

No. 26-50183

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

*Alejandro Villegas Angel,
Petitioner-Appellee,*

v.

Markwayne Mullin, Secretary, U.S. Department of Homeland Security;
Todd Blanche, U.S. Attorney General; Miguel Vergara, San Antonio
Field Office Director for Enforcement and Removal; Charlotte Collins,
Warden, T. Don Hutto Detention Center, Taylor, Texas; United States
Department of Homeland Security; United States Immigration and
Customs Enforcement; Executive Office for Immigration Review, Office
of the General Counsel,

Respondents-Appellants,

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, Secretary, U.S. Department of Homeland Security;
Todd Blanche, U.S. Attorney General; Charlotte Collins, in her official
capacity as Warden of the T. Don Hutto Detention Center; Department
of Homeland Security; DOJ Executive Office For Immigration Review,

Respondents-Appellants,

No. 26-50221

Miguel Angel Gomez Alvarado,
Petitioner-Appellee,

v.

Miguel Vergara, in his official capacity as the 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, in
his capacity as the Secretary of the U.S. Department of Homeland
Security,

Respondents-Appellants.

On Appeal from the United States District Court
for the Western District of Texas

No. 1:26-cv-000273

No. 1:26-cv-00309

No. 1:26-cv-00384

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The undersigned counsel of record certifies that the following listed non-governmental persons and entities as described in 5th Cir. R. 28.2.1 have an interest in the outcome of this case:

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STATEMENT REGARDING ORAL ARGUMENT

This Court has scheduled en banc oral argument for Thursday, September 24, 2026, at 9:00 a.m., in the En Banc Courtroom of the John Minor Wisdom U.S. Courthouse in New Orleans, Louisiana.

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CERTIFICATE OF SERVICE

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INTRODUCTION

In *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir.) *reh’r en banc denied* (Apr. 9, 2026), this court held that 8 U.S.C. §1225(b)(2)(A) mandates that aliens who are present in the United States without having been admitted—such as after entering the country illegally—must be detained without the possibility of bond during their removal proceedings. Courts in this circuit have nevertheless continued to mandate bond hearings for such aliens on due process grounds. The panel in this case endorsed that approach, determining that petitioners were entitled to bond hearings as a matter of “procedural due process.” And although no party had advocated for durational limits on detention under §1225(b)(2)(A), the panel held that “the Government may detain aliens under §1225(b)(2)(A) for ninety days but no longer without a bond hearing.” Op.36.

The panel erred at each step of its analysis, flouting on-point Supreme Court precedent at every turn. The panel’s first analytical error was to treat petitioners’ due process claims as claims for procedural due process rather than the substantive due process claims they really are. In *Connecticut Dep’t of Public Safety v. Doe*, 538 U.S. 1, 8 (2003)

(“*Connecticut DPS*”), the Supreme Court held that when an individual seeks a hearing “to prove a fact that is not material” to the government’s “statutory scheme,” his claim “must ultimately be analyzed in terms of substantive, not procedural, due process.” Here, petitioners seek a bond hearing because they want an opportunity to establish that they are not dangerous or flight risks before being detained pending their removal proceedings. But §1225(b)(2)(A) mandates the detention of an unadmitted alien without regard for his individual degree of dangerousness or risk of flight. Because petitioners seek a bond hearing “to prove a fact that is not material” to §1225(b)(2)(A)’s detention mandate, their claims sound in substantive due process, not procedural due process. *Id.* at 8.

Petitioners’ claims fail as a matter of substantive due process. To begin, detention pending removal proceedings under §1225(b)(2)(A) does not implicate any fundamental right that is “objectively, deeply rooted in this Nation’s history and tradition,” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), because “prior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings,” *Demore v. Kim*, 538 U.S. 510, 523 n.7 (2003). Section

1225(b)(2)(A)’s detention mandate thus survives petitioners’ substantive due process challenge as long as it is “rationally related to legitimate government interests.” *Glucksberg*, 521 U.S. at 728. It plainly is. The Supreme Court has long recognized “detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore*, 538 U.S. at 523. Consistent with that tradition, Congress made the rational determination in enacting §1225(b)(2)(A) to foreclose any risk of unadmitted aliens absconding from their removal proceedings by mandating their detention during that period.

The panel compounded its error by imposing an arbitrary time limit on the duration of permissible detention under §1225(b)(2)(A). The panel chose 90 days based on a passing statistical observation in *Demore* about the typical duration of detention pending removal under a different provision when that case was decided, in 2003. That observation was not the basis for a new due-process rule fashioned out of whole cloth.

In all events, even if petitioners’ claims did sound in procedural due process, they would still fail. The process due aliens, like petitioners, who have never “been admitted into the country pursuant to law” is whatever process has been “expressly conferred by Congress.” *DHS v.*

Thuraissigiam, 591 U.S. 103, 138 (2020). There is no dispute that petitioners have received that process. As a result, the balancing test under *Mathews v. Eldridge*, 424 U.S. 319 (1976), has no role to play.

The en banc Court should correct these errors as expeditiously as possible. In October, the Supreme Court is considering a related due-process challenge to mandatory detention under a different provision of the INA, 8 U.S.C. 1226(c). *Genalo v. G.M.*, No. 25-886 (oral argument scheduled, Oct. 13, 2026). The government has also asked the Supreme Court to review the constitutionality of mandatory detention under §1225(b)(2)(A). *See Raycraft v. Lopez-Campos*, No. 25-1415 (petition filed, June 22, 2026). In the interim, this Court should clarify that petitioners’ putative procedural due process claim is directed at the substance of Congress’ policy choice to require detention of applicants for admission under §1225(b)(2)(A), and that policy choice easily survives rational basis review. This Court should reverse.

STATEMENT OF JURISDICTION

The district courts had jurisdiction under 28 U.S.C. §§1331 and 2241. This Court has jurisdiction under 28 U.S.C. §§1291 and 2253(a).

STATEMENT OF THE ISSUE

Whether the Due Process Clause of the Fifth Amendment forbids the Government from detaining aliens under 8 U.S.C. §1225(b)(2)(A) for the duration of their removal proceedings, without providing them bond hearings to justify their detention.

STATEMENT OF THE CASE

I. Statutory Framework

A. Before 1996, the INA treated aliens differently based on whether they presented at a port of entry or evaded inspection and illegally entered the United States. *Buenrostro-Mendez*, 166 F.4th at 498. An alien who arrived at a port of entry would be expelled through proceedings known as “exclusion proceedings,” during which he would be “subject to mandatory detention, with potential release solely by means of a grant of parole.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025); *see also* 8 U.S.C. §§1225(a)-(b), 1226(a) (1994). In contrast, an alien who evaded inspection and entered the United States would be placed in deportation proceedings, in which he was entitled to request release on bond. *Buenrostro-Mendez*, 166 F.4th at 498. The pre-1996 INA thus perversely allowed aliens who unlawfully entered without inspection to “take advantage of the greater procedural and substantive

rights afforded in deportation proceedings,’ including the right to request release on bond,” while aliens who had dutifully ‘presented themselves to authorities for inspection’ ... were subject to mandatory custody.” *Yajure Hurtado*, 29 I. & N. Dec. at 223; H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (similar).

B. Congress discarded that prior regime in the landmark Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996); see *Buenrostro-Mendez*, 166 F.4th at 499. Among other things, IIRIRA replaced the prior focus on physical “entry,” and instead made “admission” the touchstone of the removal process. IIRIRA defined “admission” to mean “the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. §1101(a)(13)(A) (emphasis added). Now, the “pivotal factor in determining an alien’s status” is “whether or not the alien has been lawfully admitted.” House Rep. 225.

To codify that change, Congress provided in §1225(a) that both aliens “present in the United States who ha[ve] not been admitted” and aliens who “arrive[] in the United States” “shall be deemed ... applicant[s] for admission.” 8 U.S.C. §1225(a)(1). Then, in §1225(b),

Congress provided certain procedures for the removal and detention of those “applicants for admission.” In §1225(b)(1), Congress provided for expedited removal proceedings and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §1225(b)(1).

Section 1225(b)(2), the key provision at issue in this case, governs the detention of inadmissible applicants for admission not covered by §1225(b)(1)’s expedited removal proceedings. That provision requires that those aliens be detained pending §1229a removal proceedings:

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a.

8 U.S.C. §1225(b)(2)(A).¹ While §1225(b) does not allow for aliens to be released on bond, the INA grants the Department of Homeland Security (“DHS”) discretion to exercise its parole authority to temporarily release an applicant for admission, but “only on a case-by-case basis for urgent

¹ Section 1225(b)(2)(A) does not apply to (1) aliens subject to expedited removal; (2) crewmen; or (3) stowaways. 8 U.S.C. §1225(b)(2)(B). In addition, the Executive has discretion to return aliens arriving on land from a contiguous territory pending removal proceedings. *Id.* §1225(b)(2)(C).

humanitarian reasons or significant public benefit.” 8 U.S.C. §1182(d)(5)(A); *see Buenrostro-Mendez*, 166 F.4th at 499 n.3.

