

Applicable Background

As Aparicio states on reply, “[t]he material facts in this case are straightforward and largely uncontested.” Dkt. No. 9 at 3. The undersigned agrees.

Aparicio

is a native and citizen of Venezuela who entered the United States on March 25, 2021. He entered without inspection or parole by an immigration officer. Petitioner was placed in immigration proceedings with the issuance of a Notice to Appear dated April 23, 2021. On October 14, 2025, Petitioner was arrested and detained at the Dallas ERO office. Petitioner’s case was on the non-detained docket in the Dallas Immigration Court. After his arrest and detention, on October 14, 2025, ERO filed a change of address for petitioner showing he was now in custody at the Prairieland Detention Center.

Dkt. No. 7 at 7 (cleaned up).

Over the more than four years from his being placed into immigration proceedings in 2021 until his October 2025 arrest, Aparicio has lived in the United States, released on recognizance, and has appeared for his appointments with immigration officials without incident. He and his wife have applied for asylum and that their removal be withheld. And that application remains pending.

Following his recent arrest, Aparicio was placed into removal proceedings under 8 U.S.C. § 1229a and has been refused a bond hearing.

He now brings claims under the Immigration and Nationality Act (the “INA”), the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act (the “APA”), and seeks immediate injunction relief, including a TRO directing Respondents to provide him an individualized custody hearing or release him under

reasonable conditions without delay.

And, applicable to his request for an individualized custody determination, Aparicio sets forth this statutory framework applicable to immigration custody determinations, which the undersigned agrees generally informs the legal issue before the Court:

Immigration detention is governed primarily by two provisions of the INA: Section 235(b) [8 U.S.C. § 1225(b) (or “Section 1225”)] and Section 236(a) [8 U.S.C. § 1226(a) (or “Section 1226”)]. Whereas Section 236(a) of the INA authorizes the Attorney General to release noncitizens on bond pending removal proceedings, in contrast, Section 235(b) applies to certain categories of “arriving aliens” and mandates detention pending completion of expedited or threshold screening.

Congress designed § 236(a) to govern the detention of individuals who, like Petitioner, are in regular removal proceedings under § 240. The statutory text expressly provides for release on bond, subject only to conditions ensuring appearance and protecting the community.

The [United States] Supreme Court has confirmed the distinction between these statutory schemes. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (explaining differences between § 235(b) mandatory detention and § 236(a) discretionary custody). The Board of Immigration Appeals itself recognized for decades that individuals in § 240 proceedings after entry without inspection were eligible for custody redeterminations. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

[But] DHS has invoked recent BIA decisions (*i.e.*, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)) to strip immigration judges of bond authority in cases such as those of Petitioner.

Dkt. No. 2 at 10.

Legal Standards and Analysis

I. Exhaustion of Administrative Remedies

As a threshold matter, Respondents argue that the Court should deny

Aparicio's claims because he has not exhausted his administrative remedies. *See* Dkt. No. 7 at 8-9. Respondents cite "the general rule that parties exhaust prescribed remedies before seeking relief from the federal courts." *Id.* at 8.

But, as Respondents note, "the [INA] does not mandate exhaustion for situations other than appeals for final orders of removal." *Id.*; *see also Lopez-Arevelo v. Ripa*, ___ F. Supp. 3d ___, No. EP-25-cv-337-KC, 2025 WL 2691828, at *6 (W.D. Tex. Sept. 22, 2025) ("Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal." (quoting *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007))); 8 U.S.C. § 1252(d)(1) ("A court may review a final order of removal only if – the alien has exhausted all administrative remedies available to the alien as of right.").

Respondents contend that Aparicio "has not yet attempted to obtain bond from an [immigration judge ("IJ")], and so any request at this time to order a bond hearing via a writ of habeas corpus is premature, at best." Dkt. No. 7 at 9.

But they also point out that the Board of Immigration Appeals ("BIA") "affirmed 'the Immigration Judge's determination that he did not have authority over [a] bond request'" by a noncitizen who has resided in the United States for more than two years (which describes Aparicio). *Id.* at 13 (quoting *In re Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025)). And, so, Respondents argue that Aparicio must first use the very remedies that, according to Respondents, the BIA has deemed unavailable to him.

Requiring Aparicio to request a bond hearing before an IJ and (if bond were denied) appeal the decision “would be inappropriate because it would exacerbate his alleged constitutional injury – detention without a bond hearing.” *Lopez-Arevelo*, 2025 WL 2691828, at *6 (citing *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 672 n.14 (S.D. Tex. 2021)); *see also Chiquinga Yumbillo v. Stamper*, No. 2:25-cv-479-SDN, 2025 WL 2783642, at *3 (D. Me. Sept. 30, 2025) (finding that requiring petitioner to exhaust administrative remedies by appearing before an IJ would not serve the purposes of the common-law exhaustion doctrine because petitioner could suffer irreparable harm).

