UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 26-50183

Ignacio Sosnava Rodriguez
Petitioner–Appellee,
v.
Sylvester M. Ortega, in his official capacity as Director of the San Antonio Field Office of ICE's Enforcement and Removal Operations; Markwayne Mullin, U.S. Department of Homeland Security; Todd Wallace Blanche, Acting U.S. Attorney General; Department of Homeland Security; DOJ Executive Office for Immigration Review,

Respondents-Appellants.

CONSOLIDATED WITH

No. 26-50219

Alejandro Villegas Angel,
Petitioner–Appellee,
v.
Markwayne Mullin, Secretary, U.S. Department of Homeland Security; Todd Wallace Blanche, Acting U.S. Attorney General; Miguel Vergara, San Antonio Field Office Director for Enforcement and Removal; United States Department of Homeland Security; United States Immigration and Customs Enforcement; Executive Office for Immigration Review, Office of the General Counsel,

Respondents-Appellants.

CONSOLIDATED WITH

No. 26-50221

Miguel Angel Gomez Alvarado
Petitioner–Appellee,
v.
Michael Vergara, in his official capacity as Acting Director of San Antonio Field Office for U.S. Immigration and Customs Enforcement; Todd Lyons, in his capacity as the Acting Director for the U.S. Immigration and Customs Enforcement; Markwayne Mullin, Secretary, U.S. Department of Homeland Security,

Respondents-Appellants

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS
Nos. 1:26-cv-384, 1:26-cv-309, 1:26-cv-273

PETITIONERS-APPELLEES' PRINCIPAL BRIEF

Stephanie E. Norton
Gracie Willis
Yulie Landan
NATIONAL IMMIGRATION PROJECT
1763 Columbia Road NW
Suite 175 #896645
Washington, DC 20009

Patricio Garza Izaguirre
GARZA & NARVAEZ, PLLC
7600 Chevy Chase Drive, Suite 118
Austin, TX 78752

Rebecca Cassler
Michelle Lapointe
AMERICAN IMMIGRATION COUNCIL
2001 L. Street NW, Suite 500
Washington, DC 20036

Stephen A. Lagana
LAW OFFICES OF STEPHEN A. LAGANA
145 Essex St.
Lawrence, Massachusetts 01840

CERTIFICATE OF INTERESTED PERSONS

Petitioners-Appellees certify that the following listed persons and entities as described in the fourth sentence of 5th Cir. Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Petitioners-Appellees

- Ignacio Sosnava Rodriguez, Petitioner-Appellee;
- Alejandro Villegas Angel, Petitioner-Appellee;
- Miguel Angel Gomez Alvarado, Petitioner-Appellee;

Counsel for Petitioners-Appellees

- Patricio Garza Izaguirre, Garza Narvaez PLLC, Counsel for Petitioner-Appellee Alejandro Villegas Angel;
- Stephen A. Lagana, Law Offices of Stephen Lagana, Attorney for Petitioner-Appellee Miguel Angel Gomez Alvarado;
- Stephanie E. Norton, Gracie Willis, Yulie Landan, National Immigration Project of the National Lawyers Guild, Counsel for Petitioners-Appellees;
- Rebecca Cassler, Michelle Lapointe, American Immigration Council, Counsel for Petitioners-Appellees.

/s/ Rebecca Cassler
Rebecca Cassler
Counsel for Petitioners-Appellees

STATEMENT REGARDING ORAL ARGUMENT

These appeals concern as-applied due process challenges to mandatory immigration detention under 8 U.S.C. §1225(b)(2)(A) in the wake of this Court's decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). These three consolidated appeals arise out of the district courts' grants of petitions for writs of habeas corpus for three Petitioners who have lived in the United States for years after entering without inspection, who were not encountered at or near the border, and who have no criminal history. All three cases raise the same simple question: does the Due Process Clause permit the mandatory detention of these Petitioners under 8 U.S.C. §1225(b)(2)(A) without meaningful individualized review of whether their detention serves a constitutionally permissible purpose?

Oral argument is scheduled for April 29, 2026. The parties agree that oral argument will assist in the Court's review of the important constitutional issue in these cases.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Regulations

Constitutional Provisions

INTRODUCTION

At issue in this appeal is the government's radical reimagining of the most fundamental liberty interest—freedom from imprisonment. After routine traffic stops, the government arrested three men ("Petitioners"), all of whom are fathers of U.S.-citizen children, have no criminal history, and have been living in this country for over a decade after entering without inspection. Ignoring settled Supreme Court precedent, the government asserts that its civil detention of Petitioners need not be accompanied by *any* procedural protections to ensure their detention is justified. At base, the government asks this Court to hold that Congress can legislate away the Due Process Clause. The Court should reject that invitation.

The Fifth Amendment of the U.S. Constitution protects every "person"—citizen and noncitizen alike—from imprisonment "without due process of law." Born out of English common law, embraced by the founders to defend against tyranny, and reaffirmed by nearly 250 years of Supreme Court jurisprudence, due process prohibits physical deprivation of liberty unless a person's detention serves a constitutionally permissible purpose that is tested by meaningful process. Despite living in this country for years, each Petitioner in this case is subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A) without any determination that detention is necessary to prevent them from absconding or endangering their communities—what the Supreme Court has found to be the only valid justifications for immigration

detention. The district courts in each case properly concluded that, as applied to these long-time residents, such arbitrary detention without due process is impermissible.

Faced with this great weight of authority against it, the government makes a series of baseless arguments. First, the government asserts that Petitioners' claims are foreclosed by *Demore v. Kim*, 538 U.S. 510 (2003), where the Supreme Court upheld the constitutionality of a different detention statute based on a robust legislative record establishing that Congress determined mandatory detention of a narrow class of noncitizens with certain criminal convictions was justified to mitigate flight risk and danger. But the §1225(b)(2)(A) Congressional record contains no evidence of such a categorical determination as to longtime residents who entered without inspection.

Nor does *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), help the government. *Doe* is a sex-offender registration case where the plaintiff made a tenuous claim of mere reputational harm; it does not apply here. Because of the fundamental nature of Petitioners' liberty interests, the Constitution itself requires meaningful process regardless of any statutory scheme.

Finally, the government argues that Petitioners are entitled to no process beyond that provided by statute under the "entry fiction"—a doctrine plainly inapplicable to Petitioners, who indisputably entered the country years ago and were encountered by immigration authorities in the interior. Legislation cannot and has

not changed the territorial reach of the Due Process Clause's protection of physical liberty, and Petitioners' claims are not impacted by that legal fiction.

Beyond these threshold arguments, the government does not even attempt to justify Petitioners' detention. Applying the well-established framework in *Mathews v. Eldridge*, 424 U.S. 319 (1976), the lower courts correctly held that Petitioners' automatic detention without review by a neutral decisionmaker to ensure it serves a constitutionally valid purpose violated their due process rights. The Court should affirm.

STATEMENT OF THE ISSUE

Whether the district courts correctly concluded that the Due Process Clause does not permit Petitioners' mandatory detention under 8 U.S.C. §1225(b)(2)(A) without meaningful, individualized review of whether that detention serves a constitutionally permissible purpose, where Petitioners entered the United States without inspection and were encountered years later in the interior of the United States?

STATEMENT OF THE CASE

I. The Historical Application of the Due Process Clause to Noncitizens Residing in the United States.

A. Due Process and Detention at the Time of the Founding.

The Due Process Clause protects—at a minimum—"those settled usages and modes of proceeding existing in the common and statute law of England." *Murray's*

Lessee v. Hoboken Land & Improvement Co., 59 U.S. 272, 277 (1855); *Jauch v. Choctaw Cnty.*, 874 F.3d 425, 434 (5th Cir. 2017) ("At the embryonic stage, we claimed all the rights of Englishmen."). At the time of the founding, in the absence of a criminal conviction, English common law did not permit confinement without a hearing before a neutral decisionmaker to assess whether detention was necessary. *See* Caleb Foote, *The Coming Constitutional Crisis in Bail: I*, 113 U. Pa. L. Rev. 959, 966–68 (1965) (detailing pre-founding English history and practices regarding bail and pretrial detention). Indeed, Blackstone recognized the right to bail "in any Case whatsoever." 4 William Blackstone, *Analysis of the Laws of England* 148 (6th ed. 1771). This right to bail historically served as a fundamental check against arbitrary detention. *See* 4 William Blackstone, *Commentaries on the Laws on England* 296–97 (1769); 3 William Blackstone, *Commentaries* at 291 (1768).

English common law tradition afforded such core protections to noncitizens and citizens alike. *See* 1 William Blackstone, *Commentaries* at *366 (1765) (defining "the people" of England to include "aliens"); *Holmes v, Jennison*, 39 U.S. 540, 556 (1840) ("The right of personal liberty has existed ever since the first creation of man, and is incident to his nature. . . . That the [Due Process Clause] . . . embraces every person within the limits and jurisdiction of the whole Union, will not be denied."); *see also United States v. Wong Kim Ark*, 169 U.S. 649, 655 (1898) ("Such allegiance and protection . . . were not restricted to natural-born subjects and

naturalized subjects, . . . but were predicable of aliens in amity, so long as they were within the kingdom.").

The Framers incorporated these principles into the Fifth Amendment guarantee that all "person[s]" may not be deprived of "liberty" without "due process of law," U.S. Const. amend. V, recognizing that "the practice of arbitrary imprisonments, [has] been, in all ages," among "the favorite and most formidable instruments of tyranny," The Federalist No. 84 (Alexander Hamilton). That the Framers referred to "persons" rather than "citizens" in the Due Process Clause reflects their intention to conform to the common law regarding the due process rights of noncitizens. 5 Annals of Cong. 1956 (1798) (Rep. Gallatin) (noting that the Clause "speaks of persons, not of citizens"); *accord* 4 The Debates in the Several State Conventions on the Adoption of the Federal Constitution (Jonathan Elliot ed., 2d ed. 1836) ("Elliot's Debates") 541 (Thomas Jefferson explaining that summary imprisonment of noncitizens would be "contrary to the Constitution, one amendment in which has provided, that 'no person shall be deprived of liberty without due process of law'").

