IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

SABRINA AYLEN CARMONA SANCHEZ — PETITIONER

V. — Civil Case No. 5:26-cv-00046-DCB-BWR

RAFAEL VERGARA, *Warden of Adams County Correctional Center/ In His Official Capacity;* and BRIAN ACUNA, *Acting Director of U.S. Immigration and Customs Enforcement New Orleans Field Office/ In His Official Capacity* — RESPONDENT

REPORT AND RECOMMENDATION

Petitioner Sabrina Aylen Carmona Sanchez (Petitioner), a transgender woman, is an immigration detainee who has been detained by U.S. Immigration and Customs Enforcement (ICE) since January 3, 2026. Pet. [1] at 7. On February 2, 2026, Petitioner, through counsel, filed a habeas corpus Petition under 28 U.S.C. § 2241, and on February 4, 2026, a Motion for Temporary Restraining Order [6]. Petitioner alleges that her detention without a bond hearing violates the Immigration and Nationality Act (INA) and her procedural due process rights under the Fifth Amendment to the United States Constitution. Having considered Petitioner's briefing [7] [11] [16] [17], Respondents' briefing [13] [14], the record, and relevant law, it is recommended that the Petition [1] be dismissed and the Motion for Temporary Restraining Order [6] denied as moot. Petitioner's statutory challenge is precluded by the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), *reh'g en banc denied* (Apr. 9, 2026). Petitioner's procedural due

process claim fails because "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore. v. Kim,* 538 U.S. 510, 531 (2003).

I. BACKGROUND

A. Factual background

Petitioner is a native and citizen of Ecuador who entered the United States illegally on November 15, 2023 and "was apprehended by immigration authorities in California shortly after crossing the border." Pet. [1] at 6. Petitioner was issued a notice to appear for removal proceedings and released on her own recognizance. *Id.* She moved to the New York City area where she lived with her partner, was active in the community, obtained work authorization, and attended all immigration related hearings. *Id.* at 1-3. On February 6, 2024, Petitioner filed applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT), alleging persecution "based on her identify as a transgender woman." *Id.* at 1.

On January 3, 2026, Petitioner was arrested [redacted] by local law enforcement authorities in New York. ICE Asst. Field Dir. Decl. [14-1] at 1. Petitioner was not charged but was transferred to ICE custody. Pet. [1] at 8. According to the Petition, Petitioner was "transported around New York City and then to New Jersey, where she was loaded onto a plane along with other people detained by ICE." *Id.* Petitioner "informed ICE officials" that her doctor advised her not to fly because "[o]n December 16, 2025, [she] had undergone surgery on her face

and hairline" and "still had stiches," but they "loaded her onto a plane anyway." *Id.* at 8. On January 4, 2026, Petitioner was flown to an ICE detention center in Louisiana, detained with women, and "made to sleep on the floor, without a mattress or bedding, because there were not enough beds available." *Id.* at 9.

On January 5, 2025, Petitioner was flown to Adams County Correctional Center in Natchez, Mississippi, despite "having informed ICE that [flying] went against her doctors' medical advice[.]" *Id.* Petitioner is now detained at Adams County Correctional Center "in dormitory-style housing . . . with approximately 100 men." *Id.* at 2, 5. Though Petitioner "is permitted to shower privately in the healthcare unit, she must use the toilets in the dorm, which do not have doors or privacy screens." *Id.* at 10. Petitioner claims that she is harassed and fears for her safety. *Id.* at 2-3. Petitioner alleges that she is being denied necessary postoperative and gender-affirming care. *Id.* at 2-3, 10. Petitioner "*does not* challenge the conditions of her confinement directly in this habeas action, nor is she requesting transfer to a women's detention facility." Pet'r Mem. [11] at 7 (emphasis in original). Petitioner submits that "her conditions of confinement are relevant to whether the Court should order . . . relief on an emergency basis through a temporary restraining order." *Id.* (citing various district court cases). "Generally, [42 U.S.C.] § 1983 suits are the proper vehicle to attack unconstitutional conditions of confinement and prison procedures. . . .A habeas petition, on the other hand, is the proper vehicle to seek release from custody." *Carson v. Johnson,* 112 F.3d 818, 820 (5th Cir. 1997).