And, so, the undersigned finds that Aparicio is not required to seek a bond hearing before an IJ or exhaust other administrative remedies and that the Court may properly consider his claims.

II. APA Claim

In sum, Aparicio asserts that “[t]he BIA’s reversal of decades of established law” that “allowed for individualized custody determinations consistent with both statutory text and constitutional principles” “without acknowledging or adequately explaining its departure is the very definition of arbitrary and capricious action” prohibited by the APA. Dkt. No. 2 at 15-17. And, so, he argues that detaining him without a bond hearing pursuant to *Yajure Hurtado* also violates the APA. *See id.*; 29 I&N Dec. 216.

Respondents contend that Petitioners’ APA claim is barred because the APA

“is available only for final agency action ‘for which there is no other adequate remedy in a court.’” Dkt. No. 7 at 9 (quoting 5 U.S.C. § 704).

The undersigned agrees.

“Assuming without finding that APA claims are cognizable under habeas, 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.’” *Santiago v. Noem*, No. EP-25-cv-361-KC, 2025 WL 2792588, at *6 (W.D. Tex. Oct. 2, 2025) (cleaned up; quoting *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 882 (1990) (quoting 5 U.S.C. § 704)). Without a final agency action, federal courts lack subject matter jurisdiction. See *Qureshi v. Holder*, 663 F.3d 778, 781 (5th Cir. 2011).

“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) (cleaned up; quoting *Am. Airlines, Inc. v. Herman*, 176 F.3d 283, 287 (5th Cir. 1999) (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997))).

Here, because Aparicio has not received a bond hearing, and because the BIA could (notwithstanding its recent decision) affirm or deny the imposition of bond, “further administrative relief is available,” and his “detention is not the consummation of the agency’s decision-making process.” *Santiago*, 2025 WL 2792588, at *6 (cleaned up).

And, so, the Court does not have jurisdiction to consider whether Aparicio's detention without a bond hearing pursuant to *Yajure Hurtado* violates the APA, and the Court should not consider his APA claim. *See id.* at *6 n.2 ("Because the Court lacks jurisdiction to review [the petitioner's] APA claim, the Court proceeds to her constitutional claims.").

III. Procedural Due Process

A. Availability of Procedural Due Process Protections

Aparicio asserts that his "continued detention without access to an individualized custody redetermination hearing [] violates the Due Process Clause of the Fifth Amendment." *E.g.*, Dkt. No. 2 at 14.

And the undersigned finds that detaining him without a bond hearing violates his Fifth Amendment rights.

Respondents contend that the Petitioners' procedural due process rights have not been violated because a noncitizen detained without bond while awaiting a removability decision "has only those rights regarding admission that Congress has provided by statute." Dkt. No. 7 at 21 (quoting *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020)). They argue that, because Section 1225 "says nothing 'whatsoever about bond hearings' ... [n]o procedural due process claim is stated." *Id.* (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018)).

The undersigned agrees with the court in *Lopez-Arevelo* and other courts in the Fifth Circuit and finds that *Thuraissigiam* is distinguishable in this context. *See* 2025

WL 2691828 at *7-10; *see also, e.g., Vieira v. De Anda-Ybarra*, ___ F. Supp. 3d ___, No. EP-25-cv-432-DB, 2025 WL 2937880, at *4-5 (W.D. Tex. Oct. 16, 2025); *Gonzales Martinez v. Noem*, No. EP-25-cv-430-KC, 2025 WL 2965859, at *4 (W.D. Tex. Oct. 21, 2025); *Santiago*, 2025 WL 2792588, at *7-10; *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-773-JKP, 2025 WL 2976923, at *7-8 (W.D. Tex. Oct. 21, 2025).

In *Thuraissigiam*, “[t]he [Supreme] Court did not address whether noncitizens mandatorily detained under § 1225(b) have a constitutional due process right to challenge the fact or length of their detention, as [Aparicio] does here.” *Lopez-Arevelo*, 2025 WL 2691828, at *8. Unlike in *Thuraissigiam*, where the petitioner challenged his deportability and the denial of his asylum admission, Aparicio challenges his detention without a bond hearing. *See* 591 U.S. at 114-15.

In the context of detention under Sections 1225(b) and 1226(a), the United States Court of Appeals for the Fifth Circuit has “expressly left open the constitutional due process question” for lower courts to consider. *Lopez-Arevelo*, 2025 WL 2691828, at *8 (citing *Jennings*, 583 U.S. at 312).

