United States District Court
Western District of Texas
San Antonio Division

Derwin Leonardo Acosta Diaz,
Petitioner,

v.

ICE, *et al.*,
Respondents.

No. 5:26-CV-6347-OLG

Federal Respondents' Response to Petition for Writ of Habeas Corpus

Federal Respondents provide the following response to Petitioner's *pro se* habeas petition.[1] Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief sought. **Petitioner is an "arriving alien" who is ineligible for bond from an immigration judge by both statute and regulation.** *See* Exh. A (Notice to Appear, charging as an arriving alien); 8 C.F.R. § 1003.19(h)(2)(i); *see also Lopez Jaimes v. Lyons, et al,* No. 26–CV–686–MA (W. D. Tex. Feb. 17, 2026) (Alvarez, J.) (finding no due process violation where applicant for admission with expired parole was taken back into custody on a mandatory basis during removal proceedings); *Goguev v. Noem*, et al, SA–25–CA–01593–XR (W.D. Tex. Jan. 13, 2026) (Rodriguez, J.) (denying habeas petition to an arriving alien). Arriving aliens are applicants for admission, and the Fifth Circuit confirms that applicants for admission are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *Buenrostro v. Bondi*, 166 F.4th 494, 498 (5th Cir. 2026).

For the reasons that follow, Respondents urge this Court to also find that Petitioner has not shown that this mandatory detention provision is unconstitutional as applied. *See Huipe Ramos v.*

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

De Anda Ybarra, No. 3:25–CV–00503–LS, 2026 WL 851992 at *2 (W.D. Tex. Mar. 27, 2026) (no due process violation where alien is detained on a mandatory basis during removal proceedings). Petitioner's remaining claims also fail, and the petition should be denied in its entirety without a hearing.

PRECEDENTIAL STAY BARRING RELIEF ON DUE PROCESS GROUNDS

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) Exh. C (Order granting stay). 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. 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 to 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 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.

The Court should either deny habeas relief on due process grounds or hold in abeyance any order granting habeas relief that challenged 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, 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 heard oral argument in September

2026 and the parties await the Court's decision.

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* and *Tolentino*. Here, as there, Petitioner indisputably falls within the plain terms of §1225(b)(2)(A). Like the petitioners in

Rodriguez and *Tolentino*, Petitioner here is an arriving alien which is explicitly described as an applicant for admission under Section 1225(b)(2)(A). *See* Exh. A. Even though he was released and detained again, he remains an applicant for admission. 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. 1. 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.").

In the event this Court declines to dismiss or hold this petition in abeyance, a full response is provided below.[2]

BACKGROUND

Petitioner is a citizen of Venezuela who applied for admission at the Miami International Airport on or about June 8, 2024. Exh. A. He was released on parole under INA § 212(d)(5), 8 U.S.C. § 1182(d)(5) until 06/12/2026. *See* ECF No. 1 at 11. Petitioner does not allege or establish that his parole was extended or that he was otherwise within a period of authorized release. *See* ECF No. 1. After his parole lapsed, Petitioned shall, "forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission." 8 U.S.C. § 1182(d)(5). On August 16, 2026, ICE detained Petitioner. He is presently in removal proceedings, and his next hearing is scheduled for October 19, 2026. *See* Automated Case Information System (last accessed Oct. 9, 2026).

On October 1, 2026, Petitioner filed this petition. ECF No. 1.

ARGUMENT

Arriving aliens have been subject to mandatory detention by regulation long before the 2025 policy shift that resulted in an influx of habeas litigation regarding the definition of "seeking

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[2] Pursuant to the service order, Respondents provide a) 06/08/2024 b) 06/08/2024 and release thereafter; 08/16/2026 - present c) pending removal proceedings

admission." *See* 8 C.F.R. § 1003.19(h)(2)(i). The term "arriving alien" means an applicant for admission coming or attempting to come into the United States at a port of entry. 8 C.F.R. § 1001.1(q). Arriving aliens are inspected immediately upon arrival in the United States and, unless "'clearly and beyond a doubt entitled to be admitted,'" are placed in "removal proceedings to determine admissibility." *Clark v. Martinez*, 543 U.S. 371, 373 (2005) (quoting 8 U.S.C. § 1225(b)(2)(A)).

