

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

CHRISTIAN ANDRES PENUELA
CARLOS,

Petitioner,

v.

PAMELA BONDI, KRISI NOEM, TODD
LYONS, ALEXANDER SANCHEZ

Respondents.

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Case 9:25-cv-249-MJT-ZJH

**FEDERAL RESPONDENTS' OBJECTION TO MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Petitioner, a citizen of Columbia, alleges that he has lived in the United States since July 2023 when he arrived at or near Calexico, California. ECF No. 2, ¶¶ 1, 17; *see also* ECF No. 7-1. He was not admitted or paroled after inspection by an Immigration Officer. ECF No. 7-1 (Notice to Appear stating that Petitioner is in removal proceedings under INA 240 because he is “an alien present in the United States who has not been admitted or paroled.”).

On May 22, 2025, the Elizbeth (New Jersey) Police Department arrested Petitioner and charged him with simple assault-purposely/knowingly causing bodily injury in violation of New Jersey Penal Code 2C-12-1A(1). ECF No. 3, at 418. The arrest affidavit provided:

AC stated earlier this morning her ex-boyfriend CP stayed the night at her residence where she resides with his family. Earlier this morning AC asked CP to watch their two children [redacted] and [redacted] while she rested due to a severe migraine. CP began to argue with AC. AC ignored CP and grabbed her child [redacted] to change his diaper and placed him on the bed. At that moment CP went towards the bed and charged AC. AC stepped back and fell onto the bed when CP mounted her, grabbed her face with force and placed his knee over her legs to hold her down. I observed cuts on her lip and gums due to pressure against her braces. CP stood up and when AC tried to stand, he pulled her leg and threw two punches to her right upper thigh causing minor bruising. Once AC was able to stand he grabbed her by the right arm as she started to tell him I'm going to call the cops on you CP let go and left the house.

ECF No. 3, at 422.

While in custody at the Union County Jail, Petitioner was served with a Warrant for Arrest. ECF No. 7-2. On May 23, 2025, a Notice of Custody Determination was executed finding that Petitioner would be detained by the Department of Homeland Security. ECF No. 7-3. Ultimately, the state charges against Petitioner were dismissed, and the record was expunged on July 14, 2025. ECF No. 1 425–29. On July 16, 2025, Petitioner was served with a Notice to Appear with the Immigration Court. ECF No. 7-1.

On August 15, 2025, Petitioner sought a custody redetermination before an Immigration Judge (“IJ”). On August 19, 2025, the IJ denied his request, finding that it lacked jurisdiction to consider the issue. ECF No. 3, ¶ 30; *see also* ECF No. 7-4. On August 28, 2025, Petitioner appealed the Bond Order arguing that the IJ erred in denying a bond and in finding no jurisdiction to grant a bond. ECF No. 7-5.

Petitioner had been scheduled for a final hearing in his immigration proceedings on November 7, 2025. He requested a continuance. *See* ECF No. 13. On November 7, 2025, the IJ granted Petitioner’s request and ordered Petitioner to provide any evidence relating to ICE’s motion to pretermite his asylum application by November 14, 2025. *Id.* The IJ set the matter for a removal hearing on November 21, 2025. *Id.*; *see also* Case Information, *available at*: <https://acis.eoir.justice.gov/en/caseInformation> (last visited November 12, 2025).

ARGUMENT

I. The Magistrate Judge erred by failing to resolve the preliminary issue of which statute applies.

The core of the dispute in this case is whether Petitioner is entitled to receive a bond hearing while his removal proceedings are pending. In making this determination, it is necessary to resolve

the precursor question of which statute applies – 8 U.S.C. § 1225, which provides for mandatory detention, or 8 U.S.C. § 1226, which does not. The Magistrate Judge declined to resolve the issue. ECF No. 12 at 8 (“[T]he undersigned need not consider whether the agency’s new mandatory detention policies reflect a proper reading of the INA.”). Accordingly, Federal Respondents object to the R&R. This Court, in overruling the R&R, should find that § 1225 controls, Petitioner’s detention is mandatory, and the lack of a bond hearing does not violate due process.¹

In 1996, Congress enacted the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”) specifically to stop providing greater benefits on aliens who illegally entered the United States than it provided to aliens who lawfully presented themselves at a port of entry. The Immigration and Nationality Act’s (“INA”) pre-IIRIRA framework, which used physical entry into the United States as a distinguishing factor had:

The ‘unintended and undesirable consequence’ of having created a statutory scheme where aliens who entered without inspection ‘could take advantage of greater procedural and substantive rights afforded in deportation proceedings,’ *including the right to request release on bond*, while aliens who had ‘actually presented themselves to authorities for inspection ... were subject to mandatory custody.