After filing her Petition on February 2, 2026, Petitioner "had an individual hearing before" an immigration judge on February 24, 2026 "to receive evidence and argument related to [her] claims for relief from deportation." *Id.* at 5. The immigration judge denied Petitioner's applications for asylum, withholding of removal, and CAT protection and ordered that Petitioner be removed from the United States to Ecuador or alternatively Chile. IJ Order [13-2] at 1-4. Petitioner's Reply in support of the Petition, filed March 16, 2026, provides that Petitioner's "order of removal will not, as Respondents allege, 'become final after 30-days'" because Petitioner has appealed to the Board of Immigration Appeals (BIA). Pet'r Reply [17] at 16 n. 5. Petitioner submits that "her removal order will not become administratively final unless and until BIA affirms it (and if her removal is not stayed pursuant to any subsequent petition for review to the circuit court[.]" *Id.*

B. Arguments

Count One of the Petition alleges that 8 U.S.C. § 1225(b)(2)(A) does not apply to Petitioner, Pet. [1] at 16-17. This argument is now foreclosed by *Buenrostro*, which Petitioner acknowledges. Pet'r Mem. [11] at 2. According to *Buenrostro,* Petitioner has no statutory right to a bond hearing. *Buenrostro,* 166 F.4th at 498, 502-08.

Count Two alleges that Petitioner's detention violates her right to procedural due process under the Fifth Amendment. Pet. [1] at 17-18. Petitioner submits that she "has a fundamental liberty interest in being free from official restraint" and quotes *Zadvydas v. Davis,* 533 U.S. 678 (2001) for the point that "[f]reedom 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." *Id.* at 17 (quoting *Zadvydas,* 533 U.S. at 690). The Petition asserts that "[c]ivil immigration detention violates due process if it is not reasonably related to its purpose." *Id.* (citing *Zadvydas,* 533 U.S. at 690, *Jackson v. Indiana,* 406 U.S. 715, 738 (1972), and *Demore,* 538 U.S. at 527). The Petition then proposes a different test, claiming that "[d]ue process requires Respondents to justify [her] detention by clear and convincing evidence that she is a flight risk or danger to others at an individualized hearing before a neutral decisionmaker." *Id.* at 18 (relying on *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 685 (W.D. Tex. 2025)).

Petitioner claims that "Respondents created a liberty interest in *continued* liberty when they chose to release [Petitioner] on her own recognizance, and they are not free to deprive her of that liberty interest now without any process." Pet'r Mem. [7] at 15 (emphasis in original) (relying on *Lopez-Arevelo,* 801 F. Supp. 3d at 685). Petitioner contends that "petitioners like [her] have a strong liberty interest in being free from detention *and* they have liberty interests in maintaining the benefits Respondents have chosen to bestow on them – here, release on recognizance and work authorization." Pet'r Mem. [11] at 3 (emphasis in original) (citing various district court opinions).

Petitioner alleges that "'[t]o determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v.*

Eldridge, 424 U.S. 319 (1976).'" Pet'r Mem. [7] at 15 (quoting *Martinez v. Sec'y of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379, at *3 (W.D. Tex. Sept. 8, 2025)). Petitioner weighs the *Eldridge* factors in her favor and concludes that "Respondents cannot show that their interest in detaining [her] without an opportunity for review outweighs her liberty interests. Nor can they claim that the effort and cost of providing her with" a bond hearing "is overly burdensome." *Id.* at 18.