Since Petitioner presented for inspection at the port of entry, she is an arriving alien. 8 C.F.R. § 1001.1(q). Pursuant to 8 U.S.C. § 1225(b)(2)(A), arriving aliens are to be detained unless released by ICE on discretionary parole. 8 C.F.R. § 1235.3(c); *Clark*, 543 U.S. at 373 (explaining that detention of an "alien arriving in the United States" is "subject to the Secretary's discretionary authority to parole" him into the United States); *see also* 8 U.S.C. § 1182(d)(5)(A). Regardless of whether the government temporarily paroles an arriving alien in the exercise of discretion, the regulations state that an immigration judge does not have authority to review the custody determination of an arriving alien in removal proceedings. 8 C.F.R. § 1003.19(h)(2)(i)(B). This regulation pre-dates *Matter of Yajure-Hurtado,* 29 I&N Dec. 216 (BIA 2025) and is well-settled law. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see also Garibay-Robledo v. Noem*, --- F.Supp.3d ---, No. 1:25–CV–177–H, 2026 WL 81679 at *4 (N.D. Tex. Jan. 9, 2026).

Petitioner, therefore, is properly detained under § 1225(b)(2)(A) as an arriving alien/applicant for admission in removal proceedings under 8 U.S.C. § 1229a. *See Matter of E-R-M- & L-R-M-*, 25 I & N Dec. 520, 521, 523 (BIA 2011); 8 C.F.R. § 239.1 (DHS has the discretion to issue an NTA at the port of entry in lieu of expedited removal proceedings). As an arriving alien, the regulations bar Petitioner from seeking bond from an immigration judge. *See Buenrostro*, 166 F.4th at 498-508 (applying more widely to all applicants for admission, which necessarily includes

arriving aliens). Arriving aliens have limited due process rights, so that classification is vital to the due process analysis, as well.

A. Mandatory Detention under § 1225(b) Is Facially Constitutional.

In upholding the facial constitutionality of § 1225(b) the Supreme Court in *Thuraissigiam* found that applicants for admission are entitled only to the protections set forth by statute in the INA. *Dep't of Homeland Sec. v. Thuraissigiam,* 91 U.S. 103, 140 (2020). Mandatory detention of an applicant for admission during "full" removal proceedings does not violate due process, because constitutional protections are built into those proceedings. *See* 8 U.S.C. § 1229a; *see Demore v. Kim*, 538 U.S. 510, 526 (2003) (recognizing the constitutionality of detention during the limited period of removal proceedings). Consistent with the Supreme Court's long-standing precedent, the Fifth Circuit in *Buenrostro* opined that *Zadvydas* did not apply equally to detained pre-removal-order aliens who received or were receiving due process through removal proceedings. *Buenrostro*, 166 F.4th at 508; *see also Perez Sanchez v. Vergara, et al*, No. 5:26–CV–626–MA (W.D. Tex. Feb. 24, 2026) (denying habeas petition to alien seeking administrative review of a removal order, finding that no substantive due process right to release attaches and that the sole procedural protection afforded is the review of the underlying removal order itself).

B. Petitioner Does Not State a Viable Procedural Due Process Claim.

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).2F[3] 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*

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3 Respondents do not concede that *Mathews* provides the appropriate framework in this case.

v. Flores, 507 U.S. 292, 302 (1993). Indeed, asserting "a right to a hearing under the Due Process Clause" requires a showing that "the facts they seek to establish in that hearing are relevant under the statutory scheme." *Connecticut Department of Pub. Safety v. Doe*, 538 U.S. 1, 9 (2003). Petitioner here alleges no facts that would be relevant under § 1225(b)(2).

Petitioner has not challenged the adequacy of the procedures for determining whether she is properly described as an "applicant for admission," a matter determined in immigration removal proceedings, which subjects Petitioner to mandatory detention under § 1225(b)(2)(A). Instead, Petitioner argues that inclusion within the scope of a mandatory detention provision (§1225(b)(2)(A)) is a constitutionally insufficient basis on which to justify the deprivation of liberty. Petitioner's due process argument is, therefore, substantive, not procedural.

Congress imposed mandatory detention on all applicants for admission, and due process does not require procedures to adjudicate immaterial facts. Because § 1225(b)(2)(A) requires mandatory detention regardless of flight risk or danger, Petitioner's claims challenge the substance of the law, not the procedure. What Petitioner is asking this Court to do is override Congress's substantive judgment that all applicants for admission must be detained regardless of whether they are dangerous or flight risks. Procedural due process can do no such thing.

The Supreme Court's decision in *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), is definitively on 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. *Id.* 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, explaining that "due process does not require the opportunity to prove a fact that is not material to

[a] statutory scheme...." *Id.* at 7. Whether Doe was currently dangerous was "of no consequence" because the statute required him to register based on his prior conviction alone. *Id.* Without a showing that the law conflicted with the Constitution, any hearing on current dangerousness would be "a bootless exercise." *Id.* at 8.