Matter of Yajure Hurtado, 29 I. & N. Dec. 216, 23 (BIA 2025) (emphasis added) (quoting *Marinez v. Att’s General of U.S.*, 693 F.3d 408, 413 (n.5 (2012))). IIRIRA eliminated this beneficial treatment by replacing the focus on physical entry with “admission,” which it defined to mean “the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added). Simply put, the immigration laws would no

¹ Because the Magistrate Judge did not resolve the issue, Federal Respondents cannot object to specific portions of that analysis. Therefore, in addition to the arguments set forth herein, the Federal Respondents respectfully adopt and reassert the legal analysis contained in their objection to the Petition.

longer distinguish aliens based on whether they had managed to evade detection and entry the country without permission.

The plain language of Section 1225(b)(2) provides that DHS is required to detain aliens, like Petitioner, who are in the United States without admission and are subject to removal proceedings. Section 1225(b)(2) does not contain carve outs for aliens who have been in the United States for a certain period or for aliens who have traveled a certain distance from the border. The language is plain, unambiguous, and resolves the question of whether Petitioner in this case is subject to mandatory detention. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (202) (“Our analysis begins and ends with the text.”).

Section 1225(a) defines “applicant for admission” such that it encompasses an alien who either “arrives in the United States” or who is “present in the United States but has not been admitted.” 8 U.S.C. § 1225(a)(1). And post-IIRIRA, admission does not mean physical entry, but lawful entry following inspection from immigration authorities. 8 U.S.C. § 1101(a)(13)(A). Section 1225(b)(2) provides that “an alien who is an applicant for admission” “shall be detained” pending removal proceedings if the “alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). The use of the term “shall” makes it clear that detention is mandatory, *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998). There is no exception for how long the alien has been in the United States or how far he is from the border.

In this case, Petitioner entered the country illegally without inspection or admission. This is not in dispute. Thus, he falls under the plain language of Section 1225 and is subject to *mandatory* detention. The R&R fails to explain, let alone find, that Petitioner does not fall within

the plain language of Section 1225. As such, the Court should apply the plain language of the statute, find that Petitioner is subject to mandatory detention, overrule the R&R, and dismiss the Petition.²

II. Federal respondents have provided all process that is due to Petitioner.

Federal Respondents also object to the R&R's conclusion that detaining Petitioner "without any individualized assessment of his flight risk and dangerousness deprives him of his constitutional right to due process under the Fifth Amendment of the United States Constitution." ECF No. 12 at 14. As a threshold matter, because Petitioner is subject to 8 U.S.C. § 1225, his detention is *mandatory*, and the Supreme Court has permitted mandatory detention in the immigration context without finding a due process concern. Even if analyzed pursuant to *Matthews v. Eldridge*, the factors weigh in favor of the Federal Respondents.

The R&R fails to recognize that Supreme Court has upheld the constitutionality of other statutes mandating detention without bond hearings in immigration proceedings. In *Demore v. Kim*, the Court upheld the constitutionality of 8 U.S.C. § 1226(c), which mandates detention during removal proceedings without access to bond hearings. 538 U.S. 510, 522 (2018). In reaching this conclusion, the Court recognized "detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Id.* at 523. The Court found support for this conclusion in earlier cases where it had rejected aliens claims that they "were entitled to be released from detention if they did not pose a flight risk" and where the aliens did receive an individualized finding of dangerousness. *Id.* at 524 (citing *Carlson v. Landon*, 342 U.S. 524 (1952)). Notably, the Supreme Court reached this result without the need to engage in the *Matthews v. Eldridge*

² See *Oliveira v. Patterson*, 6:25-cv-01463, ECF No. 17 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, 6:25-cv-01467, ECF No. 14 (Oct 31, 2025); *Garibary-Robledo v. Noem*, 1:25-cv-177-G, ECF No. 9 (N.D. Tex. Oct 24, 2025) (order denying motion to reconsider denial of TRO); *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351 at *4–9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 at *4–5 (S.D. Cal. Sept. 24, 2025).

balancing test. And later, in *Jennings v. Rodriguez*, the Supreme Court upheld Sections 1225(b)(1) and (b)(2) despite the fact that they mandate detention during certain proceedings and that they do not impose a limit on the length of detention or require periodic bond hearings. 583 U.S. 281, 297 (2018). The Supreme Court similarly did not apply the *Mathews* balancing test. Given this case law and protections built into the system, *see* ECF No. 7 at 20–21, the Court should overrule the R&R and find that Petitioner’s due process claim fails without reaching the *Mathews v. Eldridge* balancing test.