Respondents counterargue that the Supreme Court already determined in *Demore* that "'[d]etention during removal proceedings is a constitutionally permissible part of that process.'" Resp'ts Mem. [13] at 20 (quoting *Demore,* 538 U.S. at 531). Respondents argue that Petitioner's

> detention is not punitive or for other reasons than to address h[er] removability from the United States; h[er] detention under Section 1225(b)(2) is also not indefinite, as it will end upon the conclusion of h[er] removal or removal proceedings; and h[er] detention is not discriminatory or arbitrary, as Petitioner is an applicant for admission dealt with in the same manner as that of any other applicants for admission to the United States, . . . requiring that [s]he remain detained pursuant to 8 U.S.C. § 1225(b)(2).

Id. at 20.

In Reply, Petitioner claims *Demore* does not control because "*Demore* merely upheld the constitutionality of a statute not at issue here: 8 U.S.C. § 1226(c), requiring detention for individuals 'removable from this country because [they have] been convicted of one of a specified set of crimes' given Congress' 'justifiabl[e] concern[]' that they may 'continue to engage in crime and fail to appear for their removal hearings.'" Pet'r Reply [17] at 10 (quoting *Demore,* 538 U.S. at 513).

Petitioner says her due process claim is factually distinct because "unlike in *Demore* . . . she does not challenge the constitutionality of the statute authorizing her detention, but rather the deprivation of her liberty interests in her prior release and work authorization." *Id.* at 17. Petitioner claims that "*Demore* does not apply here, since the fact of [Petitioner's] release demonstrates she is among those the Attorney General chose to 'release . . . during their deportation proceedings' precisely *because* they 'were found not to constitute a flight risk or threat to the community.'" *Id.* at 17 (quoting *Demore,* 538 U.S. at 521) (emphasis in original).

II. DISCUSSION

28 U.S.C. § 2241 confers federal district courts "within their respective jurisdictions" the authority to hear applications for habeas corpus by any person who claims to be held "in custody in violation of the Constitution or laws or treaties of the United States[.]" 28 U.S.C. § 2241. The writ of habeas corpus is "available to every individual detained within the United States," including noncitizens. *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., art I, § 9, cl. 2).

"A district court has subject matter jurisdiction to hear an alien's Section 2241 petition challenging the lawfulness of his or her detention." *Wekesa v. United States Att'y*, No. 22-10260, 2022 WL 17175818, at *1 (5th Cir. Nov. 22, 2022); *see Demore,* 538 U.S. at 517 ("Section 1226(e) contains no explicit provision barring habeas review, and we think that its clear text does not bar respondent's constitutional challenge to the legislation authorizing his detention without bail."); *Imran v. Harper,* No. 25-

30370, 2026 WL 93131, *1 (5th Cir. Jan. 13, 2026) ("district courts have subject-matter jurisdiction to review § 2241 petitions challenging the lawfulness of a noncitizen's detention").

The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving any person "of life, liberty, or property, without due process of law[.]" U.S. Const. amend. V. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. Petitioner submits that *Buenrostro* has no bearing on whether she is being detained in violation of her right to procedural due process because *Buenrostro* did not resolve a due process claim. Petitioner is correct that *Buenrostro* did not resolve a due process claim. The Fifth Circuit in *Buenrostro* did remark, however, that "[t]he petitioners' fears about potential abuse of detention pending removal proceedings under Section 1225b2A are wholly speculative. In any event, *Zadvydas v. Davis,* 533 U.S. 678, 678, 121 S. Ct. 2491, 2492, 150 L.Ed.2d 653, (2001), has no direct application to aliens who are detained and being given due process during removal proceedings." *Buenrostro,* 166 F. 4th at 508.

