on district courts with respect to due process claims challenging detention under 8 U.S.C. § 1225(b)(2)(A). *See Trump v. Boyle*, 145 S. Ct. 2653 (2025). A Court within the Western District of Texas has adopted the Fifth Circuit's precedential stay as have other district courts. *See Palles Franco v. Warden*, No. 5:26-CV-1976-XR, ECF No. 10 (W.D. Tex. Jul. 22,

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

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

3 *Contra Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1060-1062 (7th Cir. 2025) (concluding that the government was unlikely to prevail on the merits that petitioner was subject to mandatory detention under § 1225(b)(2)(A)).

2026) ("In an Order filed on July 21, 2026, the U.S. Court of Appeals ***stayed all judges in this circuit from granting any habeas petitions asserting due process claims*** until such time as the Fifth Circuit has decided *Sosnava Rodriguez v. Ortega en banc*.") (emphasis added) *see also Molina Marquez v. Catletti, et al.*, No. 26-390, 2026 WL 2075587, at *1 (W.D. La. July 17, 2026) ("In the Court's considered judgment, the Fifth Circuit's forthcoming en banc decision in *Sosnava Rodriguez* regarding the scope and application of the due process clause will likely be dispositive in this matter. Accordingly, the Court declines to adopt the R&R at this time and stays this matter until *Sosnava Rodriguez* has been resolved.").

A Fifth Circuit split panel held 8 U.S.C. § 1225(b)(2)(A) unconstitutional for all but the first 90 days of detention. But the full Court sua sponte ordered that the consolidated appeals be reheard en banc and vacated the panel opinion. *See Sosnava Rodriguez v. Ortega*, No. 26-50183, 2026 WL 1906557 (5th Cir. July 2, 2026), *reh'g en banc granted, opinion vacated*, No. 26 50183, 2026 WL 2014647 (5th Cir. July 10, 2026). The Fifth Circuit has set an en banc briefing schedule with Appellants' brief due August 10, 2026, and Appellees' brief due September 9, 2026; en banc argument is calendared for September 24, 2026.

Even if this Court were to grant habeas relief, it must immediately stay any such order pending appeal. The Fifth Circuit sua sponte granted rehearing en banc in *Rodriguez v. Ortega* and vacated the panel opinion. Following the Fifth Circuit's en banc grant, Appellants moved for a precedential order staying the district courts' judgments pending rehearing by the full Court. That relief, Appellants argued, was necessary both to rectify the lower courts' facial invalidation of § 1225(b)(2)(A) and to alleviate the crushing burden being imposed on district courts and U.S. Attorneys' Offices by the thousands of habeas petitions that have been filed this year alone. *Sosnava Rodriguez*, No. 26 50183, Dkt. 178-1, at 24-28. In support of its argument that irreparable harm would result if a stay was not granted, and that the public interest and balance of harms

strongly favored a stay, *see Nken v. Holder*, 556 U.S. 418, 435 (2009), Appellants provided declarations from the U.S. Attorneys for the Eastern and Western Districts of Texas, the Southern District of Mississippi, and the Acting U.S. Attorney for the Southern District of Texas. *Sosnava Rodriguez,* No. 26 50183, Dkt. 178-2, at 72-91.

On July 21, 2026, the Fifth Circuit, in a published order issued by the en banc Court, granted "Appellants' opposed motion for stay of the district court judgments pending rehearing en banc[.]" *Sosnava Rodriguez v. Ortega*, No. 26 50183, --- F.4th ---, 2026 WL 2104747, at *1 (5th Cir. July 21, 2026). The Court did so unreservedly, and over a fulsome opposition filed by Appellees, *Sosnava Rodriguez*, No. 26 50183, Dkt. 192-1, indicating its acceptance of Appellants' arguments, both as to their eventual likelihood of success on the merits and as to the remaining equitable factors relevant to a stay of removal. *See Sosnava Rodriguez*, 2026 WL 2104747, at *1. But the full Court went further and issued a "published order" staying the grants of habeas relief in the three consolidated appeals. *See Rodriguez v. Ortega*, 2026 WL 2104747 (5th Cir. July 21, 2026) ("Appellants' opposed motion for stay of the district court judgments pending rehearing en banc is GRANTED.").