Congress adopted the detention mandate in §1225(b)(2)(A) based on its determination that detention for the duration of removal proceedings is necessary to ensure that aliens are successfully removed from the United States. The committee report accompanying IIRIRA explained that “[a] chief reason why many deportable aliens are not removed from the United States is the inability of the INS to detain such aliens through the course of their deportation proceedings.” House Rep. 123. Without detention, “many aliens simply fail to appear for their deportation hearing.” House Rep. 122; *id.* at 159 (alien absences “impair[] the ability of the government to secure ... deportation orders[.]”). That committee report, moreover, relied on “[a] 1989 study by the General Accounting Office [which] estimated that 27 percent of deportation proceedings are closed because aliens fail to appear for their hearings,” and noted that “[t]he ‘no show’ rate [] exceed[ed] 50 percent in venues such as New York, Los Angeles, and Miami.” *Id.* Although the Executive would condition release on bond, “[b]onds d[id] not have a strong deterrent effect against no-shows.” *Id.* at 122.

Section 1226 addresses the arrest, detention, and release of admitted aliens (*i.e.*, not “applicants for admission”), such as the millions of individuals who have overstayed visas. Section 1226(a) provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. §1226(a). Detention under §1226(a) is generally discretionary. *Buenrostro-Mendez*, 166 F.4th at 499.

That discretion, however, does not extend to certain aliens who have committed certain crimes or have certain connections to terrorism. *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Under §1226(c), “[t]he Attorney General shall take into custody” such aliens—referred to in this brief as “criminal aliens” as a shorthand—and may release them only if “release of the alien from custody is necessary” to protect a witness to a “major criminal activity” or a similar person, and then only if the alien “will not pose a danger” to public safety and is not a flight risk. *Id.* §1226(c)(4).

C. For many years after IIRIRA, DHS and most immigration judges treated aliens who entered the United States without admission and were later detained in the interior of the United States as being

subject to discretionary detention under §1226(a), rather than mandatory detention under §1225(b)(2)(A). *Yajure Hurtado*, 29 I. & N. Dec. at 225 n.6; see *Buenrostro-Mendez*, 166 F.4th at 500.

On July 8, 2025, DHS “revisited its legal position on detention and release authorities” and issued interim guidance that brought the Executive’s practices in line with the statute’s plain text. See, e.g., Todd M. Lyons, Acting Director of U.S. Immigration and Customs Enforcement, *Interim Guidance Regarding Detention Authority for Applicants for Admission* (July 8, 2025). Specifically, DHS concluded that applicants for admission “are subject to detention under INA §235(b) [8 U.S.C. §1225(b)] and may not be released from ICE custody except by INA §212(d)(5) [8 U.S.C. §1182(d)(5)] parole.” *Id.* The Board subsequently adopted this same interpretation in *Yajure Hurtado*, 29 I. & N. Dec. 216.

D. In *Buenrostro-Mendez*, this Court addressed the proper interpretation of §1225(b)(2)(A). The Court held that under the plain language of the statute, aliens who are present in the United States without admission are “applicants for admission” who are “seeking admission” under §1225(b)(2)(A). 166 F.4th at 502-08. Therefore, those

aliens are subject to mandatory detention, without the option for release on bond, for the duration of their removal proceedings. *Id.*; 8 U.S.C. §1225(b)(2)(A). *Buenrostro-Mendez* thus foreclosed statutory challenges by applicants for admission to mandatory detention under §1225(b)(2)(A).

II. Factual Background and Procedural History

A. Petitioners' Backgrounds

Petitioners Sosnava Rodriguez, Alejandro Villegas Angel, and Miguel Angel Gomez Alvarado are citizens of Mexico or Honduras, who illegally entered the United States years ago. ROA.26-50183.57; ROA.26-50219.10; ROA.26-50221.6. Each petitioner was detained by DHS, determined to be inadmissible, and placed in removal proceedings. ROA.26-50183.127; ROA.26-50219.57-59; ROA.26-50221.65-70. Rodriguez, Angel, and Alvarado were encountered by immigration officials and detained under §1225(b)(2)(A) in December 2025, November 2025, and February 2026, respectively, for the duration of their removal proceedings. ROA.26-50183.57; ROA.26-50219.11; ROA.26-50221.65-70.

Petitioners filed petitions for writs of habeas corpus, alleging that detention under §1225(b)(2)(A) without bond hearings to assess flight risk or dangerousness violates due process. ROA.26-50183.89-91;

ROA.26-50219.6-18; ROA.26-50221.9-11. No petitioner challenged the duration of his detention as unconstitutionally prolonged, only the *fact* of detention without a bond hearing.

B. The District Courts' Decisions

The district courts granted the habeas petitions on February 25, March 2, and March 3, respectively. ROA.26-50183.133; ROA.26-50221.93; ROA.26-50219.85-86.

In each case, the district court held that the petitioner's detention without bond violates procedural due process, applying *Mathews*, 424 U.S. 319. ROA.26-50183.130-32; ROA.26-50221.89-91; ROA.26-50219.81-83. Those courts rejected the Government's reliance on *Thuraissigiam*, 591 U.S. 103, which applied the so-called "entry fiction" to hold that an alien who had entered the United States had no due process rights beyond those conferred by statute. The lower courts limited *Thuraissigiam* to aliens challenging admission procedures who had not gained a significant presence in the United States. ROA.26-50183.129-30; ROA.26-50221.83-86; ROA.26-50219.76-78. Two of the decisions below refused to apply *Connecticut DPS*, which held that procedural "due process does not entitle [a plaintiff] to a hearing to

establish a fact that is not material under the ... statute,” 538 U.S. at 7, because that case “arose in an entirely different context.” ROA.26-50183.86; ROA.26-50219.79. (The *Rodriguez* court did not address *Connecticut DPS*.) No district court addressed whether detention had been unconstitutionally prolonged.

The district courts then ordered petitioners’ immediate release. ROA.26-50183.133; ROA.26-50221.93; ROA.26-50219.85-86. In total, Alvarado, Rodriguez, and Angel had been detained for two months, three months, and three weeks, respectively. ROA.26-50221.95 (released March 2); ROA.26-50183.135-36 (released February 27); ROA.26-50219.91 (released March 3).

C. The Panel Decision

On July 2, 2026, a divided panel of this Court (Southwick, Graves, Wilson, JJ.) affirmed in a splintered decision. Judge Southwick, joined (mostly) by Judge Graves, held that the detentions at issue under §1225(b)(2)(A) violate due process—though they disagreed on when the constitutional violation occurs.

As a threshold matter, the majority held that aliens who are physically present in the United States, but never lawfully admitted, can

invoke the Due Process Clause to obtain procedural rights beyond what Congress has provided, rejecting the longstanding entry fiction. Op.9-15. According to the panel, “[e]ntry and residence, not legal admission, dictate the extent of the Constitution’s application.” Op.15. Much like the district courts, the panel majority limited *Thuraissigiam* to aliens who had only recently entered the country. Op.12-15. The panel recognized Supreme Court precedent holding that aliens who are paroled into the country for years are treated “as if stopped at the border,” Op.14 (quoting *Thuraissigiam*, 591 U.S. at 140), but dismissed the parole context as a “narrow exception[]” that is “inapplicable here.” Op.14.

The panel evaluated petitioners’ claims under procedural, rather than substantive, due process standards. Op.16-20. The panel held that due process entitles aliens detained under §1225(b)(2)(A) to an individualized assessment to justify their detention. Op.28-31. In so doing, the panel (like the district courts) rejected the Government’s reliance on *Connecticut DPS*, because petitioners asserted that their detention “substantively violates their right to liberty from physical constraint.” Op.18. The panel instead applied the *Mathews* factors and held that the Government must “provide a bond hearing to aliens held

under §1225(b)(2)(A) within a reasonable time of detention,” which it determined to be 90 days. Op.33, 36.

Judge Graves specially concurred. Op.39-43. He would have held that procedural due process “require[s] currently detained noncitizens to receive a hearing within 30 days of their detention,” and that “the pre-detention due process previously available under §1226(a)” must apply going forward. Op.39, 41. Nonetheless, Judge Graves “concur[red] in setting a 90-day limit” to provide a majority. Op.39.

Judge Wilson dissented. Op.44-71. Relying on *Thuraissigiam*, he explained that “admission status—not physical presence—determines what procedural rights are available to an alien.” Op.50. “[B]ecause petitioners have never been lawfully admitted into the United States, the admission procedures provided by Congress in §1225(b)(2)(A) embody the due process to which they are entitled.” Op.54. Moreover, Judge Wilson concluded that petitioners “claims would still fail” because the majority “ignores the clear import of [*Connecticut DPS*—that procedural ‘due process does not entitle [petitioners] to a hearing to establish a fact that is not material under [the] statute.’” Op.58 (quoting *Connecticut DPS*, 538 U.S. at 7). Because flight risk and dangerousness are irrelevant to

the application of §1225(b)(2)(A), “the lack of hearings [to determine those facts] did not render petitioners’ detention unconstitutional as a matter of procedural due process.” Op.59.

