

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DJIBRIL DANSOKO,

Petitioner,

vs.

KRISTI NOEM, Secretary, U.S. Department
of Homeland Security (DHS), *et al.*,

Respondents.

CASE NO. 26-cv-60133-AHS

**PETITIONER'S SUPPLEMENTAL BRIEF
REGARDING PETITIONER'S DUE PROCESS RIGHT TO A BOND HEARING**

The Court invited Petitioner to provide supplemental briefing explaining Petitioner's right to a bond hearing under the Fifth Amendment. Petitioner demonstrates that his continued detention without a bond hearing violates the Fifth Amendment's Due Process Clause, and in support thereof states as follows:

ARGUMENT

**I. Petitioner is Entitled to the Fifth Amendment's Due Process Clause
Protections**

The Fifth Amendment's Due Process Clause forbids the government to "depriv[e]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. amend. V. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause Protects." *Zadvydas v. David*, 533 U.S. 758, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Supreme Court "has said that government detention violates that Clause unless the

detention is ordered in a criminal proceeding with adequate procedural protections, *see United States v. Salerno*, 481 U.S. 739, 746 (1987), or, in certain special and ‘narrow’ nonpunitive ‘circumstances,’ *Foucha*, 504, U.S.at 80, where a special justification, such as harm-threatening mental illness, outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997). *Id.*

In *Thuraissigiam*, the Supreme Court held “[m]ore than a century of precedent establishes that, for aliens seeking initial entry, ‘the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.’” *Thuraissigiam*, 591 U.S. at 104. The petitioner in that case had been detained after making it 25 yards into U.S. territory, and the Court made clear that an individual detained shortly after unlawful entry cannot be said to have “effected an entry.” *Id.* In declining an as-applied constitutional challenge to Section 1252(e)(2), the Court reasoned that “[w]hile aliens who have established connections in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for an alien’s lawful entry into this country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause.” *Id.* at 107.

Moreover, there is a well-established “distinction between an alien who has effected an entry into the United States and one who has never entered [that] runs throughout immigration law.” *Zadvydas*, 533 U.S. at 693. “[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful,

unlawful, temporary, or permanent.” *Id.* Even in *Thuraissigiam*, the core point of the Court’s analysis in rejecting an as-applied challenge rested on the fact that as an individual who was on the initial threshold of entry, he wasn’t entitled to more due process than that afforded by statute. Precedent and logic tell us that those individuals who have established ties in the country are protected by constitutional procedural due process. After all, it is a “well established” rule “that the Fifth Amendment entitles aliens to due process of law.” *Trump v. J. G. G.*, 145 S. Ct. 1003, 1006 (2025). Here, it is undisputed Petitioner has lived in the United States since his initial entry in 2023. ECF No. 1 at 23. Therefore, Petitioner is entitled to the Fifth Amendment’s Due Process Clause protections.

II. Based on *Mathews v. Eldridge*, Section 1225(b)(2) is unconstitutional as applied to Petitioner

The key issue here is not whether Mr. Dansoko is entitled to due process protections, but rather, how much protection is he entitled to. The Supreme Court’s balancing test in *Mathews v. Eldridge* is dispositive. “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). “[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors”: (1) “the private interest that will be affected by the official action”; (2) “the [g]overnment’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail,” and (3) “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." *Id.* at 335.

The First factor weighs heavily in Petitioner's favor. "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." *Zadvydas*, 533 U.S. at 690. A noncitizen's interest in his freedom pending the conclusion of his removal proceedings deserves great "weight and gravity." See *Addington v. Texas*, 441 U.S. 418, 427 (1979); *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Courts have held that once released from immigration custody, noncitizens acquire a "protectable liberty interest in remaining out of custody on bond." See *Lopez-Arevalo v. Ripa*, 3:25-CV00337-KC, 2025 WL 2691828 at *11 (W.D. Tex. Sept. 22, 2025). Here, Petitioner has lived in the United States since 2023 and was previously released on his own recognizance. See [DE 5-2]. He was put into removal proceedings upon arrival to the United States in 2023. See [DE 1-3]. Soon thereafter he applied for protection under the asylum laws of the United States as he fears persecution in his country Guinea for being a member of the LGBTQ community. See [DE 1-5]. During the pendency of his proceedings DHS granted Petitioner with the ability to lawfully engage in employment in the country. See [DE 1-4]. Accordingly, he possesses a cognizable interest in his freedom from detention.

Now, turning onto the second factor, the Court shall consider "the [g]overnment'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. There is no doubt that Respondents have an interest in ensuring that noncitizens

appear for their removal hearings and for them not to pose a risk to the communities in which they live. But that interest, in this case, seems particularly diluted given Respondent's own decision to release Petitioner on his own recognizance once before. *See* [DE 5-2]. Further, there are no facts in the record to suggest that Petitioner's actions have materially changed as he has not failed to appear before immigration authorities, nor he has acquired a criminal record. If Respondents due have such facts, a bond hearing in front of an Immigration Judge would be the proper venue to address any such issues. Further, any fiscal or administrative burdens Respondents may assert by having to provide a bond hearing are also diminished given that the government has conducted such hearings for the part thirty years until a change in the agency's interpretation of the law. Thus, the second factor also weighs in favor of the Petitioner.

Finally, the third *Mathews* factor calls for the Court to consider "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." *Mathews*, 424 U.S. at 335. Here, Section 1225(b)(2) as applied creates a substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement pending resolution of his removal proceedings. The risk lies in the continued deprivation of liberty for a noncitizen who has already been determined to not be a flight risk nor a danger to the community, and has lived in the United States for a prolonged period of time, especially where there are no facts in the record to reflect material changes in Petitioner's dangerousness or flight risk

District courts around the Eleventh Circuit have agreed with Petitioner's position. See *Arellano v. Ripa*, No. 26-20044-CIV, 2026 U.S. Dist. LEXIS 13005, at *15 (S.D. Fla. Jan. 23, 2026) (concluding that the revocation of the petitioner's release on his own recognizance, violated the Fifth Amendment due process clause); see also *Perez v. Mordant*, No. 2:25-cv-00947-SPC-DNF, 2025 U.S. Dist. LEXIS 235337, at *11 (M.D. Fla. Dec. 2, 2025) (finding that the petitioner's interest in freedom from detention "'lies at the heart of the liberty' the Due Process Clause protects.") (quoting *Zadvydas*, 533 U.S. at 690); *Carmona v. Ripa*, No. 2:25-cv-1128-SPC-DNF, 2025 U.S. Dist. LEXIS 260293, at *13 (M.D. Fla. Dec. 17, 2025) (finding that ICE violated Gonzalez Carmona's right to due process by revoking his parole, designating him for expedited removal, and detaining him without reasonable notice and a meaningful opportunity to be heard); *Blanco v. Bondi*, No. 2:26-cv-00051-SPC-DNF, 2026 U.S. Dist. LEXIS 15245, at *10 (M.D. Fla. Jan. 28, 2026) (same).

CONCLUSION

For the reasons stated above, Petitioner's continued detention under 8 U.S.C. § 1225(b)(2), without a meaningful opportunity to be heard, violates the Fifth Amendment's Due Process Clause as applied to him. Because the *Mathews v. Eldridge* factors weigh decisively in his favor, his confinement constitutes an unlawful deprivation of liberty. Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus and order his immediate release or, at minimum, a constitutionally adequate bond hearing.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 17, 2026, I electronically filed the foregoing with the Clerk of the Court through the Court's CM/ECF Filing System, which will send a notice of electronic filing to Respondent's counsel.

/s/ Roberto A. Velasquez Andonie
Roberto A. Velasquez Andonie