The *Rodriguez* published stay order is binding on this Court in this posture. In *Trump v. Boyle*, 145 S. Ct. 2653 (2025), the Supreme Court stayed a district court injunction based on its prior stay order in *Trump v. Wilcox*, 145 S. Ct. 1415 (2025). The Court explained that "[a]lthough our interim orders are not conclusive as to the merits, they inform how a court should exercise its equitable discretion in like cases." *Id.* at 2654. Because *Boyle* did not "differ from *Wilcox* in any pertinent respect," the Court held that the disposition of the stay application was "squarely controlled" by *Wilcox*. *Id.* Multiple times after *Boyle*, the Supreme Court has applied this rule to enjoin district court orders that entered relief in conflict with one of the Court's stay orders. *See*

Dep't of Homeland Sec. v. D. V. D., 145 S. Ct. 2627 (2025); *Nat'l Institutes of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658 (2025).

The principle from *Boyle* applies fully here. The *Rodriguez* published stay order necessarily "reflect[s]" the en banc Fifth Circuit's "judgment," *Boyle*, 145 S. Ct. at 2654, that the Government is likely to succeed in its argument that detaining aliens, like Petitioner, under 8 U.S.C. §1225(b)(2)(A) does not violate the Due Process Clause, that the Government will suffer irreparable harm if habeas relief is ordered, and the balance of harms and public interest favor a stay pending en banc review. As Justice Kavanaugh has explained, a higher court's interim stay order is a "form of precedent … that requires a temporary injunction" such as "an injunction pending appeal … in like circumstances." *Trump v. Illinois*, 146 S. Ct. 432, 436 n.3 (2025) (Kavanaugh, J., concurring in the judgment).

This case is materially indistinguishable from *Rodriguez*. Here, as there, Petitioner indisputably falls within the plain terms of §1225(b)(2)(A). He is a native and citizen of Guatemala who entered the U.S. unlawfully on or about ten years ago, was encountered by ICE officials on or about May 25, 2026, and taken into ICE custody. Here, as there, the court has been asked to hold that detention under §1225(b)(2)(A), without a bond hearing, violates the Due Process Clause. *See generally* ECF No. 3. And here, as there, a grant of habeas relief would cause irreparable harm to the Government. Mot. for Stay 24-28, *Rodriguez v. Ortega*, No. 26-50183 (July 10, 2026). Like the orders in *Rodriguez*, an order granting Petitioner's habeas petition on due process grounds is tantamount to holding §1225(b)(2)(A) facially unconstitutional, which is *per se* irreparable harm. *Trump v. CASA, Inc.*, 606 U.S. 831, 860-61 (2025) (""Any time a [sovereign] is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Id.* at 860-61 (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)). And that harm is even more acute in the immigration context, where the Constitution

assigns preeminent power to the political branches, *see Galvan v. Press*, 347 U.S. 522, 531 (1954), and envisions that "the Government's political departments [will be] largely immune from judicial control," *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (citation omitted).

The Government made these exact arguments to the en banc Fifth Circuit, *see* Mot. for Stay 24-28, and the Fifth Circuit granted the Government's motion in an extraordinary, published order. That order "reflect[s]" the Fifth Circuit's "judgment" that habeas relief for aliens in Petitioner's circumstances should be stayed pending appellate review is binding on this Court. *Boyle*, 145 S. Ct. at 2654. That determination "squarely controls" here. *Id.*

A stay of currently pending proceedings is additionally appropriate because the en banc Court's decision as to the constitutionality of the detention of aliens covered by § 1225(b)(2)(A) will be controlling and dispositive of thousands pending habeas petitions in this Circuit. *See, e.g., Coker v. Select Energy Services,* LLC, 161 F.Supp.3d 492, 495 (S.D. Tex. 2015) ("Staying a case pending in a district court in the Fifth Circuit is appropriate when the district court anticipates that the Fifth Circuit will issue a ruling in an unrelated case that addresses unresolved issues in the stayed case.").

The Fifth Circuit recently issued a new order implementing the *Rodriguez* stay and clarifying its breadth and effect. *Tolentino-Rodriguez v. Blanche,* 26-20424 (5th Cir. 2026); *see also* Exh. A, Order. In that decision, Respondents moved to stay the enforcement of the district court judgments in three separate cases out of the Southern District of Texas. Exh. B (Motion for stay). Those three cases had similar salient facts and arguments to those presented by Petitioner. *Id.*

Of note are the facts and legal reasoning behind each of the underlying district court decisions. Two of the underlying cases involved district court orders which attempted to evade the controlling effect of *Rodriguez* by concluding that the decisions in *Rodriguez* were based on

procedural due process grounds and therefore the Court could grant the petition based on substantive due process. Exh. B (Motion for Stay) at 10-12. Respondents argued in *Tolentino* that the *Rodriguez* stay order still forecloses relief on substantive due process grounds. Petitioners in *Rodriguez* had a substantive due process claim, they asserted it, and the en banc Court issued the stay. *Id.* at 13-22.