The dissent then rejected petitioners’ claims as a matter of substantive due process, Op.59-71, because those claims fail rational basis review under longstanding Supreme Court precedent holding that “[d]etention during removal proceedings is a constitutionally permissible part of that process.” Op.62 (quoting *Demore*, 538 U.S. at 526). Judge Wilson also rejected the panel’s creation of a 90-day limit on detention under §1225(b)(2)(A). No petitioner had “even alleged” that the duration of their detention violated due process, and the majority’s 90-day rule was “cut from whole cloth.” Op.67, 70.

D. En Banc Proceedings

On July 10, 2026, this Court sua sponte ordered that these appeals be reheard en banc and vacated the panel opinion. Dkt. 174-1. Subsequently, on July 21, 2026, the full Court issued a precedential order granting the Government’s motion to stay the district courts’ judgments pending en banc review. Dkt. 199-1.

SUMMARY OF ARGUMENT

This Court in *Buenrostro-Mendez* held that through §1225(b)(2)(A), Congress has mandated detention of applicants for admission, without bond hearings. The district courts below, however, held that such a hearing is constitutionally mandated as a matter of procedural due process. That was error, and this Court should reverse.

I. Petitioners’ procedural due process claims fail. Section 1225(b)(2)(A) mandates detention of “applicants for admission” who have not shown they are “clearly and beyond a doubt entitled to be admitted.” Petitioners do not dispute that they fall within these statutory parameters. Instead, they argue that they are entitled to bond hearings to assess whether they are flight risks or dangerous—criteria that Congress made irrelevant to whether the terms of §1225(b)(2)(A) apply.

That is not a cognizable claim of procedural due process. An alien “who assert[s] a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme.” *Connecticut DPS*, 538 U.S. at 8 (emphasis added). An alien’s flight risk or dangerousness are irrelevant to the application of §1225(b)(2)(A), and so a hearing on those issues would be

a “bootless exercise.” *Id.* Petitioners are thus not asserting cognizable *procedural* due process claims but rather substantive due process claims clad in procedural garb.

II. Petitioners’ challenges to no-bond detention under §1225(b)(2)(A) fail as a matter of substantive due process. Congress’ policy choice to mandate detention pending removal proceedings does not implicate any fundamental rights, and it easily satisfies rational basis review. The Supreme Court has long “recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process,” because “deportation proceedings ‘would be vain if those accused could not be held in custody pending the inquiry into their true character.’” *Demore*, 538 U.S. at 523. That constitutional detention does not automatically become unconstitutional without a bond hearing after an arbitrary number of days. Rather, as long as removal proceedings are properly pending, detention under §1225(b)(2)(A) satisfies due process.

III. In any event, any procedural due process claim would be meritless. Aliens who arrive at a port of entry or are detained shortly after unlawful entry have technically physically entered the United

States, but under the longstanding entry fiction doctrine, such aliens “are treated for due process purposes as if stopped at the border.” *Thuraissigiam*, 591 U.S. at 139. Thus, for aliens who have never “been admitted into the country pursuant to law, the decisions of executive and administrative officers, acting within powers expressly conferred by Congress, are due process of law.” *Id.* at 138 (internal quotation marks omitted).

Contrary to the district courts’ and panel majority’s determinations, that doctrine does not vanish once aliens have spent a certain amount of time in the United States or made it some number of miles past the border. Rather, the doctrine applies to those “paroled elsewhere in the country *for years* pending removal.” *Thuraissigiam*, 591 U.S. at 139 (emphasis added) (citing *Kaplan v. Tod*, 267 U.S. 228, 230-31 (1925)). The lower courts’ attempt to limit *Thuraissigiam* to its specific facts, rather than the rule of law it articulated and the prior precedents that it reaffirmed, is untenable. Indeed, the Supreme Court has long emphasized that only “*once an alien gains admission* to our country and begins to develop the ties that go with permanent residence [does] his

constitutional status change[.]” *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (emphasis added).

Under *Thuraissigiam*, *Kaplan*, and *Plasencia*, petitioners have received all the process they are entitled to under the statute; the Due Process Clause requires nothing more. Regardless, §1225(b)(2)(A) is lawful even if *Mathews* balancing applied.

STANDARD OF REVIEW

This Court reviews de novo a district court’s grant or denial of a petition for a writ of habeas corpus under 28 U.S.C. §2241. *Buenrostro-Mendez*, 166 F.4th at 502; *Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000).

ARGUMENT

I. Petitioners’ claims sound in substantive due process and fail under rational basis review.

After *Buenrostro-Mendez*, there is no dispute that petitioners fall within the scope of §1225(b)(2)(A). They are “alien[s]” who are “present in the United States” and “ha[ve] not been admitted,” and so are “applicant[s] for admission.” 8 U.S.C. §1225(a)(1). Moreover, petitioners did not show that they are “clearly and beyond a doubt entitled to be admitted.” *Id.* §1225(b)(2)(A). Therefore, as this Court held in

Buenrostro-Mendez, they “shall be detained” pending their removal proceedings. *Id.*

The district courts acknowledged that petitioners are subject to mandatory detention under §1225(b)(2)(A). ROA.26-50183.129; ROA.26-50221.84; ROA.26-50219.76. Nonetheless, those courts held that petitioners are entitled to release from DHS custody as a matter of procedural due process. ROA.26-50183.130-32; ROA.26-50221.88-91; ROA.26-50219.81-83. That was error under binding Supreme Court precedent. Petitioners’ claims do not sound in procedural due process. And even if they did, they are meritless.

A. Procedural due process does not entitle petitioners to a hearing to determine facts that are irrelevant to the application of §1225(b)(2)(A).

The Constitution prohibits the government from “depriv[ing]” a “person” of “life, liberty, or property, without due process of law.” U.S. Const. amend. V. The Supreme Court has recognized two types of due process claims: procedural and substantive. *U.S. Dep’t of State v. Muñoz*, 602 U.S. 899, 910 (2024). A procedural due process claim takes as a given the substantive determinations that would justify a deprivation of life, liberty, or property, but challenges the “adequacy of the[] procedures” for

making those determinations. *Mathews*, 424 U.S. at 335. By contrast, a substantive due process claim challenges the substance of the determinations themselves as being inadequate to justify the deprivation “*at all*, no matter what process is provided.” *Reno v. Flores*, 507 U.S. 292, 302 (1993).

1. Petitioners have not challenged the process for determining whether an alien is an “applicant for admission” as a factual matter, or whether an alien is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §1225(b)(2)(A). Instead, they argued that a determination that they satisfy the statutory criteria is constitutionally insufficient to justify the deprivation of their liberty (*i.e.*, detention). But no other criteria are relevant under the terms of §1225(b)(2)(A). The district courts’ due process theory and petitioners’ claims thus do not take §1225(b)(2)(A)’s substantive determinations as a given but challenge the lawfulness of those determinations as being inadequate to justify detention “*at all*, no matter what process is provided.” *Flores*, 507 U.S. at 302. Put differently, petitioners are inescapably challenging Congress’s *substantive* policy choice not to make flight risk and dangerousness

criteria for detention. That is a substantive, not procedural, due process challenge.

The Supreme Court has repeatedly recognized that a person has no procedural due process right to a hearing on a “different set of determinations than those set forth in the” challenged law. *Washington v. Harper*, 494 U.S. 210, 220 (1990). Take, for example, *Connecticut DPS*. That case involved a statute requiring sex offenders to register with the State so their information could be published on a sex-offender registry. 538 U.S. at 4-5. Doe, who had previously been convicted of a sex offense, claimed that the statute violated his procedural due process rights by requiring him to register without a “hearing to determine whether” he was “currently dangerous.” *Id.* at 4 (citation omitted).

The Supreme Court rejected that claim. It explained that “due process does not require the opportunity to prove a fact that is not material to the State’s statutory scheme,” and “the fact that [Doe] seeks to prove—that he is not currently dangerous—[wa]s of no consequence under” the relevant statute, which required him to register based on his prior conviction alone. *Id.* at 7. “Unless [Doe] c[ould] show that that substantive rule of law [wa]s defective (by conflicting with the

Constitution), any hearing on current dangerousness [would be] a bootless exercise.” *Id.* at 8.

The rule of *Connecticut DPS* is straightforward: “Plaintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme.” 538 U.S. at 8. A claim that a plaintiff is entitled to a hearing to adjudicate facts a legislature had not made relevant “‘must ultimately be analyzed’ in terms of substantive, not procedural, due process.” *Id.* at 7-8; *see id.* at 8-9 (Scalia, J., concurring) (explaining that if a statute provides that “no one under the age of 16 may operate a motor vehicle,” “a 15-year-old” has no “right to ‘process’ enabling him to establish that he is a safe driver”).