B. Due Process and Civil Detention.

The government can only deprive citizens and noncitizens alike of fundamental rights and liberty interests—which include the "specific freedoms protected by the Bill of Rights," *Washington v. Glucksberg*, 521 U.S. 702, 720

(1997)—if the deprivation is justified by a "sufficiently compelling" governmental interest, *United States v. Salerno*, 481 U.S. 739, 748 (1987). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("[T]he interest in being free from physical detention" is "the most elemental of liberty interests."); *Kerry v. Din*, 576 U.S. 86, 91 (2015) (in our historical tradition, due process applies at minimum when one is "taken or imprisoned") (citation omitted).

Accordingly, the Supreme Court "repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases). And even when the government has a compelling interest in certain kinds of civil detention—for example, to protect the public from "a limited subclass of dangerous persons" who are "unable to control their behavior"—there must still be "proper procedures and evidentiary standards" in place. *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997). These procedures "minimize the risk of erroneous decisions," ensuring that the deprivation of liberty is in fact justified in any given case. *Addington*, 441 U.S. at 425–26; *see also Washington v. Harper*, 494 U.S. 210, 220 (1990).

When considering what procedures are necessary to ensure this, courts typically apply the flexible, three-part test articulated in *Mathews v. Eldridge*, which balances "the private interest at stake, the risk of erroneous deprivations under existing procedures in light of available alternative or additional procedures, and the government's interest." *Jauch*, 874 F.3d at 431; *see also Black v. Decker*, 103 F.4th 133, 147–49 (2d Cir. 2024) (collecting cases). In doing so, courts have routinely held that a hearing before a neutral decisionmaker is a necessary procedural safeguard for civil custody. *See, e.g.*, *Addington*, 441 U.S. at 427, 431–33; *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992); *see also Salerno*, 481 U.S. at 750–52 (same for pre-trial detention).

C. Statutory Framework for Immigration Detention and Its Limits.

The early history of immigration detention demonstrates that in the rare case where detention was authorized during deportation proceedings,[1] it was universally understood that due process required an opportunity for individualized review of detention and pre-trial release.[2] Lindsay Nash, *Resurrecting Immigration Releases*,

---

[1] Before 1996, immigration law referred to people who had not entered the country as "excludable," and if not admitted at the border they were placed in "exclusion" proceedings. People already in the country, like Petitioners, were instead potentially "deportable" and subject to "deportation" proceedings. *See Hing Sum v. Holder*, 602 F.3d 1092, 1099–1100 (9th Cir. 2010).

[2] The government is correct that the first statute authorizing release on *bond* from immigration detention was enacted in 1907. Opening Brief (OB).33 (citing *Demore*, 538 U.S. at 523 n.7). But since deportation proceedings were first created by statute in the late 1800s, both federal courts and administrative officers had undisputed

135 Yale L.J. 1533, 1563–76, 1584–90, 1597–1607 (2026). In the same vein, immediately prior to the passage of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996), noncitizens who arrived at a port of entry and were placed in exclusion proceedings were subject to mandatory, no-bond detention until the conclusion of the exclusion process, while those encountered in the interior and placed in deportation proceedings could seek release on bond. 8 U.S.C. §§1225(b) (1990), 1252(a) (1994). Those who received final exclusion or deportation orders could be detained for up to six months. 8 U.S.C. §1252(c) (1994).

IIRIRA did away with the distinction between exclusion and deportation proceedings, *see infra* 45–46, and set out new detention provisions at 8 U.S.C. §§1225(b), 1226, and 1231(a). Section 1231(a) governs the detention of noncitizens with final removal orders, while §1226 and §1225(b) apply before a final order has been entered.[3] Section 1226(a) includes access to bond, absent specified criminal

---

authority to release noncitizens "pre-adjudication"—pending resolution of their deportation proceedings—just as in the pre-trial context. *Resurrecting Immigration Releases* at 1586. As such, "the 1907 bond provision did not . . . create the pretrial release power in the deportation system." *Id.* at 1565, 1594. The 1907 law's significance is instead that "it allowed the agency, for the first time, to *require a monetary commitment* . . . as a condition of release in the deportation context." *Id.* at 1592 (emphasis added).

[3] 8 U.S.C. §1225(b)(1), which mandates detention of noncitizens placed in expedited removal proceedings, is not at issue in this case.

history as set forth in §1226(c), while §1225(b) mandates detention without access to bond. As this Court recently recognized, "[f]rom 1997 to 2025, successive presidential administrations" treated noncitizens without disqualifying criminal history who were encountered within the United States, as opposed to seeking entry at its borders, as entitled to a bond hearing under §1226(a) assessing whether they presented a flight risk or danger. *Buenrostro-Mendez*, 166 F.4th at 500.

In reviewing IIRIRA's detention provisions, the Supreme Court has adhered to the same overarching due process framework applied in all other civil detention contexts. It has required special justification for detention, as well as an individualized determination of its need, except in the rare instance where Congress made an evidence-based, categorical determination of flight risk or danger for a specific and limited group of noncitizens.

In *Zadvydas v. Davis*, the Court relied on due process jurisprudence from the civil commitment context to construe §1231(a), which authorizes post-removal-order detention without access to bond and without an explicit time limitation. 553 U.S. at 690–91. The Court reiterated that because civil immigration detention implicates the most fundamental liberty interest, to pass constitutional muster it must be limited to "certain special and narrow" circumstances where a "special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint," and must include "strong procedural protections." *Id*.

(cleaned up). Considering §1231(a), the Court found that the government's valid justifications for detention were "'ensuring the appearance of [noncitizens] at future immigration proceedings'" and "'[p]reventing danger to the community.'" *Id*. at 690 (citation omitted) (second alteration in original). However, the Court concluded that, particularly because of the statutory scheme's weak procedural protections, reading §1231(a) to permit detention until removal could be effectuated would create serious constitutional problems. Accordingly, the Court construed the statute to require an individualized review of the need for detention after a presumptively reasonable period of six months post-removal order. *Id.* at 699–701.

In *Demore v. Kim*, the Court held that §1226(c)(1)(B), which mandates detention without a bond hearing for a "limited class" of deportable noncitizens with certain criminal convictions during their removal proceedings, is constitutional on its face. 538 U.S. at 513 n.1, 518. As in *Zadvydas*, the Court evaluated the undisputed purposes of detention: preventing flight and danger to the community. *Id.* at 518, 528. Ultimately, the Court found §1226(c) facially valid despite its lack of individualized review, concluding that noncitizens' criminal convictions were a reasonable proxy for flight risk and danger. *Id*. at 531. In so finding, the Court heavily weighed the congressional record, which contained evidence establishing that deportable noncitizens with serious criminal convictions "often committed more crimes before being removed" and often "absconded prior to the completion of

[their] removal proceedings" after release on bond. *Id.* at 518–20. The Court also stressed that qualifying convictions are "obtained following the full procedural protections our criminal justice system offers." *Id*. at 513. However, the Court left open the question of whether due process might require additional procedural protections if detention continued beyond the "brief" period the government represented was necessary to complete removal proceedings, *id*. at 513, 529–31, and "became unreasonable or unjustified," *id.* at 532 (Kennedy, J., concurring).[4]

Finally, in *Jennings v. Rodriguez*, the Court held that, as a statutory matter, neither §1226 nor §1225(b) can be read to require individualized bond hearings after six months of detention. 583 U.S. 281, 297–300 (2018). However, the *Jennings* Court did not consider petitioners' as-applied due process challenges to their detention under these statutes, instead remanding the case to the Ninth Circuit to do so. *Id*. at 312.

Since *Jennings*, no circuits have decided an as-applied constitutional challenge to mandatory detention under §1225(b)(2)(A). However, multiple circuit courts have considered—and granted—such challenges to mandatory detention

[4] The data before the Court showed that detention under the statute "last[ed] roughly a month and a half in the vast majority of cases . . . and about five months in the minority of cases" with an appeal. *Id.* at 530. The government later disclosed that this data was inaccurate. *Avilez v. Garland*, 69 F.4th 525, 539–40 (9th Cir. 2023) (Berzon, J., concurring). However, this appeal does not present the question of whether Petitioners' prolonged detention without individualized review would be constitutional.

under the statute at issue in *Demore,* §1226(c). *See Black*, 103 F.4th at 145; *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020) (all finding that the Due Process Clause requires an individualized assessment of flight risk and danger when detention becomes unreasonable); *but see Banyee v. Garland*, 115 F.4th 928, 933–34 (8th Cir. 2024) (assuming due process applied but finding petitioner could not show unreasonable detention in his case).

II. The Government's New Mandatory Detention Policy and Interpretation of the Due Process Clause.

This case involves as-applied due process challenges to detention under §1225(b)(2)(A). Since its enactment until mid-2025, that statute was only applied to noncitizens who were encountered at the border and placed in removal proceedings, *Buenrostro-Mendez*, 166 F.4th at 500. That changed in July 2025, when the Department of Homeland Security ("DHS") adopted a policy that all noncitizens who had not been lawfully admitted into the United States, no matter how long they had resided here, were in fact subject to mandatory, no-bond detention. OB.12. The Board of Immigration Appeals ("BIA") subsequently adopted the same position, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), precluding thousands of detained noncitizens from accessing bond hearings.

In February 2026, this Court became the first court of appeals to consider and decide the proper application of §1225(b)(2)(A). In *Buenrostro-Mendez*, the Court

concluded that the government's new position was the correct one. 166 F.4th at 502–08. Accordingly, all noncitizens detained in this Circuit who have not been lawfully admitted into the United States are now considered held pursuant to §1225(b)(2)(A), without any individualized determination of the need for their detention or access to a bond hearing.[5]

Just a few years ago, the government represented to the Supreme Court that §1225(b) was constitutional as applied to noncitizens "on the threshold of initial entry to the United States"—then considered "likely the vast majority" of its applications—and affirmed that any statutory applications where a constitutional problem might arise "could be resolved . . . through an as-applied constitutional challenge in an individual habeas proceeding." Brief for Petitioner at 25, *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (No. 15-1204), 2016 WL 5404637, at *25. The government now argues otherwise.