Even a proper application of the *Mathews* factors compels overruling the R&R and dismissing the case because Petitioner cannot establish a due process violation. First, the Magistrate Judge erred by minimizing the government’s interest in this case. The Magistrate Judge found “[p]resumably the Government has an interest in avoiding ‘the incremental cost resulting from the increased number of hearings’ if it must provide bond determinations to people like Penuela Carlos.” ECF No. 12 at 13 (citing *Infinity Healthcare Sers., Inc. v. Azar*, 349 F. Supp. 3d 587, 601 (S.D. Tex. 2018) (quoting *Mathews*, 424 U.S. at 347)).³ But this fails to address the Government’s true interest, which the Supreme Court has found to be substantial. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.”). The power to remove aliens brings with it the constitutional power to detain them while that process plays out. *Carlson*, 342 U.S. at 328 (“Detention is necessarily part of this deportation procedure.”).⁴ Given the substantial interest the

³ *Infinity Healthcare* is not an immigration case. That case dealt with the government’s efforts to recoup Medicare payments made to the Plaintiff.

⁴ *See also Jennings*, 583 U.S. at 286 (“Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during

Government possesses in this area, the Magistrate Judge erred by limiting the interest to merely avoiding “incremental cost” and finding the factor weighed in Petitioner’s favor.

The Court also erred by placing too much weight on the first *Matthews* factor—the private interest at stake. In *Demore*, the Supreme Court recognized that “[i]n the exercise of its broad powers over immigration and naturalization, Congress regularly makes rules that would be unacceptable if applied to its citizens.” 538 U.S. at 521 (quoting *Matthews v. Diaz*, 426 U.S. 67, 79–80 (1976)). Analysis of the Petitioner’s private interest must therefore account for the fact that the Supreme Court has never held that noncitizens have a constitutional right to be released from custody during removal proceedings and, in fact, has held the opposite. *Id.* at 530; *Carlson*, 342 U.S. at 538.

Moreover, the Magistrate Judge erred by characterizing the private interest at issue as Petitioner’s interest in being free from physical detention. ECF No. 12 at 10. That is not what he seeks to protect in this case. Petitioner has no lawful right to be present in the United States. If he is merely seeking freedom from physical detention, he would agree to deportation, but he is unwilling to do so. This is because the interest he truly seeks to protect is the right to be at liberty *in the United States*. But, he does not have that right during his removal proceedings. Thus, the Magistrate Judge erred by finding that the first factor weighed in favor of the Petitioner.

Finally, the Magistrate Judge errs in concluding that the second factor—the risk of erroneous deprivation of the Petitioner’s private rights—supported Petitioner’s claim that he had

those proceedings gives immigration officials time to determine an alien’s status without running the risk of the alien’s either absconding or engaging in criminal activity before a final decision have been made.”); *Demore*, 528 U.S. at 531 (Detention during removal proceedings is a constitutionally permissible part of the process.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending inquiry into their true character, and while arrangements were being made for their deportation.”).

been denied due process. This error arises, in part, from the Magistrate Judge's failure to resolve the issue of whether Petitioner is detained pursuant to Section 1225 or 1226.

The R&R explains that a bond proceeding is necessary to provide the "opportunity to be heard and receive a meaningful assessment of whether he is dangerous or likely to abscond, it would greatly reduce the risk of an erroneous deprivation of its liberty." ECF No. 12 at 12. But because Petitioner is subject to mandatory detention under Section 1225, his detention does not depend on his dangerousness or risk of flight. Thus, the lack of a hearing to evaluate these factors does not increase the likelihood of erroneous deprivation because Petitioner *shall* be detained regardless of his dangerousness or flight risk. *See* 8 U.S.C. § 1225(b)(2).

CONCLUSION

For the foregoing reasons, the Court should sustain Respondents' objection to the R&R and dismiss the case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2025, a true and correct copy of the foregoing document was filed electronically with the court and has been sent to counsel of record via the court's electronic filing system.

/s/ James Gillingham
JAMES GILLINGHAM
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