Connecticut DPS broke no new ground. Instead, it merely applied the Supreme Court’s existing jurisprudence delineating procedural and substantive due process claims. For example, *Flores* involved a statute that granted the Attorney General “broad discretion to determine whether, and on what terms, an alien arrested on suspicion of being deportable should be released pending the deportation hearing.” 507 U.S. at 294-95. In exercising that discretion, the Attorney General

promulgated a regulation governing the “detention and release of juvenile aliens.” *Id.* at 297 (citation omitted). That regulation provided that juvenile aliens should be released to certain approved custodians (such as a parent, legal guardian, or adult relative) or otherwise placed in a government-operated or government-selected child-care facility. *Id.* at 297-98. A class of juvenile aliens who lacked approved custodians challenged the regulation, claiming that each of them had a “procedural due process” right to an individualized hearing on something else: whether “release to some other ‘responsible adult’” would be in the juvenile’s “best interests.” *Id.* at 300; *see id.* at 296, 303. The Court rejected that challenge, explaining that it was “just [a] ‘substantive due process’ argument recast in ‘procedural due process’ terms.” *Id.* at 308.

The Court rejected a similar procedural due process challenge in *Michael H. v. Gerald D.*, 491 U.S. 110 (1989). The statute in that case established a conclusive presumption that “a child born to a married woman living with her husband” is “a child of the marriage.” *Id.* at 113 (plurality opinion); *see id.* at 117-18. Claiming to be the father of “a child born to the wife of another man,” *id.* at 113, Michael H. challenged the statute on “procedural due process” grounds, arguing that it deprived him

of a relationship with his child “without affording him an opportunity to demonstrate his paternity in an evidentiary hearing,” *id.* at 119. A majority of the Court concluded that Michael H. had no “procedural due process” right to such a hearing. *Id.* at 121; *see id.* at 132-33 (Stevens, J., concurring in the judgment) (agreeing with the plurality that “the Federal Constitution imposes no obligation upon a State to ‘declare facts unless some legal consequence hinges upon the requested declaration’”) (citation omitted). The plurality recognized that the statute was “phrased in terms of a presumption,” but the presumption was “the implementation of a substantive rule of law”—namely, that the State had made it “*irrelevant* for paternity purposes whether a child conceived during, and born into, an existing marriage was begotten by someone other than the husband and had a prior relationship with him.” *Id.* at 119 (plurality opinion). The plurality therefore concluded that Michael H.’s challenge to the statute “must ultimately be analyzed” in terms of “substantive,” not “procedural,” due process. *Id.* at 121; *see also Harper*, 494 U.S. at 219-20 (recognizing that judicial decision “requir[ing] a different set of determinations than those set forth” in the challenged policy rested on “substantive” due process).

2. Under these precedents, petitioners have no procedural due process right to bond hearings. Congress decided as a substantive policy matter to impose mandatory detention on aliens, like petitioners, based solely on their status as “applicants for admission” who are not “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §1225(a)(1), (b)(2)(A). Whether an alien is a flight risk or dangerous is irrelevant to the application of §1225(b)(2)(A). *Lopez-Campos v. Raycraft*, 175 F.4th 713, 761 (6th Cir. 2026) (Murphy, J., dissenting) (“[T]he statute requires their detention *whether or not* an adjudicator would make these individualized findings.”). Therefore, petitioners have no procedural due process right to a bond hearing to assess those factors. *See id.* (Murphy, J., dissenting) (applicants for admission “do not have a procedural right to prove facts at a hearing that the law renders *irrelevant* to their detention” (citing *Connecticut DPS*, 538 U.S. at 7-8)). As in *Connecticut DPS*, *Flores*, and *Michael H.*, any claim that petitioners are entitled to a bond hearing “‘must ultimately be analyzed’ in terms of substantive, not procedural, due process.” *Connecticut DPS*, 538 U.S. at 7-8.

To be sure, the courts below held that due process required additional procedures in the form of a bond hearing. ROA.26-50183.131;

ROA.26-50221.91; ROA.26-50219.83. But a bond hearing is merely the vehicle for making the *substantive* individualized determination that the district courts believed to be necessary to justify petitioners' detention, even though no other factor is relevant under §1225(b)(2)(A). Because §1225(b)(2)(A) does not require such determination, however, petitioners' claims sound in substantive due process.

It follows that the district courts' reliance on *Mathews* to evaluate petitioners' claims was erroneous. *See Lopez-Campos*, 175 F.4th at 761 (Murphy, J., dissenting). *Mathews* articulates a three-part balancing test for analyzing certain "procedural due process" claims. *Nelson v. Colorado*, 581 U.S. 128, 134 (2017). But that test has no application in the realm of substantive due process. Instead, *Mathews* takes the "nature of the relevant inquiry" as given and asks only whether the "procedures" for conducting that factual inquiry are adequate. 424 U.S. at 335, 343.

Mathews itself illustrates the point. The statute there provided Social Security benefits to workers during periods in which they were "disabled." *Mathews*, 424 U.S. at 323. Those benefits would terminate upon a determination that a worker was no longer "disabled." *Id.* at 336.

The issue before the Court was the adequacy of the procedures for making that determination—specifically, whether the Due Process Clause required that, “prior to the termination” of benefits, the worker “be afforded an opportunity for an evidentiary hearing” on whether he was no longer disabled. *Id.* at 323. *Mathews* did not involve any challenge to the disability-based standard for terminating benefits, and the three-pronged test that the Court articulated was not meant to address such a substantive challenge. After all, the second prong calls for an assessment of “the risk of an erroneous deprivation ... through the procedures used,” and assessing that risk assumes the availability of a substantive standard for what counts as “erroneous.” *Id.* at 335. The second prong thus takes as given the substantive standard in the challenged law—as *Mathews*’ own application of the second prong shows. *See id.* at 343-47 (using the statute’s standard for determining whether a worker is no longer “disabled”).

Here, in stark contrast, petitioners do not take as given the substantive standard for justifying their further detention under §1225(b)(2)(A), but contend that the Constitution requires an assessment of factors that Congress intentionally made irrelevant to the application

of §1225(b)(2)(A). Because that is a substantive, rather than procedural, due process challenge, the district courts erred in applying *Mathews*.

3. In characterizing petitioners’ due process claims as one of procedural due process, the district courts below and the panel misapplied Supreme Court precedent. Two of the decisions below held that *Connecticut DPS* is “inapposite” because it “arose in an entirely different context: a challenge to a sex offender registration statute.” ROA.26-50221.86-87; ROA.26-50219.79. That is not a sound basis for distinguishing Supreme Court precedent. *Connecticut DPS* articulated a rule of decision that applies to *all* procedural due process claims. 538 U.S. at 8 (framing holding in terms of “Plaintiffs who assert a right to a hearing under the Due Process Clause” generally). It applies regardless of the particular statute a plaintiff is challenging.

For its part, the now-vacated panel opinion dismissed *Connecticut DPS* as “exceptionally inapt,” Op.16, because the plaintiff in that case “did not assert” that the fact he wanted to be adjudicated—“current dangerousness”—“had any bearing on the Government’s authority to require registration” of sex offenders. Op.17. That “misses the point,” as Judge Wilson explained: “[I]f dangerousness was irrelevant to Doe’s

constitutional claims under the Connecticut law at issue in [that] case, it is equally irrelevant to petitioners' procedural due process claim under §1225(b)(2)(A)," because §1225(b)(2)(A) mandates detention regardless of an individual's degree of dangerousness or flight risk. Op.56-57.

Nonetheless, the panel deemed *Connecticut DPS* irrelevant because petitioners *also* argued that §1225(b)(2)(A) "*substantively* violates their right to liberty from physical constraint," Op.18, whereas the plaintiff in *Connecticut DPS* "expressly disavow[ed]" any reliance on substantive due process, 538 U.S. at 8. The Supreme Court has previously rejected this mix-and-match approach, as the asserted "right would be in a category of one: a substantive due process right that gets only procedural due process protection." *Muñoz*, 602 U.S. at 911-12. This Court should too. In any event, the fact that petitioners challenge the substance of §1225(b)(2)(A) just means that their claims sound in substantive due process. The holding of *Connecticut DPS* does not depend on whether a party has disclaimed a substantive due process claim or not. Either way, a *procedural* due process claim fails, regardless of whether a *substantive* due process claim is simultaneously advanced. The panel majority's

attempt to distinguish *Connecticut DPS* based on what *other claims* were also advanced is untenable.

Ultimately, the now-vacated panel majority seemed to believe that petitioners' claims must arise under procedural due process because "they seek ... recognition of a procedural right" to prove they are not dangerous or flight risks. Op.18-19. The same was true in *Connecticut DPS*; that plaintiff, too, sought a "procedural right" to prove he was not "currently dangerous." 538 U.S. at 7. So the result in this case should be the same as in *Connecticut DPS*.

B. Petitioners do not have a substantive due process right to a bond hearing to justify their detention pending removal proceedings.