III. Factual Background

Ignacio Sosnava Rodriguez is a Mexican citizen who entered the United States without inspection more than two decades ago. ROA.26-50183.80. He is the father

[5] DHS "retains the authority to, in its discretion, exercise its parole authority to temporarily release applicants" detained under §1225(b)(2)(A). *Buenrostro-Mendez*, 166 F.4th at 499 n.3 (citing 8 U.S.C. §1182(d)(5)(A)). But it may only exercise this authority "on a case-by-case basis for urgent humanitarian reasons or significant public benefit," §1182(d)(5)(A)), and only if it finds that the noncitizen is neither a flight risk nor a danger, 8 C.F.R. §212.5(b).

of U.S. citizen children and resides with his family in Elgin, Texas. ROA.26-50183.80, 120.

Alejandro Villegas Angel is a Mexican citizen who entered the United States without inspection fifteen years ago. ROA.26-50219.10. He and his spouse have two U.S. citizen daughters, ages ten and seven. ROA.26-50219.7. His oldest daughter has autism and a speech impairment, and relies on him for essential medical, emotional, and other support. ROA.26-50219.10. He lives with his family in Texas, where he built his family home several years ago. ROA.26-50219.10.

Miguel Angel Gomez Alvarado is a Honduran citizen who entered the United States without inspection nearly fourteen years ago. ROA.26-50221.6. He and his wife have one son, a U.S. citizen who is two years old. ROA.26-50221.6. He has resided primarily in Central Texas for fourteen years and attends church in Killeen. ROA.26-50221.19, 27, 24.

None of the petitioners have any criminal history. ROA.26-50183.121–22; ROA.26-50219.11; ROA.26-50221.7, 89.

Each Petitioner was arrested in late 2025 or early 2026 by immigration officials following a traffic stop. ROA.26-50183.80; ROA.26-50219.11, ROA.26-50221.69. All three were then detained at T. Don Hutto Detention Center and placed in removal proceedings for being present in the United States without admission or

parole under 8 U.S.C. §1182(a)(6)(A)(i). ROA.26-50183.80; ROA.26-50219.11, ROA.26-50221.70.

Each Petitioner has a strong claim for cancellation of removal, based on their lengthy residence in the country and the harm their removal would cause to their qualifying U.S. citizen children. ROA.26-50183.80; ROA.26-50219.11; ROA.26-50221.7.

None of the Petitioners were afforded an opportunity to seek release on bond.

IV. Procedural History

On February 4, 2026, Mr. Sosnava Rodriguez filed a habeas petition, ROA.26-50183.3, and on February 13, an amended petition, ROA.26-50183.72–93, which the district court granted on February 25, 2026, ROA.26-50183.127-133.

On February 18, 2026, Mr. Villegas Angel filed a habeas petition, ROA.26-50219.3, which the district court granted on March 3, 2026, ROA.26-50219.71–86.

On February 6, 2026, Mr. Gomez Alvarado filed a habeas petition, ROA.26-50221.2, which the district court granted on March 2, 2026, ROA.26-50221.79–93.

In each case, the district court applied the three-factor *Mathews* test and found that the petitioner's mandatory detention under §1225(b)(2)(A) without meaningful, individualized review violated his due process rights. ROA.26-50183.130-131; ROA.26-50219.81–83; ROA.26-50221.88–93. The lower courts found that each Petitioners' long-term residence in the United States created a strong interest in their

continued liberty, while their detention without access to any meaningful process placed them at high risk of being erroneously deprived of that liberty. ROA.26-50183.130–31; ROA.26-50219.81–83; ROA.26-50221.88-91. In contrast, the district courts found that while the government has a strong interest in detaining noncitizens to ensure they do not abscond or present a danger to the community, it does not have a strong interest in doing so without actually testing whether such risks even exist via minimally burdensome bond hearings. ROA.26-50183.131; ROA.26-50219.83; ROA.26-50221.90-91. As a remedy, the district courts ordered each petitioner released and enjoined their future detention without a prior bond hearing at which the government must justify such detention by clear and convincing evidence of dangerousness or flight risk. ROA.26-50183.132-33; ROA.26-50219.85–86; ROA.26-50221.91-93.

Mr. Sosnava Rodriguez was released on February 27, 2026. ROA.26-50183.135. The government filed a notice of appeal on March 2, 2026. ROA.26-50183.137.

Mr. Villegas Angel was released on or about March 3, 2025. ROA.26-50219.91. The government filed a notice of appeal on March 12, 2026. ROA.26-50219.93.

Mr. Gomez Alvarado was released on March 2, 2026. ROA.26-50221.95. The government filed a notice of appeal on March 12, 2026. ROA.26-50221.97.

SUMMARY OF THE ARGUMENT

Petitioners seek—and the district courts granted—narrow relief grounded in the Due Process Clause and two centuries of Supreme Court jurisprudence: individualized review by a neutral arbiter to determine whether their imprisonment serves a compelling government purpose. The district courts below applied the proper due process framework to Petitioners' as-applied challenges to their detention under §1225(b)(2)(A) and correctly determined that their mandatory detention without any process violates the Fifth Amendment. The government's arguments urging reversal are contrary to binding Supreme Court precedent and, if accepted, would permit Congress to re-write the Constitution.

I. Freedom from physical restraint is a specifically enumerated fundamental liberty interest that can only be infringed by a compelling government purpose. The Supreme Court has repeatedly held that the only permissible purposes for civil immigration detention are to prevent flight risk and danger to the community. Petitioners' claims are straightforward and consistent with well-established due process jurisprudence: they seek constitutionally adequate procedures to determine whether their detention is substantively valid.

Demore does not foreclose Petitioners' challenge. In that case, the Supreme Court found a different detention statute facially valid based on Congress' specific, evidence-based determination that detention was necessary for a limited group of

noncitizens with certain criminal convictions. This narrow exception to individualized review, in which specific criminal convictions serve as a proxy for a determination of flight risk and danger, does not apply to Petitioners' detention under §1225(b)(2)(A): Congress considered no such evidence and made no such determination regarding longtime residents who entered without inspection.

Nor does *Connecticut Department of Public Safety v. Doe* undermine Petitioners' procedural due process claims. That case is inapplicable because it involved an unenumerated, non-fundamental interest in reputational harm. Where the government infringes on the fundamental liberty interest in freedom from restraint, the Supreme Court has repeatedly required additional process beyond that provided by statute to ensure the deprivation is justified by a sufficiently compelling purpose. Otherwise, Congress could mandate detention for no reason and no process would ever be required.

Finally, the "entry fiction" has no place in this case. All three Petitioners indisputably have "entered" the United States and, as such, have due process rights beyond what Congress has provided. A long line of Supreme Court case law, including *Thuraissigiam*, forecloses the government's argument that noncitizens who enter unlawfully are not entitled to constitutional due process protections. Changes to the immigration statutory framework in 1996 did not change the Constitution's territorial scope.

II. The district courts properly found that Petitioners are entitled to individualized review of whether their detention serves a compelling government purpose at a hearing before a neutral arbiter. The three-factor test in *Mathews* provides an appropriate framework that balances the government's interests in detaining noncitizens against the noncitizens' fundamental liberty interests and the risk of their erroneous deprivation without additional process.

The government makes no effort to dispute the courts' weighing of those factors, nor could it. The private interests weigh heavily in Petitioners' favor: they are fathers of U.S.-citizen children, have lived in the United States for over a decade, and were held in a carceral setting. There is a high risk of erroneous deprivation of their liberty, as each was detained without any process at all to assess flight risk or danger, despite having no criminal history. And providing a bond hearing would satisfy the government's valid interests in ensuring appearance at future hearings and assessing danger to the community.

STANDARD OF REVIEW

"In the context of a habeas corpus petition, this Court reviews the district court's determinations of law *de novo* and its findings of facts for clear error." *Venegas v. Henman*, 126 F.3d 760, 761 (5th Cir. 1997).[6]

[6] This Court correctly applied the *de novo* standard of review in *Buenrostro-Mendez*, *see* OB.21, which presented purely legal questions. However, clear error review applies to factual findings in habeas decisions. *Pack v. Yusuff*, 218 F.3d 448, 451

ARGUMENT

I. The District Courts Applied the Correct Due Process Framework to Petitioners' As-Applied Challenges.

The district courts properly analyzed Petitioners' as-applied due process claims by acknowledging that their detention implicates a fundamental liberty interest and assessing whether sufficient procedures were in place to ensure that the deprivation of liberty served a compelling government interest in their cases. Contrary to the government's contentions, neither *Demore* (which analyzed a different statute involving Congress's categorical determination of "criminal aliens'" dangerousness and flight risk), nor *Doe* (which did not involve a fundamental liberty interest at all), foreclose Petitioners' claims. The entry fiction does not either, as Petitioners indisputably entered and have resided in this country for years.

A. Mandatory Detention under §1225(b)(2)(A) Implicates the Most Fundamental Liberty Interest, Requiring a Constitutionally Permissible Purpose and Strong Procedural Protections.

Petitioners' detention here implicates the most fundamental of constitutionally protected interests: "[f]reedom from imprisonment." *Zadvydas*, 533 U.S. at 690 (citing *Foucha*, 504 U.S. at 80). Yet, while held under §1225(b)(2)(A),

---

(5th Cir. 2000) (stating that dismissal of a habeas petition on the pleadings—a legal question—is reviewed *de novo*, citing *Venegas*); *Buenrostro-Mendez*, 166 F.4th at 501 (relying on *Pack*).

Petitioners were afforded no process at all as to the necessity of their detention. Accordingly, they properly challenged "whether the procedures provided" when they were deprived of their liberty "were constitutionally sufficient." *Meza v. Livingston*, 2010 WL 6511727 at *6 (5th Cir. Oct. 19, 2010) (clarifying on denial of reh'g, 607 F.3d 392, 401 (5th Cir. 2010)).