To start, no binding precedent addresses whether 8 U.S.C. § 1225(b)(2) detention can violate procedural due process as applied in a particular instance, which is Petitioner's theory. No binding precedent supports Petitioner's argument that "petitioners like [her] . . . have liberty interests in maintaining the benefits

Respondents have chosen to bestow on them – here, release on recognizance and work authorization." Pet'r Mem. [11] at 3. Petitioner relies on district court opinions to prop up her arguments, without analyzing how these district courts reached their conclusions. Petitioner does not disclose that district courts are essentially split between those that accept the *Eldridge* factors as applicable in the immigration detention context and those that do not. The law that binds this Court is Supreme Court precedent addressing due process challenges in the immigration detention context. That precedent includes *Demore* and the opinions it discusses, namely *Zadvydas, Reno v. Flores,* 507 U.S. 292 (1993), *Carlson v. Landon,* 342 U.S. 524 (1952), and *Wong Wing v. United States,* 163 U.S. 228 (1896). The Supreme Court did not apply the *Eldridge* factors in *Demore, Zadvydas,* or *Flores*. *Wong Wing* and *Carlson* were decided before *Eldridge*. The Supreme Court "ha[s] never viewed [*Eldrige*] as announcing an all-embracing test for deciding due process claims." *Dusenbery v. United States*, 534 U.S. 161, 168 (2002).

Demore held that "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore,* 538 U.S. at 530. *Demore* is factually distinguishable because it addressed the constitutionality of 8 U.S.C. § 1225(c), which required no-bond detention for aliens who had been convicted of one of a specified set of crimes. *Demore,* 538 U.S. at 513-14. But *Demore* did not qualify the statement that "[d]etention during removal proceedings is a constitutionally permissible part of that process" by limiting it to criminal aliens. *Id.* at 530. *Demore* instead observed that the

Supreme Court "said more than a century ago [that] deportation proceedings 'would be in vain if those accused could not be held in custody pending the inquiry into their true character.'" *Id.* at 523 (quoting *Wong Wing,* 163 U.S. at 235). *Demore* emphasized that in 1897, the Supreme Court said, "[w]e think it clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid." *Id.* at 531 (quoting *Wong Wing,* 163 U.S. at 235).

Demore pointed to the 1952 decision in *Carlson v. Landon,* 342 U.S. 524, 537-38 (1952). In *Carlson,* the Supreme Court found that

> [d]eportation is not a criminal proceeding and has never been held to be punishment. No jury sits. No judicial review is guaranteed by the Constitution. Since deportation is a particularly drastic remedy where aliens have become absorbed into our community life, congress has been careful to provide for full hearing by the Immigration and Naturalization Service before deportation. Such legislative provision requires that those charged with that responsibility exercise it in a manner consistent with due process. Detention is necessarily a part of this deportation procedure. Otherwise aliens arrested for deportation would have opportunities to hurt the United States during the pendency of deportation proceedings. Of course purpose to injure could not be imputed generally to all aliens subject to deportation, so discretion was placed by the 1950 Act in the Attorney General to detain aliens without bail[.]

342 U.S. 524, 537-38 (1952).

Demore denoted *Flores,* where the Supreme Court in 1993 concluded that "a 'blanket' presumption of the unsuitability of custodians other than parents, close relatives, and guardians' to care for [] juvenile aliens" detained in childcare institutions pending deportation did not violate due process. *Id.* at 526 (quoting

Flores, 507 U.S. at 313). The Supreme Court observed that *Flores* "emphasized that 'reasonable presumptions and generic rules,' even when made by the INS rather than Congress, are not necessarily impermissible exercises of Congress' traditional power to legislate with respect to aliens." *Id.* (quoting *Flores,* 507 U.S. at 313-14).