Petitioners' claims thus sound in substantive due process. To determine the appropriate level of scrutiny, a plaintiff "must begin with a careful description of the asserted right," *Flores*, 507 U.S. at 302, and his claim triggers heightened scrutiny only if that carefully described right is "objectively, deeply rooted in this Nation's history and tradition." *Muñoz*, 602 U.S. at 910 (quoting *Glucksberg*, 521 U.S. at 720-21). If the asserted right satisfies that test, then the statute faces a presumption of unconstitutionality, and the government can overcome that presumption

only by showing that the statute is the “least restrictive means” of achieving a “compelling” government interest. *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021) (citation omitted). Otherwise, the substantive due process challenge fails so long as the statute is “rationally related to legitimate government interests.” *Glucksberg*, 521 U.S. at 728.

Under that standard, petitioners’ substantive due process claim plainly fails. The panel’s contrary analysis once again rested on misapplications of binding Supreme Court precedent.

1. Petitioners’ substantive due process claims are subject to rational basis review.

Petitioners’ detention without a bond hearing for the duration of their removal proceedings does not implicate any fundamental right, and so does not trigger heightened scrutiny. The Supreme “Court has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens,” *Demore*, 538 U.S. at 522, so any asserted right to “freedom from detention” must be tailored to the immigration context. Here, a suitably careful description of the asserted right requires identifying both *who* is asserting the right and *what* he is asserting.

With respect to *who*, the asserted right is one that purportedly belongs to “applicants for admission” who have been unable to show they are “clearly and beyond a doubt entitled to be admitted” and are detained pending their removal proceedings. 8 U.S.C. §1225(b)(2)(A). With respect to *what*, the right being asserted is not *a right to be free from detention*, for an alien in removal proceedings “has the keys in his pocket” and can “end[] his detention immediately” by withdrawing his objections to removal and “return[ing] to his native land.” *Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999); *see also Banyee v. Garland*, 115 F.4th 928, 933 (8th Cir. 2024) (same); *Richardson v. Reno*, 180 F.3d 1311, 1317 (11th Cir. 1999) (similar). Nor is it a *right to be at liberty in the United States*, for there is no dispute that an alien detained under §1225(b)(2)(A) could be deprived of that liberty upon a determination, at a bond hearing, that he presents a flight risk or is dangerous. Instead, the asserted right is the right of an applicant for admission detained under §1225(b)(2)(A) to a bond hearing—followed by his release into the United States if there is no determination that he presents a flight risk or is dangerous. *Cf. Flores*, 507 U.S. at 303 (describing an asserted “right to an individualized hearing on whether private placement would be in

the child’s ‘best interests’—followed by private placement if the answer is in the affirmative”).

There is no such right that is “objectively, deeply rooted in this Nation’s history and tradition.” *Muñoz*, 602 U.S. at 912. After a period of “relatively open borders,” *id.* at 912, Congress enacted a series of additional immigration-detention statutes,² and “prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings.” *Demore*, 538 U.S. at 523 n.7; *see* Act of Feb. 20, 1907, ch. 1134, §20, 34 Stat. 905. Some earlier provisions had expressly prohibited releasing aliens on bond. *See* Act of May 5, 1892, ch. 60, §5, 27 Stat. 25 (providing that “no bail shall be allowed” to certain Chinese

² *See, e.g.*, Act of Sept. 13, 1888, ch. 1015, §13, 25 Stat. 479 (authorizing “any Chinese person” “found unlawfully in the United States” to be “arrested” and “removed”); Act of Oct. 19, 1888, ch. 1210, 25 Stat. 566 (authorizing “the Secretary of the Treasury, in case he shall be satisfied that an immigrant has been allowed to land contrary to the prohibition of th[e] law, to cause such immigrant ... to be taken into custody and returned to the country from whence he came”); Act of Mar. 3, 1891, ch. 551, §8, 26 Stat. 1085 (authorizing alien immigrants arriving by water to be “detain[ed]” “until a thorough inspection is made”); Act of Mar. 3, 1893, ch. 206, §5, 27 Stat. 570 (authorizing inspectors to “detain for a special inquiry” every arriving alien “who may not appear” to “be clearly and beyond doubt entitled to admission”); Act of Mar. 3, 1903, ch. 1012, §21, 32 Stat. 1218 (authorizing an alien who “has been found in the United States in violation of this Act” to “be taken into custody and returned to the country whence he came”).

persons); Act of Nov. 3, 1893, ch. 14, §2, 28 Stat. 8 (similar). Others had been silent on the matter. *See, e.g.*, Act of May 5, 1892, §6, 27 Stat. 25-26. Although some courts construed such silence as implicitly authorizing release on bond, *see, e.g., Chin Wah v. Colwell*, 187 F. 592, 594-95 (9th Cir. 1911), there was little or no doubt that Congress could eliminate that authority. As one court of appeals put it, “one in custody charged with being an alien, and with violation of the Immigration Act,” “has no primary or inherent right to bail” “pending and during” his deportation proceedings, and “whatever right in this regard may accrue to him, must be granted to him by Congress.” *Prentis v. Manoogian*, 16 F.2d 422, 423 (6th Cir. 1926) (per curiam).

The existence of any right to a bond hearing was thus “a matter of legislative grace rather than fundamental right.” *Muñoz*, 602 U.S. at 916 (citation omitted). And especially because such grace was sometimes withheld, the right cannot be said to be so “deeply rooted in this Nation’s history and tradition” as to trigger strict scrutiny. *Id.* at 910 (citation omitted). Indeed, the Supreme Court long ago declared it “clear that detention or temporary confinement” was “part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens.”

Wong Wing v. United States, 163 U.S. 228, 235 (1896). When that history is added to the Supreme Court’s longstanding recognition that “the field of immigration” is “an area unsuited to rigorous judicial oversight,” it would be “remarkable” if an immigration-detention statute like §1225(b)(2)(A) had to satisfy heightened scrutiny.

Accordingly, because petitioners’ detention does not implicate any fundamental right, their substantive due process challenge to detention under §1225(b)(2)(A) must be evaluated under rational-basis review. *Glucksberg*, 521 U.S. at 728; *see Lopez-Campos*, 175 F.4th at 760-61 (Murphy, J., dissenting) (concluding that unadmitted aliens’ “substantive due process claim[s] fail once we articulate a ‘careful description’ of the[] proposed right” (quoting *Flores*, 507 U.S. at 302)).

2. The Supreme Court has rejected substantive due process challenges to mandatory detention in the immigration context.

Under rational-basis review, a “statute is presumed constitutional, and ‘the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it,’ whether or not the basis has a foundation in the record.” *Heller v. Doe*, 509 U.S. 312, 320-21 (1993) (brackets and citations omitted). Moreover, the Court may

not reject “a legislature’s generalizations” simply because “there is an imperfect fit between means and ends.” *Id.* at 321. Rather, the statute must be upheld if it is “rationally related to legitimate government interests.” *Glucksberg*, 521 U.S. at 728.

Section 1225(b)(2)(A) “easily clears” rational basis review. Op.62 (Wilson, J., dissenting). Indeed, the Supreme Court has repeatedly upheld the constitutionality of immigration detention pending removal proceedings, and “no Supreme Court case [has] raised due-process concerns” with such detention. *Lopez-Campos*, 175 F.4th at 760 (Murphy, J., dissenting).

a. In *Demore*, the Supreme Court considered a “substantive due process” challenge to detention under §1226(c). 538 U.S. at 515. Like petitioners here, the alien in *Demore* “argued that his detention under §1226(c) violated due process because the [government] had made no determination that he posed either a danger to society or a flight risk.” *Id.* at 514. The Court rejected that claim. It explained that its cases had long “recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” *Id.* at 523; *see also id.* at 526 (reiterating the “Court’s longstanding view that the

Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings”). That detention, the Court explained, serves the legitimate objective of “preventing deportable criminal aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.” *Id.* at 528. After all, “deportation proceedings ‘would be vain if those accused could not be held in custody pending’” a decision on removability. *Id.* at 523 (quoting *Wong Wing*, 163 U.S. at 235). Therefore, because “[d]etention during removal proceedings is a constitutionally permissible part of that process,” the Court held that the alien’s substantive due process “claim must fail.” *Id.* at 531.

Demore also distinguished the Court’s prior decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), which addressed the constitutionality of *indefinite* detention under a different provision of the INA (§1231) that applies to aliens with final orders of removal. *Id.* at 682, 690, 692. First, the aliens challenging their detention in *Zadvydas* were aliens for whom removal was “no longer practically attainable.” *Id.* at 690. Under those circumstances, “detention ... did not serve its purported immigration purpose.” *Demore*, 538 U.S. at 527. By contrast, §1226(c) applies to

aliens “pending their removal proceedings,” and so “necessarily serves the purpose of preventing” those aliens “from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.” *Id.* at 528 (emphasis omitted). As *Demore* noted, Congress “had before it evidence suggesting that permitting discretionary release of aliens pending their removal hearings” would result in “large numbers” of aliens “skipping their hearings and remaining at large in the United States unlawfully.” *Id.*; *see also Buenrostro-Mendez*, 166 F.4th at 508.