The government contends that Petitioners can only challenge their detention on substantive, not procedural, due process grounds, because the facts they seek to establish through additional process—whether they present any danger or risk of flight—are ultimately "irrelevant under the terms of §1225(b)(2)(A)." OB.23. This is wrong. Because Petitioners' detention implicates a fundamental liberty interest, it is not §1225(b)(2)(A)—but the Constitution—that dictates what is relevant here. And as the Supreme Court has repeatedly found, the only constitutionally permissible purposes of civil immigration detention are to prevent flight risk and danger to the community. *See, e.g.*, *Zadvydas,* 533 U.S. at 690–91. Petitioners therefore properly challenged the adequacy of procedures testing whether their detention satisfied those purposes. In any event, because §1225(b)(2)(A) also reflects these purposes, flight risk and danger to the community are in fact entirely "relevant under the statutory scheme." *Doe*, 538 U.S. at 8.

1. Mandatory Detention Under Section 1225(b)(2) Infringes Upon a Fundamental Liberty Interest, Thereby Requiring Adequate Procedural Protection.

The Due Process Clause protects both substantive and procedural due process. *Glucksberg*, 521 U.S. at 719–20. The government attempts to muddle Petitioners' due process claims here, but their argument is straightforward: they have a fundamental liberty interest that the government may only deprive them of if constitutionally adequate procedures demonstrate detention is substantively valid. As the Supreme Court has explained:

> the substantive issue involves a definition of th[e] protected constitutional interest, as well as identification of the conditions under which competing state interests might outweigh it. The procedural issue concerns the minimum procedures required by the Constitution for determining that the individual's liberty interest actually is outweighed in a particular instance.

Harper, 494 U.S. at 220 (quoting *Mills v. Rogers*, 457 U.S. 291, 299 (1982) (alterations in original)). As such, "[t]he procedural protections required by the Due Process Clause must be determined with reference to the [substantive] rights and interests at stake in the particular case." *Id.* at 229.

Here, Petitioners' mandatory detention under §1225(b)(2)(A) implicates a fundamental liberty interest: freedom from imprisonment. *Zadvydas*, 533 U.S. at 690; *Foucha*, 504 U.S. at 80. In the civil immigration detention context, the Supreme Court has already identified the only government interests that have been found sufficiently compelling to outweigh that liberty interest: the need to prevent

noncitizens from absconding or endangering the community. *Zadvydas*, 533 U.S. at 691; *Demore*, 538 U.S. at 525-28; *Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958) ("Physical detention of [noncitizens] . . . is generally employed only as to security risks or those likely to abscond"). Indeed, these interests are the only reason why "detention during deportation proceedings" can be "a constitutionally valid aspect of the deportation process." OB.4 (citing *Demore*, 538 U.S. at 510). Petitioners do not dispute that where an individual's immigration detention actually serves those purposes, it satisfies a compelling government interest; this principle is well-settled.

As is equally well-settled in the context of civil detention, "strong procedural protections" are required. *Zadvydas*, 533 U.S. at 691; *see also Salerno*, 481 U.S. at 747, 750–52 (only permitting pre-trial detention in "narrow circumstances" when the government can prove dangerousness in a hearing with meaningful procedural protections); *Addington*, 441 U.S. at 426–27; *Foucha*, 504 U.S. at 80 (confirming that both hearings and heightened evidentiary standards are required for civil commitment). Even where compelling government interests exist in theory, as here, the Supreme Court still requires sufficient procedural protections to ensure these interests are being served in any individual case, including through a hearing before a neutral arbiter. *See Salerno*, 481 U.S. at 752; *see also Addington*, 441 U.S. at 431-32. Petitioners' claims center on the utter lack of any such procedures.

2. Heightened Scrutiny, Not Rational Basis Review, Applies to Civil Custody.

The government advances the extraordinary argument that deprivation of an individual's physical liberty requires nothing more than a rational basis. OB.33. This is a radical, unprecedented, and baseless proposition.

The right to be free of physical restraint is explicitly enumerated in the Due Process Clause. *Jauch*, 874 F.3d at 430 ("The Constitution itself protects physical liberty."). By definition, it is fundamental. *See Kerry*, 576 U.S. at 91; *Foucha*, 504 U.S. at 80 (noting "'the importance and fundamental nature' of the individual's right to liberty" (quoting *Salerno*, 481 U.S. at 750)). Accordingly, the test the government puts forward for identifying *unexpressed* "fundamental" rights, which assesses whether a right is "deeply rooted in this Nation's history and tradition," OB.33 (quoting *Glucksberg*, 521 U.S. at 720–21), has no application here. *See Dep't of State v. Muñoz*, 602 U.S. 899, 910 (2024); *Mirabelli v. Bonta*, 146 S. Ct. 797, 804 (2026) (Barrett, J., concurring).[7]

For the same reason, the rational basis test and jurisprudence have no role to play in analyzing Petitioners' claims. *Glucksberg*, 521 U.S. at 720–28; *cf. Reno v.*

[7] Nevertheless, the right to due process regarding pretrial custody *is* deeply rooted in history and tradition, *supra* 3–5, and that foundational concept has been understood to apply to pre-adjudication civil detention during deportation proceedings since that detention regime came into existence, *Resurrecting Immigration Releases* at 1594–1607.

Flores, 507 U.S. 292, 302–03 (1993) (applying the rational basis test where no "fundamental" liberty interest existed for noncitizen children in non-carceral settings and not subjected to "physical restraint"). Instead, the Supreme Court has made clear that only "in certain special and 'narrow' nonpunitive 'circumstances,' where a special justification . . . outweighs the 'individual's constitutionally protected interest in avoiding physical restraint,'" and only where there are "strong procedural protections," may civil custody validly infringe an individual's fundamental interest in freedom from restraint. *Zadvydas*, 533 U.S. at 690 (quoting *Foucha*, 504 U.S. at 80 and *Hendricks*, 521 U.S. at 356); *see also Salerno*, 481 U.S. at 750 (requiring the government to prove that its interests are "sufficiently weighty" to justify deprivation of an individual's liberty).

3. *Demore* Does Not Foreclose Petitioners' As-Applied Due Process Claims.

In the context of this overarching due process framework, the Supreme Court has found that mandatory immigration detention for limited periods can be constitutional where Congress has already made specific, evidence-based determinations that the detention of certain limited groups of noncitizens is necessary because of their particular risks of flight and danger. *See Demore*, 538 U.S. at 528. Contrary to the government's argument, OB.33-36, this narrow exception to the general rule of individualized review has no relevance to this case.

In a facial holding, the *Demore* Court upheld §1226(c)(1)(B) only after reviewing Congress's determination that the "limited class" of noncitizens with certain criminal convictions, 538 U.S. at 518, posed a categorical bail risk. This determination was well-documented and supported by evidence: prior to the passage of IIRIRA, Congress considered information demonstrating "INS' near-total inability to remove deportable criminal aliens." *Id.* at 518–21. This information included studies showing high recidivism rates by noncitizens with criminal convictions, *id.*, and showing that a significant percentage of them did not appear for their proceedings, *id.* at 519. Congress concluded that "one of the major causes of the INS' failure to remove deportable criminal aliens was the agency's failure to detain those aliens during their deportation proceedings" and for that group, "[d]etention is key to effective deportation." *Id.* Based on this voluminous record, in drafting §1226(c) Congress utilized the fact of specific criminal convictions as a categorical proxy for a finding that detention was necessary to guard against danger to the community and failure to appear. *See id*.

In upholding §1226(c), the Supreme Court stressed that relying on specific criminal convictions as a proxy for danger and flight risk satisfied due process because "[t]hese convictions ... reflect 'personal activity' that Congress considered relevant to future dangerousness." *Id.* at 525 n.9 (quoting *Zadvydas*, 533 U.S. at 714). In other words, the Court viewed Congress's evidence-based findings as a

sufficiently individualized assessment for the "subset" of noncitizens subject to §1226(c). *Id.* at 521. The Court also relied on the fact that the qualifying convictions are always "secured following full procedural protections." *Id*. at 525 n.9. Regardless, Justice Kennedy specifically left open the possibility of individual as-applied challenges "if the continued detention became unreasonable or unjustified." *Id.* at 532 (Kennedy, J., concurring); *see also Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1212 (11th Cir. 2016) (describing Justice Kennedy's concurrence as "especially relevant" because it "provided the fifth vote for the majority"), *vacated on other grounds*, 890 F.3d 952 (11th Cir. 2018).

The government now attempts to stretch *Demore* far beyond its narrow holding. In doing so, the government presents a false dichotomy: deportation is either "practically attainable," and thus detention is always constitutionally permissible under *Demore*, or detention is indefinite, thus falling under *Zadvydas*.[8] *See* OB.34–36. This oversimplification ignores generations of due process jurisprudence regarding civil confinement, which requires a "sufficiently compelling" justification and adequate procedural safeguards. *See Reno v. Flores*,

[8] Petitioners are eligible for relief from removal that could grant them lawful permanent status. *Supra* 15. Their possible deportation is therefore no more "practically attainable" than for similarly situated noncitizens subject to §1226(a), who have a right to individualized review of the necessity of their custody. The arbitrary line drawn between these two groups, for the purpose of bond eligibility, has no connection to the permissible purposes of detention.

507 U.S. 292, 316 (1993) (O'Connor, J., concurring). It also ignores the highly specific congressional considerations underpinning the category of "criminal aliens" in *Demore*, a category that plainly does not include Petitioners given their lack of criminal history. *See supra* 14. Indeed, the statement from *Demore* cited by the government, OB.35, that "detention necessarily serves the purpose of preventing deportable criminal [noncitizens] from fleeing prior to or during their removal proceedings," is followed immediately by a recognition of the evidence regarding criminal history Congress considered in drafting §1226(c), 528 U.S. at 528.