The petitioner in *Thuraissigiam* was also stopped and detained “within twenty-five yards of the border” and was not released or permitted to reside in the United States. 591 U.S. at 114.

But Aparicio has been released on his own recognizance and permitted to reside in the United States since 2021. Dkt. No. 2 at 5; *see Lopez-Arevelo*, 2025 WL 2691828, at *9 (distinguishing *Thuraissigiam* because petitioner had resided in the

United States for three years).

And, so, Aparicio is entitled to procedural protections under the Fifth Amendment's Due Process Clause. And the undersigned will consider his claim that his detention violates his due process rights.

B. *Mathews* Balancing Test

“To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).” *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025) (cleaned up). The three factors to consider are (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335 (cleaned up).

“The essence of due process is the requirement that ‘a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.’” *Id.* at 348 (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 171-72 (1976) (Frankfurter, J., concurring)).

1. Private Interest

“Freedom from imprisonment – from government custody, detention, or other

forms of physical restraint – lies at the heart of the liberty [the Due Process] Clause protects.” *Vieira*, 2025 WL 2937880, at *6 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690(2001)). District courts have held that noncitizens who have been released from custody on their recognizance have a “liberty interest in remaining out of custody on bond.” *Lopez-Arevelo*, 2025 WL 2691828, at *11 (collecting cases).

Aparicio was released on his recognizance in 2021. Upon his release, he acquired a “cognizable interest in his freedom from detention that deserves great weight and gravity.” *Vieira*, 2025 WL 2937880, at *6.

And, so, the first factor weighs in favor of Aparicio.

2. Risk of Erroneous Deprivation and Value of Additional Safeguards

As to the second factor, Aparicio is in custody. Without a bond hearing, he will likely remain in custody. And the risk of an arbitrary deprivation is greater given the BIA’s new interpretation of Section 1225(b)(2). *See Vieira*, 2025 WL 2937880, at *7, *Lopez-Arevelo*, 2025 WL 2691828, at *11.

“[A]gency decisionmakers regularly ‘conduct[] individualized custody determinations ... consider[ing] flight risk and dangerousness.’” *Gonzales Martinez*, 2025 WL 2965859, at *4 (cleaned up). So a bond hearing would “give [Aparicio] the opportunity to be heard and receive a meaningful assessment of whether he is dangerous or likely to abscond.” *Lopez-Arevelo*, 2025 WL 2691828, at *11.

And, so, a bond hearing would reduce the risk of an erroneous deprivation of

Aparicio's liberty. The second factor therefore weighs in favor of Aparicio.

3. Government's Interest

Respondents argue that the government has the constitutional power to detain Aparicio without bond "for the limited purpose of removal proceedings and determining his removability." Dkt. No. 7 at 20.

But they do not explain their interest in making those determinations while detaining Aparicio without bond.

Aparicio has no history of absconding. Aparicio has instead appeared regularly for appointments with immigration officials since his release in 2021.

And, in any event, the government's interest in ensuring that Aparicio appears for his removal proceedings "would be squarely addressed through a bond hearing." *Gonzalez Martinez*, 2025 WL 2965859, at *4.

And, so, the third factor also weighs in favor of Aparicio.

Because all three *Mathews* factors support Aparicio, the undersigned finds that denying him a bond hearing under Section 1225(b)(2) deprives him of his procedural due process rights under the Fifth Amendment.

IV. Statutory Interpretation and Substantive Due Process

Because the denial of a bond hearing violates Aparicio's procedural due process rights, the undersigned will not address the parties' arguments on statutory interpretation. *See, e.g., Perez v. Kramer*, No. 25-cv-3179, 2025 WL 2624387, at *3 (D. Neb. Sept. 11, 2025) (addressing procedural due process issue but declining to

“determine the validity of the government’s argument that [p]etitioner should be mandatorily detained under § 1225 [or] the applicability of the BIA’s decision in [Yajure] *Hurtado*”); *Vieira*, 2025 WL 2937880, at *4 (addressing procedural due process violation “regardless of whether the applicable statute is § 1225(b) or § 1226(a)”).

The undersigned also declines to address any substantive due process claim that Aparicio may make. *See Santiago*, 2025 WL 2792588, at *6 n.2 (“[B]ecause the Court grants [the petition] on procedural due process grounds, the Court need not reach [the petitioner’s] substantive due process ... claims.”).

V. Motion for TRO

As “[a] TRO is simply a highly accelerated and temporary form of preliminary injunctive relief,” “[t]o obtain a temporary restraining order, an applicant must show entitlement to a preliminary injunction.” *Horner v. Am. Airlines, Inc.*, No. 3:17-cv-665-D, 2017 WL 978100, at *1 (N.D. Tex. Mar. 13, 2017) (cleaned up).