While Petitioner asserts that procedural due process requires the government to prove that she is a flight risk or danger to the community to continue her detention, *Carlson* rejected that argument in upholding the constitutionality of no-bail detention for aliens who "did not deny that they were members of the Communist Party or that they were therefore deportable." *Demore,* 538 U.S. at 523-24 (summarizing *Carlson*). *Demore* rejected that argument in a case challenging 28 U.S.C. § 1226(c)'s no-bond detention of aliens convicted of one of a specified set of crimes. *Id.* at 513. *Carlson* said that "[t]he protection of citizenship is open to those who qualify for its privileges," and "[s]o long . . . as aliens fail to obtain and maintain citizenship by naturalization, they remain subject to the plenary power of Congress to expel them under the sovereign right to determine what noncitizens shall be permitted to remain within our borders." *Carlson,* 342 U.S. at 534, 537. *Demore* held that "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. The evidence Congress had before it certainly supports the approach it selected even if other, hypothetical studies might have suggested different courses of action." *Id.* at 528 (citations omitted); *see Diaz,* 426 U.S. at 78 ("The fact that all persons, aliens and citizens alike, are protected by

the Due Process Clause does not lead to the further conclusion that all aliens are entitled to enjoy all the advantages of citizenship[.]").

Petitioner's proposal to use *Eldridge*'s factors which consider "the probable value, if any, of additional or substitute procedural safeguards," *Eldridge,* 424 U.S. at 335, does not align with Supreme Court law establishing that "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. *Eldridge* does not account for the "fundamental premise of immigration law" that "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Demore,* 538 U.S. at 521 (quoting *Diaz,* 426 U.S. at 79). The *Demore* majority criticized the *Demore* dissent for "seek[ing] to avoid this fundamental premise of immigration law." *Id.* at 521. Petitioner's briefing wholly avoids it, as do the district court decisions she relies on.

Arguments like Petitioner's that urge the habeas court to conclude that an alien's liberty interests outweigh the government's interest in detention have not been successful in the context of immigration detention pending a determination of removability. In *Carlson,* some of the petitioners alleged that "their many years' residence spent in this country without giving basis for fear of action by them inimical to the public welfare during the pendency of their deportation proceedings, their integration into community life through marriage and family connections, and their

meticulous adherence to the terms of previous bail, allowed under a former warrant charging deportability." *Carlson,* 342 U.S. at 529. The other petitioner had been released on $2,000.00 bail and was re-detained after enactment of the Internal Security Act of 1950 based on an order from the INA's acting commissioner. *Id.* at 532. *Carlson's* analysis did not focus on these facts but looked to the evidence "Congress had before it of resident aliens' leadership in communist domestic activities sufficient to furnish reasonable ground for action against alien resident Communists." *Id.* at 536. "The aliens in *Carlson* had *not* been found individually dangerous[,]" but the Supreme Court "nonetheless concluded that the denial of bail was permissible 'by reference to the legislative scheme to eradicate the evils of Communist activity.'" *Demore,* 538 U.S. at 524 (emphasis in original) (quoting *Carlson,* 342 U.S. at 543).

In rejecting the juvenile alien detainees' "best interests" argument in *Flores,* the Supreme Court observed that the claim was

> in essence, a demand that the INS program be narrowly tailored to minimize the denial of release into private custody. But narrow tailoring is required only when fundamental rights are involved. The impairment of a lesser interest (here, the alleged interest in being released into the custody of strangers) demands no more than a 'reasonable fit' between governmental purpose . . . and the means chosen to advance that purpose. This leaves ample room for an agency to decide, as the INS has, that administrative factors . . . favor using one means rather than another.

Flores, 507 U.S. at 305.

The Supreme Court in *Flores* recognized that the petitioners' procedural due

process claim was not actually a procedural due process claim. *Id.* at 308. The petitioners' argument that the "procedural system is unconstitutional because it does not require the Service to determine in the case of each individual alien juvenile that detention in INS custody would better serve his interests than release to some other 'responsible adult,'" was "just the 'substantive due process' argument recast in 'procedural due process' terms" and was rejected "for the same reasons." *Id.* at 308. *Flores* concluded that

> [w]here a juvenile has no available parent, close relative, or legal guardian, where the government does not intend to punish the child, and where the conditions of governmental custody are decent and humane, such custody surely does not violate the Constitution. It is rationally connected to a government interest in preserving and promoting the welfare of the child and is not punitive since it is not excessive in relation to that valid purpose.