In stark contrast, for individuals like Petitioners, who entered the United States without inspection, Congress did not consider any evidence that would warrant a categorical finding of danger or flight risk, especially for those who have lived in the country for years. *See generally* H.R. Rep. 104-469(I) (1996); S. Rep. 104-249 (1996); H.R. Conf. Rep. 104-828 (1996).[9]

[9] Indeed, one of Congress' primary focuses in enacting IIRIRA was on—as *Demore* notes—"criminal aliens." 538 U.S. at 518-21. Indeed, it used the term "criminal alien" approximately 65 times in the House Report, 41 times in the Senate Report, and 39 times in the Conference Report. Congress was also focused on deterring noncitizens from working without authorization through employer sanctions and eligibility verification, H.R. Rep. 104-469(I) at 126-30, deporting noncitizens who had deportation or exclusion orders, *id.* at 119, visa overstays, *id.* at 111, and new deterrence-based practices at the border, *id.* at 112 ("It is both more humane and cost effective to deter people from entering the United States than it is to locate and remove them from the interior."). There are no proposed amendments or statements in any of the Congressional records that mention a risk of danger or flight by noncitizens who entered without inspection, especially those who then develop strong ties within the United States.

The *Demore* Court balanced the recognition that "detention during deportation proceedings [i]s a constitutionally valid aspect of the deportation process" (to prevent flight risk and danger), 538 U.S. at 523, with the equally relevant observation that noncitizens in detention have a right to ensure their detention bears a sufficiently strong relationship to its intended purpose, *see id.* at 527 (discussing *Zadvydas*). The bases for the holding in *Demore* do not apply for Petitioners.

Although a 1997 interim final rule claims that a 1996 Department of Justice Inspector General report[10] ("OIG Report") found that "when aliens are released from custody, nearly 90 percent abscond," *see* OB.35–36 (citing 62 Fed Reg. 10312, 10323 (Mar. 6, 1997), this report does not demonstrate a categorical evidence-based determination by Congress as occurred in *Demore*.[11] First, the OIG Report makes clear that this data refers generally to noncitizens with final orders, not noncitizens in proceedings like Petitioners; nor is the data disaggregated between those who entered without inspection and those who, for instance, overstayed visas. *See* OIG

[10] The OIG Report cited in the 1997 interim rule appears to be the Department of Justice Inspector General report titled "Immigration and Naturalization Service Deportation of Aliens After Final Orders Have Been Issued," Report Number I-96-03, (Mar. 1996), https://tinyurl.com/2zs2vjws [hereinafter "OIG Report"], which states, "INS was successful in deporting only about 11 percent of nondetained aliens after final orders had been issued."

[11] The OIG Report is not mentioned in the IIRIRA legislative reports at all.

Report. Second, the OIG Report does not say 90% of noncitizens absconded from hearings or deportation: it states that INS only deported about 11% of noncitizens ordered deported, but attributes that rate to several factors, including the government's own "failure to send surrender notices." *Id.* Third, the 1997 interim rule does not cite the OIG Report to justify mandatory detention of people like Petitioners at all, suggesting that even the agency at the time did not see this mischaracterized data as relevant to §1225(b)(2)(A). *See* 62 Fed Reg. at 10323.

Overall, the detention statute at issue in *Demore* was narrowly drawn to cover a "limited class" of noncitizens whom evidence showed presented a categorical bail risk. 538 U.S. at 518. In contrast, §1225(b)(2)(A) as interpreted by this Court is anything but narrowly drawn, covering approximately two million noncitizens at the time of its enactment (and likely millions more today) based solely on their statutory status as "applicants for admission." *Buenrostro-Mendez*, 166 F.4th at 507. Section 1225(b)(2)(A) is instead akin to the statute in *Zadvydas*, which applied equally to "particularly dangerous individuals" *and* all other noncitizens "ordered removed for many and various reasons." 533 U.S. at 691, 697. Here, as there, inquiry into whether a specific application of such indiscriminate, status-based detention is related to a permissible purpose is necessary.[12]

[12] The Court's statement in *Wong Wing v. United States*, 163 U.S. 228, 235 (1896), that immigration detention is permissible "pending the inquiry into [a noncitizen's] true character," *quoted in* OB.34, supports Petitioners. There, the Court compared

B. *Connecticut Department of Public Safety v. Doe* Is Inapplicable to the Immigration Detention Context.

The government's attempt to rely on a sex-offender registration case to claim that Petitioners cannot bring a procedural challenge to their unreviewed detention under §1225(b)(2)(A), OB.25, entirely misses the mark. *Connecticut Department of Public Safety v. Doe* has no bearing on the immigration detention context, where fundamental liberty interests are at stake such that the Constitution itself requires meaningful process. And even if *Doe* did apply, it would not undercut Petitioners' claims for additional process because the facts Petitioners seek to establish through that process—flight risk and danger—are "relevant under the statutory scheme" of §1225(b)(2)(A). *See* OB.25 (quoting *Doe*, 538 U.S. at 9).

1. Petitioners Validly Seek Additional Process Because the Deprivation of Their Fundamental Liberty Interests Requires It.

Petitioners do not challenge that, post-*Buenrostro*, they are subject to §1225(b)(2)(A), nor do they argue that no application of the statute is constitutionally valid. And they need not, as an infringement on a fundamental liberty interest pursuant to even a facially valid statute still requires a meaningful

---

immigration detention pending proceedings to pretrial detention, *see id.*, which both at the time and today encompasses a bail hearing as the default. Here, Petitioners have *no* access to a meaningful inquiry into any purpose that their individual detention may serve.

opportunity to be heard. *See supra* 20–25. That is all Petitioners seek, and *Doe* in no way precludes this claim.

The plaintiff in *Doe* challenged a state law that required public disclosure of information about individuals convicted of sex offenses. He claimed that the inability to present evidence related to *present* dangerousness before being placed on the registry violated his due process rights. 538 U.S. at 4–6. But the law turned exclusively on the fact of a *past* conviction, as the state agency explicitly noted in a disclaimer on its website. *Id.* at 4. And the law's purpose, as the Supreme Court recognized, was simply to make "publicly-available information" "more easily available and accessible," not to warn the public about registrants' current dangerousness. *Id.* at 5. Because Doe did not assert any statutory *or constitutional* basis why he could not have been placed on the registry even if additional process proved he presented no present danger, his claim failed. *Id.* at 7–8.

Doe is nothing like this case. The interest Doe sought to protect bears little resemblance to the fundamental right to physical liberty Petitioners assert. Indeed, Doe had "*expressly disavow[ed]*" any claim "that the liberty interest in question is so fundamental as to implicate so-called 'substantive' due process[.]" *Id.* at 8 (emphasis added), 9 (Scalia, J., concurring). It was not clear that Doe's claim involved a constitutionally protected liberty interest at all. At most, Doe invoked a liberty interest grounded in reputational harm—which the Court noted, without

deciding, its precedent did not support. *See id.* at 6–7. As Doe conceded he had no fundamental (or even statutorily created) interest at stake, and made no argument that the statute did not serve a valid purpose in general or as applied to him, the Court's statement that a hearing on current dangerousness would be a "bootless exercise" makes sense. *Id.* at 7–8. Doe presented no reason why a finding that he was not currently dangerous should affect his placement on the registry, and thus no reason why more process would remedy his claim of reputational harm.[13]

Here, unlike Doe's attempt to cast mere reputational harm as a liberty interest, Petitioners invoke the most fundamental of liberty interests, flowing from the Due Process Clause itself. *Kerry*, 576 U.S. at 91. As Justice Scalia recognized in *Doe*, in cases like this, no statute can limit the procedures required by the Constitution. *See Doe*, 538 U.S. at 8–9 (Scalia, J., concurring). Otherwise, Congress could simply legislate away the Due Process Clause's procedural guarantees. *See Counselman v. Hitchcock*, 142 U.S. 547, 565 (1892) ("Legislation cannot detract from the privilege afforded by the constitution.").

---

[13] *Michael H. v. Gerald* and *Reno v. Flores,* OB.28, present somewhat analogous situations to *Doe*: there, the Court rejected the plaintiffs' assertions of new, unenumerated fundamental interests and also rejected the plaintiffs' related claim that procedural due process required process before those interests could be infringed. The claim for more process to protect those interests failed because the interests were not deemed constitutionally protected. *Michael H. v. Gerald D.*, 491 U.S. 110, 122–27 (1989) (plurality opinion); *Reno*, 507 U.S. at 308–09. Those cases are irrelevant here, where Petitioners do not seek recognition of an unenumerated fundamental right.

The reason the *Doe* analysis focuses solely on the statutory criteria and stated purpose is because there were no other relevant constitutional considerations at issue. *Doe* does not set a general principle that statutes dictate the reach of the Due Process Clause, as confirmed by numerous cases in which the Supreme Court has declined to tether due process to statutory lines. In *Foucha*, for example, the statute at issue permitted the detention of people who were found innocent by reason of insanity if they could not prove they were not dangerous. 504 U.S. at 73. The Supreme Court, however, found that, despite the statute, the Constitution required a civil commitment hearing in which the government proved not just danger, but also the extra-statutory criterion of present mental illness to justify the deprivation of these individuals' liberty. *Id*. at 80.

Similarly, in *Landon v. Plascencia*, 459 U.S. 21 (1982), the Supreme Court concluded that while, *as a statutory matter*, a lawful permanent resident returning from a brief trip abroad should have been placed in exclusion proceedings (where she would have been afforded limited process), *id*. at 30–32, *as a constitutional matter*, given the significance of her ties to the United States, she was entitled to due process beyond that afforded in such proceedings, *id.* at 32; *see also Kwong Hai Chew v. Colding*, 344 U.S. 590, 601 (1953) ("While it may be that a resident [noncitizen]'s ultimate right to remain in the United States is subject to alteration by statute or authorized regulation because of a voyage undertaken by him to foreign

ports, it does not follow that he is thereby deprived of his constitutional right to procedural due process."). If procedural due process was only ever concerned with whether a statute applies according to its terms, *Foucha*, *Landon*, and *Kwong Hai Chew*—all entirely undisturbed by *Doe*—would have turned out differently.