The third case involved an alien who had been paroled into the United States but was subsequently re-detained years later. Exh. B (Motion for Stay) at 10-12. The district court held that re-detaining that petitioner without a bond hearing was a distinguishing fact which allowed the court to evade the stay in *Rodriguez*. Indeed, that fact pattern was not true of any of the *Rodriguez* petitioners.

In the *Tolentino* motion, Respondents also raised the notion to the Fifth Circuit that some district courts have concluded the *Rodriguez* stay only precludes facial challenges to §1225(b)(2)(A). Exh. B (Motion for Stay) at 19.

Respondents asked that the Fifth Circuit stay those cases in a written opinion that confirms the controlling effect of the *Rodriguez* order. *Id.* at 30. On August 27, 2026, the Fifth Circuit issued an order granting Respondents' motion and thereby confirming that the intent of the precedential stay issued in *Rodriguez* was to apply to **all** cases in the Fifth Circuit, cases involving habeas litigation surrounding mandatory detention under 8 U.S.C. § 1225 (b)(2)(A), and due process concerns. Exh. A (Order). *A fortiori*, the *Rodriguez* stay order applies to both procedural and substantive due process arguments regarding 8 U.S.C. § 1225(b)(2)(A), cases in which petitioners are released and subsequently re-detained, and as applied challenges.

Admittedly, the *Rodriguez* stay order does not preclude this Court from adjudicating habeas petitions or prevent this court from entering final judgments. *Esquivel v. Mullin,* 2026 WL 2322821, at *2 (W.D. Tex. Aug. 10, 2026). Rather, the *Rodriguez* stay order mandates that district

courts that grant habeas relief on due process grounds at issue in *Rodriguez* stay the execution of such orders. *Id; Rodrguez v. Ortega,* 2026 WL 2104747, at *1 (5th. Cir. July 21, 2026).

The Fifth Circuit reinforced this reasoning in *Tolentino-Rodriguez*. The Fifth Circuit does not commonly publish stay orders, because generally said orders are only meant to affect the judgment in a particular case. Publication is not necessary. A published stay order is intended to give the stay not just persuasive but *precedential controlling* effect in other cases.

The Fifth Circuit's decision to issue a stay in *Tolentino-Rodriguez* explicitly clarifies that the Fifth Circuit's intent behind the application of the *Rodriguez* stay order is precedential and should apply to other cases addressing the same legal issues. The Rodriguez stay applies to the instant case. Should the Court grant habeas relief, the order should be stayed pending the *Rodriguez* en banc decision.

In the event this Court declines to dismiss or hold this petition in abeyance, a full response is provided below.

II. 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. Like the Fifth Circuit in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), the Eighth Circuit in *Avila* held that aliens, like Petitioner[s], who are "applicant[s] for admission" under 8 U.S.C. §1225(a)(1) are subject to mandatory detention under §1225(b)(2)(A). *Avila*, 170 F.4th 1128, 1137.

Despite *Buenrostro-Mendez* and *Avila*, 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* and *Avila*. Post-*Buenrostro-Mendez* and *Avila*, 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 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.

III. BACKGROUND

Petitioner is a native and citizen of Guatemala who entered the United States unlawfully allegedly on or about ten years ago. ECF No. 3, at pg. 3.[4] He was recently encountered by immigration officials on or about May 25, 2026, pursuant to a vehicle stop, was processed with a Notice to Appear (NTA) and taken into ICE custody. Exh. C, I-213, at pgs. 3, 5; Exh. D, NTA. Petitioner is scheduled to appear before an immigration judge (IJ) for an in-person master hearing on September 8, 2026. *See* EOIR Automated Case Information, https://acis.eoir.justice.gov/en/caseInformation (last accessed on August 28, 2026).

Petitioner fails to acknowledge 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

[4] All page citations to the petition refer to the page numbers assigned by the Court's CM/ECF system, rather than the internal pagination of the cited document.

individualized custody determination is unlawful and unconstitutional. *See generally* ECF No. 3.

IV. 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 and the Eighth Circuit. *Buenrostro-Mendez*, 166 F.4th 494, 498; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025); *Joaquin Herrera Avila*, 170 F.4th 1128 (8th Cir. 2026).

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.*

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. 166 F.4th at 506. "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 508.

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 498.

The Fifth Circuit is not the only court to so hold. The Eighth Circuit's decision in *Avila* also supports the Government's position. *Avila*, 170 F.4th 1128.