Second, and in the same vein, *Demore* emphasized that “the period of detention at issue in *Zadvydas* was ‘indefinite’ and ‘potentially permanent,’” whereas detention under §1226(c) pending removal proceedings “is of a much shorter duration” and “ha[s] a definite termination point.” *Demore*, 538 U.S. at 528-29; *accord Lopez-Campos*, 175 F.4th at 760 (Murphy, J., dissenting) (discussing *Demore*).

b. *Demore* built on the Court’s existing precedents. At least twice before, the Supreme Court approved mandatory detention of aliens without requiring individualized assessments. In *Carlson v. Landon*, 342 U.S. 524 (1952), the Court addressed a constitutional challenge to the

detention, “without bail,” of aliens who were deportable because of their Communist activities. *Id.* at 526-28, 542-44. Those aliens challenged their detention on the grounds that there had been no finding that they were flight risks or dangerous—and one of the plaintiffs had specifically been adjudicated *not* dangerous. *Id.* at 531-32; *Demore*, 538 U.S. at 525 n.8. But the Court held that the Government could detain those aliens solely “by reference to the legislative scheme,” without any individualized determinations. *Carlson*, 342 U.S. at 543 (emphasis added); *see Demore*, 538 U.S. at 523-24 (discussing *Carlson*).

The Court applied the same rule in *Flores* to reject a substantive due process challenge by unaccompanied juvenile aliens to their detention without individualized determinations. 507 U.S. at 299-300. Consistent with *Carlson*, the Court in *Flores* held that Congress may employ “reasonable presumptions and generic rules” when legislating with respect to aliens, rather than requiring individualized determinations made after judicial or administrative hearings. *Id.* at 313; *see Demore*, 538 U.S. at 526 (discussing *Flores*); *accord Lopez-Campos*, 175 F.4th at 760 (Murphy, J., dissenting) (discussing *Demore* and *Flores*).

c. Following this unbroken line of Supreme Court precedent, the Eighth Circuit in *Banyee* rejected a due process challenge to the duration of detention under §1226(c) in sweeping language that forecloses any due process challenge to mandatory detention of aliens pending removal proceedings. Relying on *Carlson*, *Flores*, and *Demore*, that court held that “[t]he rule has been clear for decades: ‘[d]etention during deportation proceedings [i]s ... constitutionally valid,’” with no requirement of “individualized findings of dangerousness or flight risk.” 115 F.4th at 931, 932, 933. The Eighth Circuit recognized that *indefinite* detention would pose constitutional problems, but it rejected the argument that “length determines legality.” *Id.* at 932. Instead, “what matters is that detention pending deportation ‘ha[s] a definite termination point’—deporting or releasing the alien.” *Id.* Thus, as long as “deportation is still on the table,” detention without a bond hearing is constitutionally permissible. *Id.* at 933.

3. Petitioners’ substantive due process claims fail under rational basis review.

a. These precedents foreclose petitioners’ substantive due process challenges to mandatory detention under §1225(b)(2)(A). Detention under §1225(b)(2)(A) “satisfies the deferential rational-basis

test” for the same reasons as detention under §1226(c): “It *categorically* ‘serves the purpose of preventing [removable aliens] from fleeing prior to or during their removal proceedings, thus increasing the chance that’ *all* ‘will be successfully removed.’” *Lopez-Campos*, 175 F.4th at 760 (Murphy, J., dissenting) (quoting *Demore*, 538 U.S. at 528). Congress was entitled to employ “reasonable presumptions and generic rules,” *Flores*, 507 U.S. at 313, when legislating with respect to applicants for admission and their detention under §1225(b)(2)(A), just as when legislating with respect to the aliens addressed in *Demore*, *Flores*, and *Carlson*. To be sure, some aliens who would otherwise attend their removal proceedings will remain detained; “[b]ut when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.” *Demore*, 538 U.S. at 528; *see Lopez-Campos*, 175 F.4th at 760-61 (explaining that Congress may make these sorts of “‘categorical judgments’ under rational-basis review”).

Moreover, and just as in *Demore*, detention under §1225(b)(2)(A) does not implicate any of the concerns underlying *Zadvydas*. Petitioners do not allege that their ultimate removals are “unattainable.” Nor is

their detention under §1225(b)(2)(A) “indefinite” or “permanent.” *Demore*, 538 U.S. at 528. As with §1226(c), detention under §1225(b)(2)(A) lasts only for the duration of “a proceeding under section 1229a.” 8 U.S.C. §1225(b)(2)(A); *see Jennings*, 583 U.S. at 297 (“Once [removal] proceedings end, detention under §1225(b) must end as well.”). Removal thus remains a practically attainable goal, and as long as “deportation is still on the table,” *Banyee*, 115 F.4th at 933, petitioners’ detention under §1225(b)(2)(A) bears a rational relation to the legitimate purposes identified in *Demore*.

b. The now-vacated panel opinion refused to apply *Demore* and *Carlson* on the theory that “the Government has made no showing that ‘Congress had before it evidence ... sufficient to furnish reasonable ground[s]’ for §1225(b)(2)(A). Op.30-31 (quoting *Carlson*, 342 U.S. at 536). To begin, that inquiry flouts bedrock principles of rational basis review, under which “a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.” *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 315 (1993); *accord* Op.64 (Wilson, J., dissenting).

Besides, while *Demore* noted the evidence that “failure to detain” criminal aliens inhibited their deportation, 538 U.S. at 519, the Court’s *legal analysis* did not turn on the evidentiary record. Rather the Supreme Court based its holding on established precedent recognizing Congress’s sweeping power to regulate in the context of immigration, *id.* at 521-22, and “th[e] Court’s longstanding view that the Government may constitutionally detain deportable aliens”—not just criminal aliens—“during the limited period necessary for their removal proceedings,” *without* individualized assessments of flight risk or dangerousness, *id.* at 523-26.

Indeed, *Demore*’s reliance on *Carlson* and *Flores*—neither of which involved aliens with criminal convictions—refutes the panel’s rationale. *Carlson* addressed the detention of aliens who were deportable because of their participation in Communist activities, and the Court held that the Government could detain those aliens, without an individualized assessment, solely “*by reference to the legislative scheme.*” 342 U.S. at 543 (emphasis added); *see Demore*, 538 U.S. at 524-25 (discussing

same).³ That was true, moreover, even though one of the aliens in *Carlson* had “a specific finding of nondangerousness.” *Demore*, 538 U.S. at 525. And *Flores* emphasized that Congress may employ “reasonable presumptions *and generic rules*” when legislating with respect to aliens. 507 U.S. at 313 (emphasis added).

In all events, “Congress’s choice in [§1225(b)(2)(A)] to require detention ... was firmly supported by the evidence in 1996 and remains a rational policy today.” Op.66 (Wilson, J., dissenting); *see id.* at 65 (“Contemporary congressional findings uniformly suggested that illegal aliens frequently evaded removal when prematurely released from custody”). The committee report accompanying IIRIRA explained that “[a] chief reason why many deportable aliens are not removed from the United States is the inability of the INS to detain such aliens through the course of their deportation proceedings.” House Rep. 123. Detention was thus essential, because without detention “many aliens simply fail to appear for their deportation hearing.” House Rep. 122.

³ *Carlson* did say that the “purpose to injure could not be imputed generally to all aliens subject to deportation.” 342 U.S. at 538. But “[t]his observation ha[d] no bearing on whether illegal aliens may be detained pending their removal proceedings.” Op.64 (Wilson, J., dissenting).

That conclusion was supported by “[a] 1989 study by the General Accounting Office [which] estimated that 27 percent of deportation proceedings are closed because aliens fail to appear for their hearings,” and noted that “[t]he ‘no show’ rate []exceed[ed] 50 percent in venues such as New York, Los Angeles, and Miami.” *Id.* These rates of abscondment remained despite widespread use of bond. “Bond,” the committee report concluded, “do[es] not have a strong deterrent effect against no-shows.” *Id.* at 122.

As this Court recognized in *Buenrostro-Mendez*, “the Department of Justice Inspector General found in 1997 that ‘when aliens are released from custody, nearly 90 percent abscond and are not removed from the United States.’” 166 F.4th at 508 (quoting 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)); see Office of Inspector General, INS, *Deportation of Aliens After Final Orders Have Been Issued* (Mar. 1996), <https://perma.cc/JA5M-VU8P>. Because “only about 11 percent of the nondetained aliens ... left the country,” the report concluded that “detention is key to deportation.” *Id.*; accord *Removal of Criminal and Illegal Aliens: Hearing Before the Subcomm. on Immigr. and Claims of the House Comm. on the Judiciary*, 104th Cong., at 4 (Mar. 23, 1995) (Statement of T. Alexander Aleinikoff,

General Counsel, Immigr. & Naturalization Serv.) (“In the past, far too many deportable aliens absconded with little or no consequence.”).