Detainees who assert a right to a due process hearing must show that the facts they seek to establish in that hearing are relevant under the statutory scheme. *Conn. Dep't of Pub. Safety,* 538 U.S. at 9; *Duarte v. City of Lewisville, Texas*, 858 F.3d 348 (5th Cir. 2017). The Fifth Circuit applied that same rationale to reject a procedural due process challenge to mandatory detention under §1226(c) for removal proceedings in *Wekesa v. U.S. Attorney*, 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. 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." *Conn. 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 where those issues are irrelevant under § 1225(b)(2). Petitioner falls squarely within the plain language of the statute as interpreted by *Buenrostro-Mendez.* Therefore, any claim that Petitioner is entitled to a bond hearing "'must ultimately be analyzed' in terms of substantive, not procedural, due process." *Conn. Dep't of Pub. Safety*, 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).

C. Even if Petitioner Were Asserting a Viable Procedural Due Process Claim, It Lacks Merit.

The Supreme Court has made clear that *lawful admission*—not physical entry (or even parole)—is the touchstone for when aliens gain due process interests that could potentially require procedures beyond what Congress has provided. In *Landon v. Plascencia*, 459 U.S. 21, 32 (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[]." (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 be required only for those who have been lawfully *admitted* was confirmed years before in *Kaplan v. Tod*, 267 U.S. 228 (1925), a habeas case where a child sought release from immigration custody. 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 presumably forming connections to the United States. *Id.* at 229. Still, because the child had never been lawfully admitted, the Due Process Clause did not require *any* additional procedures beyond what Congress provided. *Id.* at 229-30.

D. Petitioner Does Not Have a Substantive Due Process Right to a Bond Hearing.

Petitioner does not purport to identify any fundamental right to which she is entitled. *Assaad v. Ashcroft*, 387 F.3d 471, 475–76 (5th Cir. 2004) (collecting cases and finding that the failure to receive discretionary relief in removal proceedings does not amount to a deprivation of a liberty interest). As such, the 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). Reversing the lower court's finding that the petitioner in *Demore* had shown an as-applied constitutional challenge while in pre-removal-order detention, the Supreme Court concluded that since removal proceedings were ongoing, detention was "a constitutionally permissible part" of the removal process. *Id.* at 530.

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." *Dep't of State v. Muñoz*, 602 U.S. 899, 910 (2024) (quoting *Glucksberg*, 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 if it is "rationally related to legitimate government interests." *Id.*

Section 1225 clears the rational basis test. Petitioner does not allege that removal is "unattainable" like it was in *Zadvydas*, so detention under § 1225(b)(2)(A) serves the same legitimate interest recognized by *Demore* in the context of § 1226(c)—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." 166 F.4th 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*.

While complaining that detention during removal proceedings violates due process, Petitioner does not contest that she is removable as charged. Moreover, Petitioner makes no showing that removal proceedings and corresponding detention during those proceedings are unconstitutional as applied. There is no allegation regarding deprivation of the right to counsel in removal proceedings. Indeed, the NTA constitutes notice of the allegations and charge, and Petitioner may appeal any adverse decision administratively and in the circuit court. As applied here to Petitioner, therefore, detention for the purpose of removal proceedings does not violate substantive due process.

District courts in this Circuit have also dismissed due process concerns in similar contexts. *See, e.g., Menjivar Araujo v. Bondi, et al*, No. 26–CV–237–ADA–SH (W.D. Tex. Mar. 2, 2026); *Herrera Cordoba v. Bondi, et al*, No. 1:26–CV–238–ADA–SH (W.D. Tex. Mar. 2, 2026); *Moya Gonzalez v. Collins, et al*, No 1:26–CV–176–ADA–ML (W.D. Tex. Feb. 26, 2026); *Lechon Cotachachi v. Bondi, et al*, No. 1:26–CV–236–ADA (W.D. Tex. Feb. 26, 2026) (Albright, J.) (due

process does not entitle applicant for admission to a bond hearing); ***Lopez Jaimes v. Lyons, et al,* No. 26–CV–686–MA (W. D. Tex. Feb. 17, 2026) (Alvarez, J.)** (finding no due process violation where applicant for admission with expired parole was taken back into custody on a mandatory basis during removal proceedings); *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 applications for admission without bond under § 1225); *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); *Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (Eskridge, J.) (rejecting petitioner's argument that mandatory detention without bond hearing violates substantive due process).

CONCLUSION

Respondents respectfully request that the Court deny this petition.

Respectfully submitted,

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Certificate of Service

I certify that on October 9, 2026, I directed a copy of this motion to be served on Petitioner at the following address:

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PRO SE

/s/ Anne Marie Cordova
Assistant U.S. Attorney