First, *Avila* held that "the ordinary meanings of the phrases 'applicant for admission' and 'seeking admission' are the same." *Id.* at 1134. In so holding, the Eighth Circuit explained that the text and statutory context of §1225(b)(2)(A) foreclose interpreting "seeking admission" to refer to a "present tense, affirmative action." *Id.* In addition, the Eighth Circuit correctly held that the Government's interpretation does not render any portion of §1225(b)(2)(A) surplusage. *Id.* Second, *Avila* held that the Government's interpretation is consistent with the "statutory purpose of §1225" of "placing all aliens 'on equal footing'" in immigration proceedings. *Id.* at 1136. By contrast, Avila's interpretation—like Petitioners' here—"contradicts the statute's goal." *Id.* Third,

Avila rejected Avila's reliance on language in *Jennings v. Rodriguez*, 583 U.S. 281 (2018)—also relied on by Petitioners here—which "was offered only as general background information" and "does not preclude other statutory provisions—such as §1225(b)(2)(A)—from also applying" to aliens inside the country. *Id.* at 1135. Fourth, *Avila* correctly held that prior administrations' decisions to "not exercise their full authority under §1225" does not justify departing from the statute's text, because "'authority granted by Congress cannot evaporate through lack of administrative exercise.'" *Id.* at 1137. Finally, *Avila* held that the Government's reading of §1225(b)(2)(A) does not render §1226(c) superfluous. *Id.* Although §1225(b)(2)(A) and §1226(c) may overlap, the Eighth Circuit correctly held that such overlap does not give "license to rewrite or eviscerate" clear statutory text. *Id.*

District courts around the country also 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 applicants 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 applicant 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 applicant 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 Enf't 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.

V. 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).

To the extent Petitioner raises due process claims those 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 Cour 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).

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, 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 change that, if ordered removed, the aliens will be successfully removed." 538 U.S. at 528. As *Buenrostro-Mendez* recognized, "the Department of Justice Inspector General found in 1997 that 'when aliens are released from custody, nearly 90 percent abscond and are not removed from the United States," and "[t]hat situation exists today at a much larger scale." *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 applicants 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.

VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

"A person seeking habeas relief must first exhaust available administrative remedies." *Hinojosa v. Horn*, 896 F. 3d 305, 314 (5th Cir. 2018) (per curiam) (citing *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (per curiam)). Exhaustion has been a long-standing prerequisite to habeas relief. *Id.*

There are approximately 3.74 million cases pending in immigration court. *See*, https://www.justice.gov/eoir/pr/eoir-announces-significant-immigration-court-milestones (Sept. 4, 2025). Federal district courts are not intended nor equipped to be the reviewing court for all immigration bond determinations or decisions related to the institution of removal proceedings. 8 U.S.C. § 1226(e) (district courts do not have jurisdiction to review discretionary decisions made by immigration judges regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole). "Challenges to removal proceedings, the government's evidence, and the merits of asylum claims are properly addressed to the immigration court and should be administratively exhausted before presenting in district court. *Hinojosa*, 896 F. 3d at 314; *see Cortez v. Lynch*, No. 1:25-CV-822, 2026 WL 82039 (S.D. Ohio Jan. 12, 2026) (McFarland, J.) (declining to review Petitioner's detention-based claims due to his failure to exhaust administrative remedies); *Tecum Pastor v. Dir. of Detroit Field Off.*, No. 4:25-CV-02761, 2025 WL 3746495 (N.D. Ohio Dec. 24, 2025) (Calabrese, J.) (holding that Petitioner must first pursue challenge before BIA for exhaustion and that such exhaustion is not futile); *Bartolon v. Bondi*, No. 1:25-CV-747, 2025 WL 3674604 (S.D. Ohio Dec. 18, 2025) (McFarland, J.) (holding that Petitioner's failure to exhaust claims with BIA precluded judicial review of habeas claims); *Garibay-Robledo*

v. Noem, No. 1:25-CV-177-H, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025), *reconsideration denied*, No. 1:25-CV-177-H, 2025 WL 3264478 (N.D. Tex. Oct. 24, 2025) (Hendrix, J.) (holding that Petitioner does not demonstrate grounds for excusing exhaustion and must first advance his request for relief to BIA).

Petitioner has either chosen not to seek bond before the immigration court, or Petitioner has received a bond determination from an immigration judge that Petitioner contests. Either way Petitioner must first seek relief with the immigration court or the BIA, fully exhausting administrative remedies before coming to this Court.