Unsurprisingly, the government provides no case suggesting that the Supreme Court, or any court of appeals, has ever considered the *Doe* framework relevant to detention challenges.[14] And even in other cases involving challenges to sex-offender conditions, courts regularly decline to apply *Doe* where such conditions implicate fundamental liberty interests. *See, e.g.*, *Bleeke v. Server*, No. 1:09-CV-228, 2010 WL 299148, at *12–13 (N.D. Ind. Jan. 19, 2010) (finding *Doe* inapplicable and finding blanket parole condition violated convicted sex offender's procedural due process rights because it implicated fundamental right to associate with one's children). Courts equally distinguish *Doe* where sex-offender conditions are not tied solely to individuals' prior convictions, which are necessarily subject to "process [that] meets

[14] The government claims this Court "applied the same rationale" as in *Doe* "to reject a procedural due process challenge against mandatory detention under §1226(c) in *Wekesa v. U.S. Attorney*, No. 22-10260, 2022 WL 17175818 (5th Cir. Nov. 22, 2022)." OB.26. It did no such thing. That unpublished decision noted only that the *pro se* petitioner did not "meet the statutory requirements for release under Section 1226(c)(2)," without reference to his due process rights. *Id*. at *1. Accordingly, as the U.S. Solicitor General's Office explained in its opposition to *certiorari* in *Wekesa*, the panel did not address the constitutional question and therefore created no circuit split. Respondents' Brief at 9–10 & n.6, *Wekesa v. U.S. Att'y*, 143 S. Ct. 2666 (No. 22-6710).

constitutional muster." *Meza v. Livingston*, 607 F.3d 392, 401–02 (5th Cir. 2010) (collecting cases); *compare Duarte v. City of Lewisville*, 858 F.3d 348, 352 (5th Cir. 2017) (applying *Doe* where plaintiff did not assert fundamental liberty interest and his underlying conviction comported with due process).[15]

Ultimately, the government's claim that flight risk and danger "are irrelevant under the terms of § 1225(b)(2)(A)," OB.23, and that as such, Petitioners' claims can sound only in substantive due process, vastly overstates the limited holding of *Doe*. *Doe* does not, and cannot, stand for the proposition that individuals seeking to protect their fundamental liberty interest can only ever bring procedural due process challenges to enforce explicitly provided statutory procedures or otherwise must bring a facial challenge to the statute itself. *See* OB.23.

2. Preventing Flight and Danger Are Unquestionably Relevant to the Immigration Detention Statutory Scheme in §1225(b)(2)(A).

Even putting aside the fundamental liberty interests involved here, the government's invocation of *Doe* would still fail because "the facts [Petitioners] seek to establish" through additional process "*are* relevant under the statutory scheme." 538 U.S. at 8 (emphasis added). Doe's request to prove he was not a present danger sought to establish facts that, even if true, presented no reason why he could not be

[15] *See also, e.g.*, *Coleman v. Dretke*, 395 F.3d 216, 219 (5th Cir. 2004); *Soto v. Brock*, 795 F. App'x 246, 249 (5th Cir. 2019); *Thomas v. Blocker*, No. 21-1943, 2022 WL 2870151, at *5 (3d Cir. July 21, 2022); *Riley v. Corbett*, 622 F. App'x 93, 96 (3d Cir. 2015).

placed on the registry because addressing current dangerousness was not the aim of the statute, and it was clear that placement on the registry did not concern current dangerousness. *Doe*, 538 U.S. at 5, 7. In contrast, as the Supreme Court and the government itself have made clear, the only purpose of §1225(b)(2)(A), or any other immigration detention statute, is to ensure that noncitizens do not flee or endanger the community.

The government cannot seriously dispute this. In *Jennings*, the government confirmed that "Congress enacted IIRIRA to streamline the Secretary's ability to remove *newly arriving* [noncitizens] and convicted criminals, and *to prevent them from fleeing or committing crimes during their removal proceedings*." Brief for Petitioner at 13, *Jennings*, 583 U.S. 281 (No. 15-1204), 2016 WL 5404637, at *13 (emphases added); *see also id*. at *21–22. Similarly, in habeas cases where noncitizens have challenged their unreasonable detention under §1225(b)(2)(A), the government routinely reiterates its position that such "detention serves a valid statutory purpose by ensuring [the noncitizen's] presence at his removal proceedings and securing his availability for removal." *Perez v. Decker*, No. 18-cv-5279, 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018); *see also A.E. v. Andrews*, No. 1:25-cv-107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (noting "the government's asserted interest in effecting removal" of noncitizens detained under §1225(b) and finding that providing a bond hearing "would not undercut" that

interest, as the very "purpose of a bond hearing is to inquire whether the [noncitizen] represents a flight risk or danger to the community"), *report and recommendation adopted*, 2025 WL 1808676 (E.D. Cal. July 1, 2025).[16]

The Supreme Court agreed in *Jennings*, explaining that detention under §1225(b) "gives immigration officials time to determine a [noncitizen]'s status without running the risk of the [noncitizen]'s either absconding or engaging in criminal activity before a final decision can be made" in their removal proceedings. 583 U.S. at 286. This purpose is also reflected in the statutory scheme in §1182(d)(5)(A), which authorizes DHS to parole a noncitizen from §1225(b)(2)(A) custody for a limited period "for urgent humanitarian reasons or significant public benefit"—but only so long as they present no flight risk or danger. 8 C.F.R. §212.5(b); *see also* 8 C.F.R. §235.3(c) (confirming this provision applies to noncitizens detained under §1225(b)(2)(A)). The requirements of 8 C.F.R. §212.5(b) underscore that danger and flight risk are relevant to the statute.

As there can thus be no question that flight risk and danger are central to both the Constitution and the statutory scheme here, the district courts' consideration of Petitioners' procedural due process challenges was wholly appropriate. The only

[16] The government also contradicts itself here, simultaneously claiming that flight risk and danger are irrelevant to the statutory scheme, OB.24, and that "detention under §1225(b)(2)(A) serves the same legitimate interest recognized by *Demore*," flight risk, OB.35.

question then becomes *what* process was constitutionally required to test those critical facts. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541–42 (1985).

C. Petitioners Are Entitled to Constitutional Due Process Because They Have Effectuated an Entry into the United States.

A century of precedent forecloses the government's argument that because Petitioners entered without admission, §1225(b)(2)(A) sets the ceiling for their procedural due process rights. *See* OB.29–32. The government attempts to rewrite the history and scope of the well-established "entry fiction" by incorrectly conflating the concepts of entry and admission. But that fiction is inapplicable here, as there is no dispute that Petitioners have entered the United States.

1. Constitutional Due Process Applies to All Noncitizens Who Have Entered the United States, Including Petitioners.

As the Supreme Court has frequently explained, as "persons" in the United States, noncitizens who have entered the country have due process rights, including from unjustified deprivations of liberty, even if they entered unlawfully. *See Mathews*, 426 U.S. at 77 (due process protects every noncitizen in the United States, "[e]ven one whose presence in this country is unlawful, involuntary, or transitory"); *Zadvydas*, 533 U.S. at 693 (explaining that once a noncitizen has "effected an entry into the United States," constitutional due process attaches); *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (reiterating the right to due process for noncitizens present in the

United States, in a case that included noncitizens who had entered without inspection).

These constitutional protections exist independent of statutory rights. For example, in the course of invalidating a statute in *Wong Wing*, the Court held that "all persons within the territory of the United States are entitled to the protection guarantied by [the fifth and sixth amendments], and that even [noncitizens] shall not be . . . deprived of life, liberty, or property without due process of law." 163 U.S. at 238. And in *Yamataya v. Fisher*, the Court explained that the custody and deportation of a person found to have entered unlawfully four days prior must comport with "'due process of law' as understood at the time of the adoption of the Constitution." 189 U.S. 86, 100–01 (1903) (executive officers may not "arbitrarily . . . cause [a noncitizen] who has entered the country . . . to be taken into custody" without "giving him all opportunity to be heard").

Different due process principles may apply to a distinct category of noncitizens—those who have not yet physically "entered" the United States and are attempting to do so when encountered by authorities. In contrast to persons like Petitioners, who were encountered within the physical territory of the United States—and whose due process rights are manifest—courts have held that for noncitizens "detained upon arrival" who are "seeking to enter the country," the "only procedural rights" that attach to their *request to enter* "are those conferred by

statute."[17] *DHS v. Thuraissigiam*, 591 U.S. 103, 131 (2020); *accord id.* at 107, 118 (noting Mr. Thuraissigiam, who was arrested within 25 yards of the border, "in the very act of attempting to enter," was seeking additional procedures regarding his application for admission, not challenging his detention); *see also United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 539 (1950); *Landon*, 459 U.S. at 32; *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892).[18]

This "entry" doctrine extends to certain noncitizens subject to a legal fiction: those whom the government stops while they are attempting to enter, at a port of entry or at the border, are legally not considered to have "entered" the country. Since they were stopped "on the threshold of entry," they do not acquire standalone procedural due process rights with regard to their request to enter, even though they are on U.S. soil, and even if they are later paroled into the country. *Leng May Ma*,

---

[17] It is clear that noncitizens who have not entered retain some due process rights independent of statutory rights, *see, e.g.*, *Lynch v. Cannatella*, 810 F.2d 1363, 1373 (5th Cir. 1987), and the Supreme Court has repeatedly explained that the entry fiction is relevant only to the question of due process related to an application for admission, *e.g.*, *Landon*, 459 U.S. at 32; *Thuraissigiam*, 591 U.S. at 138–39. But the instant case presents no reason for this Court to address the precise contours of those protections.

[18] In immigration law, "admission" and "admitted" mean "lawful entry . . . into the United States after inspection and authorization by an immigration officer." 8 U.S.C. §1101(a)(13)(A); *see Hing Sum*, 602 F.3d at1100–01 (explaining that this definition reflects the term's "settled meaning[]" in immigration law). This is distinct from "entry" generally, which can occur lawfully or unlawfully. *See Leng May Ma*, 357 U.S. at 187. The entry doctrine only applies if there has been *no* entry; it does not turn on whether an entry was lawful (i.e., whether it constituted an admission).