Id. at 303 (internal quotations and citations omitted). *Flores* concluded that "the INS policy now in place is a reasonable response to the difficult problems presented when the Service arrests unaccompanied alien juveniles. It may well be that other policies would be even better, but we are [not] a legislature charged with formulating public policy." *Id.* at 314 (internal quotation and citation omitted).

And in *Demore,* the Supreme Court overturned the Ninth Circuit's holding that "§ 1226(c) violates substantive due process as applied to respondent because he is a permanent resident alien." *Id.* at 515 (referencing *Kim v. Ziglar,* 276 F.3d 523 (9th Cir. 2002)). The Ninth Circuit emphasized that "permanent resident aliens constitute the most favored category of aliens and that they have the right to reside permanently

in the United States, to work here, and to apply for citizenship." *Id.* (citing *Kim,* 276 F.3d at 528). The Ninth Circuit "rejected the Government's two principal justifications for mandatory detention under § 1226(c)" – "ensuring the presence of criminal aliens at their removal proceedings" and "protecting the public from dangerous criminal aliens." *Id.* The Ninth Circuit "discounted the first justification because it found that not all aliens detained pursuant to § 1226(c) would ultimately be deported" and discounted "the second justification on the grounds that the aggravated felony classification triggering respondent's detention included crimes that the court did not consider 'egregious' or otherwise sufficiently dangerous to the public to necessitate mandatory detention." *Id.* at 515. Relying on *Zadvydas,* "the Court of Appeals concluded that the INS had not provided a justification 'for no-bail civil detention sufficient to overcome a lawful permanent resident alien's liberty interest.'" *Id.* (quoting *Kim,* 276 F.3d at 535).

The Supreme Court in *Demore* reversed, finding that "Congress, justifiably concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers, may require that persons such as respondent be detained for the brief period necessary for their removal proceedings." *Id.* at 513. The Supreme Court referenced evidence before Congress, including that "one of the major causes of the INS's failure to remove deportable aliens was the agency's failure to detain those aliens during their deportation proceedings." *Id.* at 519 (citing Department of Justice report). "Once

released, more than 20% of deportable criminal aliens failed to appear for their removal hearings." *Id.* (citing S. Rep. 104-48 (1995)). Evidence before Congress "strongly support[ed] Congress' concern that, even with individualized screening, releasing deportable criminal aliens on bond would lead to an unacceptable rate of flight." *Id.* at 520. The Supreme Court concluded that "[t]he evidence Congress had before it certainly supports the approach it selected even if other, hypothetical studies might have suggested different courses of action." *Id.* at 528.

Petitioner initially says in the Petition that the due process test in the immigration detention context is whether detention is reasonably related to its purpose. Pet. [1] at 1 ("Civil immigration detention violates due process if it is not reasonably related to its purpose"). Petitioner then fails to apply a reasonableness test and instead argues that "[d]ue process requires Respondents to justify [her] detention by clear and convincing evidence that she is a flight risk or danger to others at an individualized hearing before a neutral decisionmaker." Pet. [1] at 18. In so urging, Petitioner is inviting the Court to apply the analysis that the Supreme Court rejected in *Demore* because *Demore* rebuked the Ninth Circuit's misapplying *Zadvydas* to conclude that "INS had not provided a justification 'for no-bail civil detention sufficient to overcome a lawful permanent resident alien's liberty interest.'" *Demore,* 538 U.S. at 515 (quoting *Kim,* 276 F.3d at 535).

The due process test in the immigration detention context is whether detention bears a reasonable relation to its purpose. *See Demore,* 538 U.S. at 527-28 (finding

no-bond detention of criminal aliens necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings"); *Zadvydas,* 533 U.S. at 699 (finding the habeas court "should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal"); *Flores,* 507 U.S. at 306 (concluding that "[o]f course, the INS regulation must still meet the (unexacting) standard of rationally advancing some legitimate governmental purpose"); *Carlson,* 342 U.S. at 532 ("Congress had before it evidence of resident aliens' leadership in communist domestic activities sufficient to furnish reasonable ground for action against alien resident Communists").