Congress thus rationally chose to eliminate any risk of abscondment by aliens who have never been admitted. And that “remains a rational policy today.” Op.66 (Wilson, J., dissenting). As this Court recognized, the problem of aliens absconding “exists today on a much larger scale.” *Buenrostro-Mendez*, 166 F.4th at 508.

c. Petitioners’ substantive due process challenges to mandatory detention under §1225(b)(2)(A) is thus foreclosed by Supreme Court precedent. That suffices to reject it. But the sweeping consequences of adopting petitioners’ due process theory further supports that outcome. Their theory that mandatory detention without a bond hearing violates due process could be argued to require the invalidation, not only of §1225(b)(2)(A), but of other detention statutes. For example, §1225(b)(1) mandates detention of aliens subject to expedited removal, *see Jennings*, 583 U.S. at 302-03—a category that includes certain aliens arriving in the United States and those present in the United States for up to two years at the time of the determination of inadmissibility who have not been admitted or paroled, regardless of criminality. 8 U.S.C. §1225(b)(1).

This statute does not require a bond hearing as a predicate for detention. Under petitioners' theory, this statute, too, could be subject to constitutional challenge.

C. Detention under §1225(b)(2)(A) is constitutional as long as removal proceedings are pending.

The preceding discussion establishes that the *fact* of detention under §1225(b)(2)(A) without a bond hearing does not violate due process. Although petitioners did not challenge the *duration* of their detention under §1225(b)(2)(A), the now-vacated panel opinion held that due process requires the Government to “provide a bond hearing to aliens held under Section 1225(b)(2)(A) within a reasonable time of detention,” which it determined to be 90 days. Op.33, 36. That was error. The Due Process Clause does not limit the duration of detention under §1225(b)(2)(A), so long as removal proceedings are pending. And it certainly does not impose a 90-day limit on the duration of that detention.⁴

⁴ The en banc Court should resolve the duration-of-detention issue now. Although petitioners previously challenged the fact of their detention only, they have not disclaimed asserting due process challenges to the duration of their detentions on remand and will undoubtedly argue to this Court that the duration of their detentions violates due process. The parties' briefing, coupled with the panel opinion and dissent, will be more

Detention under §1225(b)(2)(A) is constitutional as long as it is “rationally related to legitimate government interests.” *Glucksberg*, 521 U.S. at 728. Section 1225(b)(2)(A) satisfies that test throughout the duration of an alien’s removal proceedings, because the legitimacy of the government’s interests does not diminish over time. Ensuring that an alien appears for his fifth removal hearing is as legitimate as ensuring that he appears for his first. Nor does the relationship between the alien’s detention and the government’s interests diminish over time. As the Court observed in *Demore*, the “detention ... pending ... removal proceedings ... *necessarily* serves the purpose of preventing [them] from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.” 538 U.S. at 527-28 (emphasis altered).

than sufficient to allow the en banc Court to resolve the duration-of-detention question.

Moreover, if this Court does not resolve the duration-of-detention issue now, many district courts in this Circuit likely will adopt the now-vacated panel decision’s rationale. Although the Supreme Court this Term will address this question with respect to mandatory detention under §1226(c), *see Genalo v. G.M.*, No. 25-886, and the Government has sought review of the constitutionality of mandatory detention under §1225(b)(2)(A), *see Raycraft v. Lopez-Campos*, No. 25-1415, this Court should fully resolve the constitutionality of detention under §1225(b)(2)(A) in the interim.

In short, “nothing suggests that length determines legality”; rather, “what matters is that detention pending deportation ‘ha[s] a definite termination point.’” *Banyee*, 115 F.4th at 932. Detention under §1225(b)(2)(A) plainly does: it may continue only “for a proceeding under section 1229a of this title.” 8 U.S.C. §1225(b)(2)(A). And at any time, an alien can end his removal proceedings—and thus end his detention—by withdrawing any objection to removal. *Supra*, p. 34.

To be sure, detention under §1225(b)(2)(A) would raise constitutional concerns if removal were “no longer practically attainable.” *Demore*, 538 U.S. at 527 (citation omitted). At that point, detention would “no longer bear[] a reasonable relation to the purpose for which [the alien] was [detained].” *Id.* While an alien’s removal proceedings are ongoing, that would be true only in the extraordinary circumstance in which the proceedings ceased to be a means of effectuating the alien’s removal and became a “ruse” to keep the alien in detention. *Banyee*, 115 F.4th at 934. In that circumstance, an alien could bring an as-applied challenge to his §1225(b)(2)(A) detention on the ground that his removal proceedings had become a sham “to incarcerate [him] for other reasons.” *Id.* (quoting *Demore*, 538 U.S. at 533). But no due process violation arises

when “deportation is still on the table.” *Id.* at 933. And it certainly does not arise categorically after 90 days of detention, regardless of the circumstances of the alien’s case.

Here, petitioners have not alleged, nor is there any evidence to suggest, that their ongoing removal proceedings are a sham or “a ruse ‘to incarcerate [them] for other reasons.’” *Banyee*, 115 F.4th at 934 (quoting *Demore*, 538 U.S. at 533). “Petitioners’ removal remains attainable, and their detention under §1225(b)(2)(A) is neither indefinite nor permanent.” Op.67 (Wilson, J., dissenting) (quotation marks omitted). Indeed, petitioners’ removal proceedings moved rapidly while they were in detention. *See* Decl. of Joshua D. Johnson ¶¶5-10 (Dkt. 178-1). Removal thus was (and is) “still on the table,” *Banyee*, 115 F.4th at 933, so the application of §122(b)(2)(A) continues to be rationally related to the Government’s legitimate interests in detention: “[T]heir detention still ‘necessarily serves the purpose of preventing’ petitioners ‘from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, [petitioners] will be successfully removed.’” Op.67-68 (Wilson, J., dissenting) (quoting *Demore*, 538 U.S. at 528).

At a minimum, if the Due Process Clause did limit the length of detention under §1225(b)(2)(A), the panel opinion’s 90-day limit is plainly incorrect. As Judge Wilson explained, that 90-day limit “is cut from whole cloth”: it was based on “[n]othing other than the *Demore* Court’s observation that most removal proceedings (as of 2003) were completed within 90 days.” Op.68, 70 (Wilson, J., dissenting); see Op.35-36 (citing *Demore*, 538 U.S. at 529 & n.11). To be sure, the “definite termination point” for detention under §1226(c) was one of the grounds on which *Demore* distinguished indefinite detention under §1231. *Demore*, 538 U.S. at 529. But nothing in that observation imbued 90 days with constitutional significance. How could it have? *Demore* “reversed the petitioner’s grant of habeas despite his having spent *six months* in [] custody.” Op.68 (Wilson, J., dissenting) (emphasis added); see *Demore*, 538 U.S. at 531.

The panel seized upon *Demore*’s observation that *Zadvydas* had recognized that detention for 90 days was “considered presumptively valid.” Op.35-36 (quoting *Demore*, 538 U.S. at 529 & n.11). But while detention for 90 days is “presumptively valid,” it hardly follows that detention for 91 days is *categorically unconstitutional* without a bond

hearing on dangerousness and flight risk. *Zadvydas* makes this clear: it recognized that detention was presumptively valid for *6 months* (not just 90 days) and does not *ever* require a bond hearing as to either flight risk or dangerousness—instead requiring only a showing of “significant likelihood of removal in the reasonably foreseeable future” to justify continued detention no matter what the risk of flight or dangerousness might be. 533 U.S. at 701.

The panel majority thus “ignore[d] the nearest guidance on temporal limitations to detention” in *Zadvydas*, which “expressed that six months’ detention following a removal order should be treated as presumptively constitutional.” Op.68 (Wilson, J., dissenting). And petitioners “were not detained anywhere near that long: petitioner Gomez was detained for three months; Sosnava, for roughly two months; and Villegas, just three weeks.” *Id.*

The panel nonetheless granted habeas relief for those petitioners on the theory that they “would today have been detained by immigration authorities for an unreasonable time absent the district courts’ intervention.” Op.3; *see also id.* at 37-38. That conclusion makes no sense; it rests on the incoherent premise that the clock for

unconstitutionally *prolonged detention* keeps ticking while aliens *are not detained*. There is “no support for this inference,” Op.69 (Wilson, J., dissenting), and it is contradicted by the Executive Office for Immigration Review’s practice of prioritizing removal proceedings of aliens who are detained. See Executive Office for Immigration Review, U.S. Dep’t of Justice, *Policy Memorandum 25-47: Case Priorities and Immigration Court Performance Measures 2* (Sept. 12, 2025), perma.cc/6cm8-vx9f (noting history of prioritizing “all cases involving individuals in detention”). Under that practice, “[i]mmigration judges generally issue orders within a few months on the detained docket.” Decl. of Joshua D. Johnson ¶15 (Dkt. 178-1).