357 U.S. at 187–89; *see also Landon*, 459 U.S. at 32–34 (collecting cases); *Thuraissigiam*, 591 U.S. at 140 (applying this precedent); *see also Martinez-Aguero v. Gonzalez*, 459 F.3d 618, 623 (5th Cir. 2006) (confirming the entry fiction applies only to "excludable" noncitizens).

However, the "entry fiction" does not apply to noncitizens who "are within the United States after an entry, irrespective of its legality," *Leng May Ma*, 357 U.S. at 187, and therefore are accorded full constitutional due process "conforming to traditional standards of fairness," *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *see also United States v. Saucedo-Velasquez*, 843 F.2d 832, 834–35 & n.2 (5th Cir. 1988) (reiterating that constitutional due process applied in deportation proceedings for a noncitizen who had entered unlawfully).

Determining whether a person has effected "entry" is a familiar judicial exercise. Courts ask if, after gaining physical presence in the United States, the person was stopped at the threshold or if they were free from "official restraint." *United States v. Hernandez-Adame*, 157 F.4th 662, 671 (5th Cir. 2025) (explaining that the official restraint doctrine "is the law of this circuit"); *United States v. Cardenas-Alvarez*, 987 F.2d 1129, 1133 (5th Cir. 1993) (explaining the history and broad applicability of this definition of "entry"); *United States v. Argueta-Rosales*, 819 F.3d 1149, 1158–59 (9th Cir. 2016) (explaining that the "official restraint" doctrine has long been recognized by the Supreme Court and BIA). In close cases,

whether entry has occurred is a fact-specific inquiry requiring examination of when and where a person was encountered after crossing the border. *See, e.g.*, *Ex parte Chow Chok*, 161 F. 627, 628-30, 632 (C.C.N.D.N.Y. 1908) (factual record showed noncitizens were never free from official restraint, and thus had not entered, but rather were "found in the very act of entering" unlawfully), *aff'd*, 163 F. 1021 (2d Cir. 1908).

But these are not close cases. Petitioners each crossed the border more than a decade ago, went on to establish lives in the United States, and were not "found in the very act of entering." *Id.*; ROA.26-50183.80; ROA.26-50219.10; ROA.26-50221.79. There can be no question, and the government agrees, OB.21, that they entered, meaning that the Constitution applies as it does to all within the United States. *E.g.*, *United States v. Lopez-Vasquez*, 227 F.3d 476, 484 (5th Cir. 2000) (noncitizens who entered "unlawfully" are assured due process protections).

2. The Government's Novel Argument About the Entry Fiction Is Wholly Unsupported.

Given the established meaning of "entry," it is unsurprising that the government cites no authority supporting its claim that a person who "successfully evade[s] inspection at the border" lacks fundamental constitutional liberty protections despite being wholly within the United States when encountered. OB.30. The government quotes *Thuraissigiam*'s discussion of a noncitizen "who tries to enter the country illegally," *id.* (quoting 591 U.S. at 140), but that decision is doubly

inapplicable here. First, *Thuraissigiam* is irrelevant where Petitioners actually effectuated entries: the Court found that Thuraissigiam had not entered because he was apprehended immediately crossing the border. 591 U.S. at 138–40. In doing so, the Court applied a century's worth of caselaw acknowledging that unlawful entry is still a form of entry. *Id.* Second, *Thuraissigiam* relied on the entry fiction to find that Mr. Thuraissigiam's procedural due process rights "regarding [his] *admission*" were limited to what the statute provided, with no discussion of rights to physical liberty. *Id.* at 140 (emphasis added)

No other case the government cites supports its argument either. OB.29–31. *Nishimura Ekiu, Mezei*, and *Kaplan* all involved excludable noncitizens who sought entry at ports of entry, and the Court found neither parole from the port nor detention at Ellis Island constituted entry. *Nishimura Ekiu*, 142 U.S. at 661 (habeas petitioner's "right to land in the United States" was not increased by being permitted to stay in a "mission-house as a more suitable place than the steam-ship, pending [its] decision"); *Mezei*, 345 U.S. at 229 ("harborage at Ellis Island" of noncitizen ordered excluded on national security grounds was "not an entry"); *Kaplan v. Tod*, 267 U.S. 228, 257 (1925) (child lawfully ordered excluded at Ellis Island did not enter just because executive officers temporarily "enlarged" "her prison bounds" by

permitting her stay with aid society until deportation). *Landon*, too, arose in the port of entry context, and as explained *supra* 34–35, particularly supports Petitioners.[19]

3. IIRIRA Did Not Change the Definition or Constitutional Significance of "Entry"

The government points to IIRIRA to urge this Court to break from over a century of precedent defining "entry." OB.31–32. Congress's decision in IIRIRA to change the statutory significance of entering without admission—by deeming all noncitizens who have done so "applicants for admission," 8 U.S.C. §1225(a)(1)—did not change the black-letter law establishing that even an unlawful entry is an "entry" for constitutional due process purposes.[20]

Before IIRIRA, the statutory framework for immigration proceedings placed those who had "already entered this country" in "deportation" proceedings, which involved procedures and substantive standards that were more generous to the noncitizen. *Vartelas v. Holder*, 566 U.S. 257, 261 (2012). In contrast, it subjected

---

[19] *Landon* does not say that due process applies "only" after admission and permanent residence, *contra* OB.30; however, its focus on those concepts makes sense given that Ms. Plasencia was a previously admitted permanent resident and that formed the basis of her claim. *See* 459 U.S. 21 at 23.

[20] Nor did IIRIRA change the statutory meaning of "entry." IIRIRA de-emphasized its statutory importance, but still maintained the term in multiple sections, including the definition of "admission" itself. *Supra* n.18. Where the statutes say "entry," courts apply the "firmly established" immigration law meaning of that term that "has been around for decades." *Argueta-Rosales* 819 F.3d at 1159 (citing, *inter alia*, *United States v. Angeles-Mascote*, 206 F.3d 529, 531 (5th Cir. 2000)).

those on the threshold of entry to more streamlined "exclusion" proceedings with the burden of proof regarding excludability on the noncitizen. *Id.*; *Landon*, 459 U.S. at 25–26.

IIRIRA consolidated the two into unified "removal" proceedings and revised how substantive grounds for removal are applied. Today, only noncitizens who entered *lawfully* (i.e., those who were "admitted") are subject to the more generous grounds of "deportability," while the less generous grounds of "inadmissibility" apply to people who were not admitted—including both formerly "excludable" people (i.e., those who have not "entered") as well as people who have "entered," but unlawfully. *See Vartelas*, 566 U.S. at 262–63 & n.3; *Buenrostro-Mendez*, 166 F.4th at 498–99; *Hing Sum*, 602 F.3d at 1100–01.

These statutory changes apply "in removal proceedings under the INA," *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020). And whatever Congress's goals were, *see* OB.31–32, IIRIRA did not impact fundamental constitutional due process protections, for "a mere act of congress cannot amend the constitution." *Counselman*, 142 U.S. at 565; *Loudermill*, 470 U.S. at 541. Moreover, the requirement that when it imprisons people, the government operate consistent with basic due process—rather than arbitrarily—poses no threat to the statutory scheme. This is especially true since, until the government's recent change in policy,

Petitioners would have had access to pre-adjudication release procedures since the advent of deportation proceedings in the late 1800s. *Supra* 7–8 & n.2.[21]

II. The District Courts Correctly Determined that Petitioners' Detention Violated Due Process

A. The District Courts Correctly Applied Established Due Process Principles to Petitioners' Detention.

There is no interest more fundamental than liberty from imprisonment. *See supra* 20–25. The district courts correctly concluded that Petitioners' detention implicates this fundamental liberty interest. ROA 26-50183.129; ROA.26-50219.76-77; ROA.26-50221.83. The district courts also correctly rejected the government's argument that *Demore* forecloses an as-applied due process challenge here. *See* ROA.26-50183.129; ROA.26-50219.75; ROA.26-50221.83. As described above, unlike in *Demore*, there has been no categorical determination that the process-less detention of Petitioners, who have no criminal history and who have built strong ties

[21] The government's argument that Petitioners' entries "constituted criminal acts" and therefore they should be stripped of procedural due process, OB.31–32, is similarly inapt. These cases do not concern criminal detention, but rather they involve civil confinement, and therefore the long history of civil confinement due process jurisprudence governs here. *Supra* 5–7, 20–25. And 8 U.S.C. §1325, "Improper entry by alien," is indeed a misdemeanor, but no Petitioner has been charged under this statute. If they had been charged, they would have been entitled to due process with regard to custody under the Bail Reform Act and, after a hearing, released unless no release condition could ameliorate a risk of danger or flight. *See* 18 U.S.C. §3142.

to the United States over the course of many years, satisfies §1225(b)(2)(A)'s only permissible purposes: preventing flight and danger.[22] *See supra* 25–30.

The proceedings below reflect the intertwined nature of substantive and procedural due process when it comes to fundamental liberty interests: as the district courts correctly determined, due process requires procedural protections to prevent the unjustified infringement of liberty relative to its permissible purposes. ROA.26-50183.130-133; ROA.26-50219.78-83; ROA.26-50221.86-90. As the statutory scheme here includes no such procedural protections, Petitioners rightly sought additional process to assess whether their detention serves those purposes. ROA.26-50183.82, 89-90; ROA.26-50219.12-14; ROA.26-50221.9. In other words, the petitions below do "sound in" procedural due process, *contra* OB.22, because Petitioners requested additional procedural protections to ensure the deprivation of their strong liberty interests was justified.

Additionally, it was appropriate for the district courts to apply the *Mathews* test to determine what process is due in this context. Due process is "flexible" and "calls for such procedural protections as the particular situation demands." *Jennings*,

[22] Even if rational basis review were to apply to this as-applied challenge—which would be unprecedented in the government custody context, *see supra* 24–25—the government articulates no rational basis for Petitioners' detention, claiming only that it is statutorily required. The mere existence of removal proceedings, *see* OB.34, is not a rational basis for detention where a noncitizen presents no risk of flight, such that removal proceedings would be unaffected by the person's release.