According to *Buenrostro*, flight risk is an immigration purpose served by no-bond detention of applicants for admission under 8 U.S.C. § 1225(b)(2). *Buenrostro* observed that "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.' 62 Fed. Reg. at 10323. That situation exists today on a much larger scale." *Buenrostro*, 166 F.4th at 508. Detention of applicants for admission serves the immigration purpose of preventing an unacceptable rate of flight that occurs when aliens are released from custody, "thus increasing the chance that, if ordered removed, the aliens will be successfully removed." *Demore,* 538 U.S. at 528.

That some applicants for admission are not flight risks does not mean that the Fifth Amendment requires the government to individually determine whether each

alien detained for removal is a flight risk 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." *Id.* at 528 (finding due process did not require an individualized bond hearing); *see Carlson,* 342 U.S. at 537-38 (same). That aliens detained under § 1225(b)(2)(A) might not ultimately be deported was an argument that did not affect the outcome in *Demore*. *Demore,* 538 U.S. at 515.

Petitioner's claim that she received no individualized process prior to detention is inaccurate. *See* Pet'r Mem. [7] at 15. Before Petitioner was detained, an "examining immigration officer determine[d]" that Petitioner was "not clearly and beyond a doubt entitled to be admitted[.]" *See* 8 U.S.C. § 1225(b)(2)(A). Section 1225(b)(2)(A) detention coincides with "a proceeding under Section 1229a," which Petitioner is receiving. *See id.* Petitioner was detained on January 3, 2026, and fifty-two days later, an immigration judge heard her evidence and ordered her removed. Petitioner's continued detention under 8 U.S.C. § 1225(b)(2)(A) is attributable to her appealing the immigration judge's ruling to BIA.

This Court's function is not to determine whether detention of all applicants for admission is "poor public policy, with the balance of harms outweighing any positive benefits." *Schall v. Martin,* 467 U.S. 253, 281 (1984). The question this Court must decide is whether the preventive detention system Congress chose comports with constitutional standards. According to over a century of Supreme Court precedent, Petitioner's temporary detention during the pendency of her removal

proceedings is constitutionally permissible. *See Demore,* 538 U.S. at 523 (referencing *Wong Wing,* 163 U.S. at 235).

III. RECOMMENDATION

It is recommended that the Petition [1] be dismissed and the Motion for Temporary Restraining Order [6] denied as moot.

IV. NOTICE OF RIGHT TO OBJECT

Within fourteen days after being served with a copy of this Report and Recommendation, a party may serve and file specific written objections to the proposed findings and recommendations. Fed. R. Civ. P. 72(b)(2). A party may respond to another party's objections within 14 days after being served with a copy of the objections. *Id.* The district judge will determine de novo any part of the Report and Recommendation that has been properly objected to. Fed. R. Civ. P. 72(b)(3). The district judge may accept, reject, or modify the Report and Recommendation; receive further evidence; or return the matter to the magistrate judge with instructions. *Id.*

An objecting party must specifically identify the findings, conclusions, and recommendations to which he objects. A district judge need not consider frivolous, conclusive, or general objections. A party who fails to file written objections to the proposed findings, conclusions, and recommendations shall be barred, except upon grounds of plain error, from attacking on appeal any proposed factual finding or legal conclusion adopted by the Court to which he did not object. *Douglass v. United Servs. Auto. Assoc.,* 79 F.3d 1415, 1428-29 (5th Cir. 1996), *superseded by statute on other*

grounds, 28 U.S.C. § 636(b)(1).

SIGNED, this the 1st day of May 2026.

s/ Bradley W. Rath

BRADLEY W. RATH
UNITED STATES MAGISTRATE JUDGE