* * *

Ultimately, this Court should reject petitioners’ effort to invalidate §1225(b)(2)(A) through a substantive due process challenge disguised as a procedural due process claim. The Supreme Court’s decision in *Connecticut DPS* governs the claims that sound in procedural due process and petitioners’ claims do not fit. And established Supreme Court precedents dispense with their substantive due process claims, whether advanced on day one or ninety-one of detention.

II. Even if petitioners were asserting cognizable procedural due process claims, they would be meritless.

Petitioners' claims fail even if they did sound in procedural due process. Under longstanding precedent, they are entitled only to the procedures Congress has provided in statute. And even if additional procedures were required, detention under §1225(b)(2)(A) without bond satisfies due process under *Mathews*.

A. Petitioners are entitled only to the procedures Congress has provided in statute.

1. Under longstanding precedent, unadmitted aliens like petitioners are entitled only to the procedures Congress has provided in statute. That is “due process of law.” *Thuraissigiam*, 591 U.S. at 138.

In *Thuraissigiam*, the Supreme Court rejected a procedural due process challenge to the credible-fear procedures for determining eligibility for asylum. 591 U.S. at 114-15. That challenge, the Court held, was “contrary to more than a century of precedent” establishing that for “‘foreigners who have never been naturalized, nor acquired any domicil[e] or residence within the United States, *nor even been admitted into the country pursuant to law*,’ ‘the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.’” *Id.* at 138 (emphasis added)

(quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)); see also *id.* at 139 (“Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.” (quoting *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950))).

The Court rejected Thuraissigiam’s argument that this rule did not apply because he had *physically entered* the United States; it reasoned that Congress’s “plenary authority to decide which aliens to admit” would be rendered “meaningless if it became inoperative as soon as an arriving alien set foot on U.S. soil.” 591 U.S. at 139. And although Thuraissigiam himself “was apprehended within 25 yards” of the border, the Supreme Court’s reasoning in that case was not so limited. Rather, the Court “repeatedly emphasize[d] that admission status—not physical presence—determines what procedural rights are available to an alien.” Op.50 (Wilson, J., dissenting).

Thuraissigiam built on longstanding Supreme Court precedent holding that admission—not physical entry—is the touchstone for when aliens gain due process interests that could potentially require procedures beyond what Congress has provided. Op.48-51 (Wilson, J., dissenting). For example, in *Landon*, 459 U.S. 21, the Court observed

that only “*once an alien gains admission* to our country and begins to develop the ties that go with permanent residence [does] his constitutional status change[].” *Id.* at 32 (emphasis added). “Th[is] rule,” the Court explained, “rests on [the] fundamental proposition[]” that “[t]he power to admit or exclude aliens is a sovereign prerogative,” and “the Constitution gives ‘the political department of the government’ plenary authority to decide which aliens to admit.” *Thuraissigiam*, 591 U.S. at 139 (citing *Nishimura Ekiu*, 142 U.S. at 659).

Consistent with this rule, aliens who have been “paroled elsewhere in the country *for years* pending removal” and who have developed significant ties to the country are “‘treated’ for due process purposes ‘as if stopped at the border.’” *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). For example, *Kaplan* held that a child paroled into the country for *nearly nine years*—but never admitted—must be “regarded as stopped at the boundary line” and “had gained no foothold in the United States.” 267 U.S. at 230-31. That was so even though the child had been living in the interior of the country with her naturalized-citizen father and thus had

formed connections to the United States. *Id.* at 229. And *Thuraissigiam* specifically cites *Kaplan* as good law. 591 U.S. at 139.

The entry fiction doctrine thus dispenses with any procedural due process claim petitioners might have. “[B]ecause Petitioners have never been lawfully admitted into the United States, the admission procedures provided by Congress in §1225(b)(2)(A) embody the due process to which they are entitled.” Op.54 (Wilson, J., dissenting). That is “due process of law.” *Thuraissigiam*, 591 U.S. at 138.

2. The district courts and the now-vacated panel opinion thought *Thuraissigiam* inapplicable because that alien was detained soon after crossing the border and had not domiciled in the United States. ROA.26-50221.85; ROA.26-50219.77-78; ROA.50183.129-30; Op.13-14. As Judge Wilson explained, “this cabined reading ignores the thrust of the decision,” which “repeatedly emphasizes that admission status—not physical presence—determines what procedural rights are available to an alien.” Op.49, 50 (Wilson, J., dissenting). The Court “plainly concluded that an ‘applicant for admission,’ like an ‘alien who is detained shortly after unlawful entry[,] cannot be said to have effected an entry.’” Op.50 (Wilson, J., dissenting). The 26-yard-line and not-immediately-

apprehended exceptions that the panel majority posited are thus refuted by *Thuraissigiam*.

The now-vacated panel majority also disregarded the Supreme Court decisions holding that unadmitted aliens who are paroled into the United States “for years ... are ‘treated’ for due process purposes ‘as if stopped at the border.’” *Thuraissigiam*, 591 U.S. at 139 (citing *Mezei*, 345 U.S. at 215; *Leng May Ma v. Barber*, 357 U.S. 185, 188-90 (1958); and *Kaplan*, 267 U.S. at 230-31). The panel dismissed those cases as recognizing a “narrow exception[]” “intended to encourage conditional release.” Op.14. That misses the point. Those cases necessarily establish that even an unadmitted alien who *has* “acquired a[] domicil[e] or residence within the United States” is “‘treated’ for due process purposes ‘as if stopped at the border.’” *Thuraissigiam*, 591 U.S. at 138, 139.

Ultimately, petitioners’ theory (embraced by the district courts) would constitutionalize the perverse dynamic this Court already rejected as a matter of statutory law in *Buenrostro-Mendez*. If, as petitioners assert, the principle of *Thuraissigiam* applies only to aliens at the border pre-entry—not to those who deliberately evade inspection and enter

unlawfully without admission—then aliens who violate federal law would enjoy *greater* constitutional protections than those who comply with it. The Constitution should not be read to allow aliens to adversely possess additional due process rights by unlawfully entering the United States—a criminal offense. *See* 8 U.S.C. §1325(a).

B. Petitioners’ procedural due process claims fail under *Mathews*.

Even if petitioners had procedural due process rights beyond those provided by statute, their claims would still fail under *Mathews*. Under *Mathews*, a court must balance: (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.” 424 U.S. at 335.

On the first factor, the district courts and the now-vacated panel opinion reasoned that petitioners’ interest in release from detention “weighs heavily” in their favor. ROA.26-50221.89; ROA.26-50219.81; *see* ROA.26-50183.130. But context matters: “The procedural protections required by the Due Process Clause must be determined with reference to the rights and interests at stake in the particular case.” *Harper*, 494

U.S. at 229. And here, the strength of petitioners’ liberty interests is significantly diminished. They certainly “do not have any right—let alone a fundamental right—to be present in the country” pending their removal proceedings. *Lopez-Campos*, 175 F.4th at 760 (Murphy, J., dissenting). Moreover, “an alien detained under §1226(c)”—or §1225(b)(2)(A)—“has the keys in his pocket” and can “end[] his detention immediately” by withdrawing his defense to removal and “return[ing] to his native land.” *Parra*, 172 F.3d at 958; *supra*, p. 34. Put simply, petitioners have no cognizable constitutional interest to be at liberty within the United States when they have no right to be in the United States *at all*.

On the second factor, there is no “high risk” of erroneous deprivation. ROA.26-50221.90; ROA.26-50219.82; *see* ROA.26-50183.131. Detaining aliens under §1225(b)(2)(A) without a bond hearing cannot lead to an “erroneous deprivation” because neither flight risk nor dangerousness is relevant to whether §1225(b)(2)(A) applies. *Supra*, p. 27. Nor is there any risk of error with respect to whether applicants for admission, like petitioners, fall within §1225(b)(2)(A); the

district courts conceded that *Buenrostro-Mendez* resolved that question. ROA.26-50183.129; ROA.26-50221.84; ROA.26-50219.76.

Finally, on the third factor, “[t]he government’s interest in efficient administration of the immigration laws” is “weighty” and courts applying *Mathews* “must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.” *Landon*, 459 U.S. at 34. Here, Congress has determined that aliens covered by §1225(b)(2)(A) are to be detained pending their removal proceedings—full stop. That judgment must “weigh heavily” in any *Mathews* analysis.

Ultimately, the Supreme Court “ha[s] already done whatever balancing is necessary,” and upheld mandatory detention without an individualized assessment. *Banyee*, 115 F.4th at 933. *Demore* rejected the argument that requiring “individualized bond hearings” is not excessively burdensome because “when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.” 538 U.S. at 528. It was, after all, “the lead dissent in *Demore* [that] advocated for ... ‘individual determination[s],’” but “[t]he majority opted for a bright-line

rule instead.” *Banyee*, 115 F.4th at 933. In short, courts may not employ *Mathews* to “impos[e] procedures that merely displace congressional choices of policy.” *Landon*, 459 U.S. at 35.

CONCLUSION

The Court should reverse the district courts’ orders granting the writs of habeas corpus.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that:

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I hereby certify that on August 10, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

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