583 U.S. at 314 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). Applying *Mathews* to assess the procedures here is consistent with that guidance, and the Supreme Court and this Court have adopted *Mathews* as the appropriate test for measuring the constitutional adequacy of process in civil and immigration detention cases. *See Jauch,* 874 F.3d at 431 (describing that in the normal case involving deprivation of liberty, *Mathews* applies); *Black*, 103 F.4th at 147–49 (collecting cases). If a different procedural due process test should be used instead, the government does not explain what it is.

B. The Government Does Not and Could Not Dispute the District Courts' Balancing of the *Mathews v. Eldridge* Factors.

To determine whether additional process is required, courts applying *Mathews* balance three factors: (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." 424 U.S. at 335. As *Mathews* explains, "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id*. at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

Notably, the government does not contest the district courts' balancing of these factors here. The district courts correctly found that the first factor, Petitioners' private interests, weighs heavily in their favor. Freedom from physical detention by the government is "the most elemental of liberty interests." *Hamdi*, 542 U.S. at 529. Moreover, all three Petitioners are long-term residents of the United States who have lived here continuously for many years and have substantial ties to this country. *See* ROA.26-50183.127 (Mr. Sosnava Rodriguez, approximately twenty-two years in the United States), ROA.26-50219.71 (Mr. Villegas Angel, fifteen years), ROA.26-50221.89 (Mr. Gomez Alvarado, nearly fourteen years). *See Yamataya*, 189 U.S. at 87, 101 (emphasizing due process rights of noncitizen who had entered the country unlawfully four days prior and had thus "become subject in all respects to its jurisdiction, and a part of its population").

Petitioner Alejandro Villegas Angel has two U.S.-citizen daughters, ages seven and ten (one of whom is autistic), ROA.26-50219.10; Petitioner Miguel Angel Gomez Alvarado has a now-two-year-old U.S.-citizen son, ROA.26-50221.6; and Petitioner Sosnava Rodriguez also has U.S.-citizen children, ROA.26-50183.80. *See Black*, 103 F.4th at 151–52 (finding the first *Mathews* factor weighed "heavily" in favor of noncitizens whose detention separated them from their families). Petitioners were "locked up in jail," "under conditions indistinguishable from those imposed on criminal defendants," making their deprivation of liberty "substantial." *Velasco*

Lopez v. Decker, 978 F.3d 842, 850–51 (2d Cir. 2020). Given that "in our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," *Salerno*, 481 U.S. at 755, Petitioners' liberty interests are immense.

As to the second *Mathews* factor, there is a significant risk of erroneous deprivation of Petitioners' liberty interests under §1225(b)(2)(A). The government detained Petitioners with no process at all, much less an individualized assessment of whether their detention was reasonable.[23] All three Petitioners were deprived of their liberty without the opportunity to present information to mitigate concerns about flight risk or dangerousness. Notably, the government has not even suggested, much less provided any evidence showing, that they pose a risk of flight or danger. None of these Petitioners has any criminal history. ROA.26-50219.82; ROA.26-

[23] The government does not argue (nor could it) that dicta from *Buenrostro-Mendez*, 166 F.4th at 508, means that the due process noncitizens receive in their removal proceedings somehow satisfies due process with respect to their detention. This would be akin to suggesting that anyone can be held in pre-trial detention because they are receiving due process in their criminal proceedings, a proposition the Supreme Court has soundly rejected. *See Salerno*, 481 U.S. at 749–50. As Petitioners had no opportunity in their removal proceedings to challenge whether their detention serves a constitutionally permissible purpose, they must be able to do so in habeas. *See Jennings*, 583 U.S. at 293 (explaining why 8 U.S.C. §1252(b)(9) does not require noncitizens to bring challenges to unlawful detention as part of a petition for review of a final removal order). If not, constitutionally excessive detention would be "effectively unreviewable" because "[b]y the time a final order of removal [is] eventually entered," the detention "would have already taken place." *Id.* And if due process in removal proceedings were sufficient to dispose of any detention challenge, the Supreme Court could have decided both *Demore* and *Jennings* on this ground without further analysis. It did not, and specifically left open as-applied due process challenges to detention in both cases.

50183.120–22; ROA.26-50221.91–92. And they all have a particularly strong incentive to appear at their removal proceedings due to their eligibility to obtain lawful permanent resident status in those proceedings through cancellation of removal. ROA.26-50221.6; ROA.26-50219.11; ROA.26-50183.57. Providing additional procedural safeguards, such as a hearing in front of a neutral arbiter or other ability to rebut any theoretical government concerns about allowing Petitioners to remain free while their immigration cases are pending, would protect against erroneous deprivation of their liberty interests. *See Meza*, 2010 WL 6511727, at *7 (state system in which parolee had no opportunity to correct errors in information presented to the Parole Board that impacted his liberty interest "create[d] a high risk of erroneous deprivation.").[24]

[24] Although noncitizens detained under §1225(b)(2)(A) may seek release on parole under §1182(d)(5), this does not constitute any, let alone meaningful, process testing the permissible purposes of detention. First, while a finding of lack of flight risk and danger is necessary for release on parole, it is not remotely sufficient—DHS must first find that release is necessary for "urgent humanitarian reasons" or "significant public benefit" *and* ultimately opt to exercise its discretion to *temporarily* release the person. 8 C.F.R. §212.5. In other words, the outcome of any parole determination is not tethered to the relevant constitutional issue. Second, the parole decision is not made by a neutral arbiter, but by the noncitizen's jailer, DHS. *Id*.; *see Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) ("And, of course, an impartial decision maker is essential."); *accord Giles v. Shaw Sch. Dist.*, 655 F. App'x 998, 1004 (5th Cir. 2016). Third, the decision does not involve a hearing of any kind, DHS need not provide any explanation of the parole decision, and the noncitizen has no opportunity to contest the outcome. 8 C.F.R. §212.5; *see Salerno,* 481 U.S. at 750–51; *Foucha,* 504 U.S. at 79; *Goldberg*, 397 U.S. at 271; *Meza*, 2010 WL 6511727, at *14; *see also Zadvydas*, 533 U.S. at 692 (noting that "[t]he Constitution demands greater procedural protection even for property" (citations omitted)). Moreover, as other

On the third factor, the government here has identified a general interest in detaining noncitizens to ensure they appear for their removal proceedings. *See* OB.35. Applying that interest to the *Mathews* analysis, the district courts correctly found that providing Petitioners with a bond hearing would satisfy any concerns about appearance at future hearings and an assessment of any danger to the community. *See* ROA.26-50183.131; ROA.26-50221.90; ROA.26-50219.83.

And although the government has not specifically identified administrative or fiscal costs here, by denying bond hearings to individuals like Petitioners, the government is ensuring that it instead undertakes significant expenditures detaining them. *See Black*, 103 F.4th at 154–55 ("We expect that the additional resources that the government will need to expend to justify continued detention at bond hearings will be minimal—and will likely be outweighed by costs saved by reducing unnecessary detention."). Indeed, the government had provided such a process to noncitizens like Petitioners for decades as a matter of course before its abrupt reinterpretation of the detention statutes last year, suggesting that the costs are not in fact burdensome. *See* ROA.26-50183.131.

---

courts have noted, under current administration policy, "ICE 'field offices no longer have the option to discretionarily release [noncitizens].'" *Santiago v. Noem*, No. 25-cv-361, 2025 WL 2792588, at *11 (W.D. Tex. Oct. 2, 2025) (citation omitted).

In sum, the three *Mathews* factors tip sharply in Petitioners' favor and support the district courts' ultimate determination that Petitioners must be afforded individualized review of whether their detention serves a valid purpose at a hearing before a neutral arbiter.

CONCLUSION

For all of the reasons above, the Court should affirm the decisions below.

Dated: April 23, 2026

Respectfully submitted,

/s/ Rebecca Cassler
Rebecca Cassler
Michelle Lapointe
AMERICAN IMMIGRATION COUNCIL
2001 L Street NW, Suite 500
Washington, DC 20036
T: (202) 507-7514
rcassler@immcouncil.org
mlapointe@immcouncil.org

Counsel for Petitioners-Appellees

Patricio Garza Izaguirre
GARZA & NARVAEZ, PLLC
7600 Chevy Chase Drive, Suite 118
Austin, TX 78752
T: (512) 485-3005
patricio@garzanarvaez.com

Counsel for Petitioner-Appellee Alejandro Villegas Angel

/s/ Stephanie E. Norton
Stephanie E. Norton*
Gracie Willis‡
Yulie Landan+†
NATIONAL IMMIGRATION PROJECT
1763 Columbia Road NW
Suite 175 #896645
Washington, DC 20009
T: (202) 217-4742
ellie@nipnlg.org
gracie@nipnlg.org
yulie@nipnlg.org

Counsel for Petitioners-Appellees

Stephen A. Lagana†
LAW OFFICES OF STEPHEN A. LAGANA
145 Essex St.
Lawrence, Massachusetts 01840
T: (978) 794-2331
lagana.law@gmail.com

Counsel for Petitioner-Appellee Miguel Angel Gomez Alvarado

** Not admitted in the District of Columbia; working remotely from Wyoming and admitted in New York only*
‡ Not admitted in the District of Columbia; working remotely from Texas and admitted in Texas and Georgia only
+Not admitted in the District of Columbia; working remotely from New York and admitted in California only
† Admission pending

CERTIFICATE OF COMPLIANCE

I certify that the foregoing motion complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 12,908 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f). It also complies with the typeface requirements of Fed. R. App. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced and easy-to-read typeface using Microsoft Word in 14-point size font.

/s/ Rebecca Cassler
Rebecca Cassler
April 23, 2026
Counsel for Petitioners-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2026, I electronically filed the foregoing with the Clerk for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. A true and correct copy of this brief has been served via the Court's CM/ECF system on all counsel of record.

/s/ Rebecca Cassler
Rebecca Cassler
April 23, 2026
*Counsel for Petitioners-Appellee*s