VII. APA CHALLENGES MAY NOT BE ASSERTED AS HABEAS PETITIONS

In this proceeding, Petitioners expressly challenge their civil detention. *See, e.g.*, ECF No. 3. To the extent Petitioner raises additional arguments under the APA, such arguments are not cognizable in habeas, and 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 is in removal proceedings, and thus the immigration court and the BIA retain 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).

Similarly, to the extent Petitioner's claims are challenging detention under the INA and its regulations, such is also without merit. *See* ECF No. 3. Because Petitioner is an applicant for admission as defined by 8 U.S.C. § 1225(a)(1) and binding Fifth Circuit precedent, Petitioner is subject to mandatory detention without bond under § 1225(b)(2)(A). *See Chi v. Warden, Bluebonnet Det. Facility*, No. 26-cv-67, 2026 WL 1062625 at *3 (N.D. Tex. Apr. 13, 2026) (holding INA claim foreclosed) (citing *Buenrostro-Mendez*, 166 F.4th at 498).

Petitioner also maintains that his continued detention violates the *Accardi* Doctrine.[5] ECF No. 3, at pg. 16. Under the *Accardi* doctrine, the government and its agencies are required to follow their own rules and regulations. *Accardi*, 347 U.S. at 266-68. To the extent that such regulations contradict the plain text of § 1225(b)(2), the statute governs because "a valid statute always prevails over a conflicting regulation." *See Rodriguez-Hidalgo v. Noem*, 4:25-cv-05730 (S.D. Tex. Jan. 9, 2026) (quoting *Duarte v. Mayorkas*, 27 F.4th 1044, 1060 n.13 (5th Cir. 2022) (citations omitted)); *see also Chi v. Warden, Bluebonnet Det. Facility*, No. 26-cv-67, 2026 WL 1062625 at *6 (N.D. Tex. Apr. 13, 2026) (holding *Accardi* doctrine claim based on violation of § 287.8(c) not cognizable in habeas); *Carnesolta v. Tate*, No. 26-cv-1006, 2026 WL 948727 at *3-4 (S.D. Tex. Apr. 8, 2026) (finding habeas relief unavailable to remedy warrantless arrest); *Navdeep v. Warden, ERO El Paso Camp East Montana Detention Center*, No. 3:26cv829-KC (W.D. Tex. Apr. 23,

[5] *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

2026) (dismissing petitioner's *Accardi* doctrine claim for warrantless arrest). Thus, Petitioner's argument is foreclosed and he has not shown an entitlement to habeas relief.

VIII. FOURTH AMENDMENT CLAIMS ARE NOT COGNIZABLE IN HABEAS

Petitioner raises a Fourth Amendment due process argument. *See generally* ECF No. 3. Petitioner argues that the circumstances of Petitioner's initial arrest violated the Fourth Amendment. *See id.* These claims are without merit.

First, the basis of Petitioner's argument relating to the circumstances of his *initial* arrest is not cognizable in this habeas petition, which vests jurisdiction in this Court solely to review the legal propriety of Petitioner's *current detention*. The question in habeas proceedings is not whether detention was unlawful in the past. "[T]he great and central office of the writ of habeas corpus is to test the *legality of the prisoner's current detention*." *Walker v. Wainwright*, 390 U.S. 335, 336, (1968)(emphasis added).

In habeas, the Court does not review all possible previous errors, it asks only whether the confinement is justified. *See Lane v. Williams*, 455 U.S. 624, 631, (1982) (explaining that where detainment or its consequences have expired, a habeas petition is moot); *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973) (distinguishing between backward-looking remedies and habeas); *Lindh v. Murphy*, 521 U.S. 320, 342, (contrasting backward-looking actions like damages with "the writ of habeas corpus is prospective in nature," and it "does not compensate for past wrongful incarceration ...") (Scalia, J., dissenting). Whatever the circumstances and facts before now, they are thus irrelevant to resolution of the legality of the current detention.

IX. 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.

X. STAYS AND ORDERS NOT TO TRANSFER

The Court in this case should not enter an order staying removal. Any such 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).

XI. CONCLUSION

This Court should follow the Fifth Circuit's reasoning in *Buenrostro-Mendez* and the Eighth Circuit's reasoning in *Avila*. Respondents respectfully request that the Court deny this petition.

Dated: August 28, 2026

Respectfully submitted,

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

Certificate of Service

On or about August 28, 2026, I directed a copy of this filing to be mailed via US Certified Mail to the Pro Se Petitioner at the address on file.

Elmer Omar Chai Pastor
[redacted]
El Paso Service Processing Center
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Petitioner PRO SE

By: */s/ Deborah L. Fischer*
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