But granting a preliminary injunction “is an extraordinary remedy which requires the movant to unequivocally show the need for its issuance.” *Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1050 (5th Cir. 1997) (citing *Allied Mktg. Grp., Inc. v. C.D.L. Mktg., Inc.*, 878 F.2d 806, 809 (5th Cir. 1989))

And, so, to obtain preliminary injunctive relief, a movant must unequivocally “show (1) a substantial likelihood that he will prevail on the merits, (2) a substantial threat that he will suffer irreparable injury if the injunction is not granted, (3) his

threatened injury outweighs the threatened harm to the party whom he seeks to enjoin, and (4) granting the preliminary injunction will not disserve the public interest.” *Bluefield Water Ass’n, Inc. v. City of Starkville, Miss.*, 577 F.3d 250, 252-53 (5th Cir. 2009) (cleaned up); accord *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974).

And the Fifth Circuit “has repeatedly cautioned that [such relief] should not be granted unless the party seeking it has clearly carried the burden of persuasion on all four requirements.” *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 386 (5th Cir. 2013) (cleaned up).

“The purpose of a preliminary injunction is always to prevent irreparable injury so as to preserve the court’s ability to render a meaningful decision on the merits.” *Canal Auth.*, 489 F.2d at 576 (cleaned up).

So the decision on a motion seeking a TRO or preliminary injunction does “not amount to a ruling on the merits” of a plaintiff’s claims, *Jonibach Mgmt. Trust v. Wartburg Enters., Inc.*, 750 F.3d 486, 491 (5th Cir. 2014), considering that “the findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits” and “may be challenged at a later stage of the proceedings,” *id.* (cleaned up).

In short, a TRO or preliminary injunction is not a device “to give a plaintiff the ultimate relief he seeks” through his claims. *Peters v. Davis*, No. 6:17CV595, 2018 WL 11463602, at 2 (E.D. Tex. Mar. 28, 2018); accord *Lindell v. United States*, 82 F.4th

614, 618 (8th Cir. 2023) (“This Court has repeatedly recognized that the purpose of injunctive relief is to preserve the status quo; it is not to give the movant the ultimate relief he seeks.”); *Kane v. De Blasio*, 19 F.4th 152, 163 (2d Cir. 2021) (“The purpose of a preliminary injunction is not to award the movant the ultimate relief sought in the suit but is only to preserve the status quo by preventing during the pendency of the suit the occurrence of that irreparable sort of harm which the movant fears will occur.” (cleaned up)). And, so, a motion or application for a TRO or preliminary injunction is properly denied when it is no more than a “motion to win.”

Here, the arguments supporting Aparicio’s TRO motion focus on the harms of mandatory detention without bond. And, so, he appears to seek the same or similar relief in their habeas petition and TRO motion.

Insofar as Aparicio seek the same ruling on the merits as the habeas petition, the undersigned finds that the TRO motion improperly seeks ultimate relief. *See Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346, at *4 (S.D. Tex. Oct. 7, 2025) (denying TRO as moot because it sought the same relief as the petitioner’s habeas petition – to release the petitioner from custody or order a bond hearing).

And, so, the Court should deny the TRO motion [Dkt. No. 4].

Remedy

Most courts confronting this issue have determined that the appropriate relief is a bond hearing. *See Lopez-Arevelo*, 2025 WL 2691828, at *12-13 (collecting cases);

Vieira, 2025 WL 2937880, at *7 (collecting cases). And, so, the Court should order that Aparicio be given a bond hearing before an IJ and decline to award any other requested relief at this time.

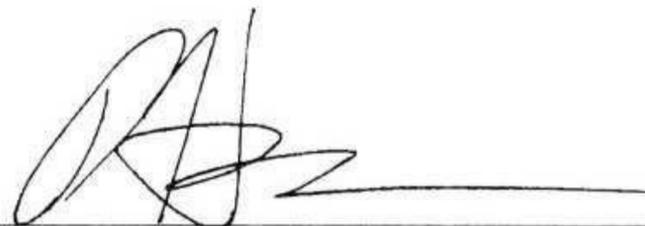
Recommendation

The Court should grant in part Petitioner Andres Eduardo Aparicio Rodriguez's amended application for a writ of habeas corpus under 28 U.S.C. § 2241 [Dkt. No. 2] and require Respondents to provide him with a bond hearing before an immigration judge. And the Court should deny the motion for a temporary restraining order [Dkt. No. 4].

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. ' 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judges' findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v.*

United Services Auto. Ass'n, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: November 6, 2025

A handwritten signature in black ink, consisting of a large, stylized 'D' and 'H' followed by a horizontal line extending to the right.

DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE