UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0: 26-cv-2282 (ECT/SGE)

Eliseo C.,

Petitioner,

RESPONSE

v.

TODD BLANCHE, *et al.*,

Respondents.

Respondents respectfully submit this supplemental brief pursuant to the Court's April 21, 2026 order, requiring the Respondents to address the basis for Petitioner's continued detention.

BACKGROUND

Petitioner was detained by immigration officials on April 16, 2026, following the issuance of a detainer and administrative warrant. Petitioner had been arrested on April 14, 2026, in Ramsey County for violation of a Restraining Order under Minn. Stat. § 609.748. See Form I-213; Citation case 62-CR-26-2543.

Petitioner seeks relief from the court in the form of immediate release or, in the alternative, a bond hearing to determine his flight risk and danger to the community. Petitioner is currently in removal proceedings, charged with being an Inadmissible Alien not in possession of valid immigration documents under 8 U.S.C. § 1182(a)(7)(A)(i)(I).

See NTA p. 3.[1] Petitioner is therefore an "applicant for admission" to the United States, and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), being present in the United States without lawful admission and was not "clearly and beyond a doubt entitled to be admitted." Binding authority—including the Supreme Court's decisions in *Demore v. Kim*, 538 U.S. 510 (2003) and *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), as well as recent Eighth Circuit precedent in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024) and *Avila v. Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026)—confirms that mandatory detention under § 1225(b)(2)(A) is statutorily and constitutionally authorized. Petitioner's prior custody review, regulatory compliance, and alleged procedural concerns do not alter the statutory mandate. For these reasons, and for the additional reasons explained below, the Court should deny the habeas petition in its entirety.

The court has requested Respondents to file a reasoned memorandum of law and fact explaining Respondents' legal position. This brief will address the court's concerns, and respond to the contentions made by Petitioner roughly in the order raised in his petition. Pp. 28-50.

[1] Petitioner was issued a second NTA with the same charges in 2026. This was in error, as Petitioner was already issued an NTA in 2016, and his removal case has not yet been disposed of. The second NTA changes nothing about the case.

ARGUMENT

I. STATUTORY FRAMEWORK OF THE INA JUSTIFIES DETENTION

A. The pre-1996 immigration laws gave preferential treatment to aliens—including bond hearings—who entered the United States unlawfully.

Prior to 1996, the INA treated aliens differently based on whether the alien had presented at a port of entry or evaded inspection and illegally entered the United States. *Buenrostro-Mendez*, 166 F.4th at 498 (citing 8 U.S.C. §§ 1225(a), 1251(a) (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) "dictated [both] what type of [removal] proceeding applied," *Hing Sum*, 602 F.3d at 1099, and whether the alien would be detained pending those proceedings, *Buenrostro-Mendez*, 166 F.4th at 498.[2]

At the time, the INA provided for "two types of proceedings in which aliens can be denied the hospitality of the United States: deportation hearings and exclusion hearings." *Landon v. Plasencia*, 459 U.S. 21, 25 (1982). An alien who arrived at a port of entry would be placed in exclusion proceedings and subjected to mandatory detention, with potential release solely by a grant of parole. *Buenrostro-Mendez*, 166 F.4th at 498; *see* 8 U.S.C. § 1182(d)(5)(A). In contrast, an alien who evaded inspection and entered the United States would be placed in deportation proceedings. *Buenrostro-Mendez*, 166 F.4th at 498. Aliens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request

[2] Aliens who arrive at a port of entry have technically "entered" the United States physically, but under the longstanding "entry fiction" doctrine, "aliens who arrive at a port of entry . . . are treated for due process purposes as if stopped at the border." *Thuraissigiam*, 591 U.S. at 139.

release on bond." *Buenrostro-Mendez*, 166 F.4th at 498; *see Hing Sum*, 602 F.3d at 1100.

B. IIRIRA eliminated the preferential treatment of aliens who unlawfully entered the United States and mandated detention of "applicants for admission."

Congress discarded that prior regime through enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, IIRIRA sought to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc); *accord Buenrostro-Mendez*, 166 F.4th at 499 (noting that IIRIRA "aimed to reduce this incongruity" of treatment).

To that end, IIRIRA replaced the prior focus on physical "entry," instead making "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., *supra*, at 225 (emphasis added); *see Hing Sum*, 602 F.3d at 1100 (similar).

IIRIRA effected these changes through several provisions codified in Section 1225 of Title 8.

Section 1225(a): Section 1225(a) codifies Congress's decision to make "admission," rather than physical entry, the touchstone. That provision states that an alien "present in the United States who has not been admitted or who arrives in the United States" "shall be deemed . . . an applicant for admission":

Section 1225(b): IIRIRA also provided for expedited removal and "Section 240" proceedings (under 8 U.S.C. § 1229a) and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. § 1225(b)(1)-(2).

Section 1225(b)(1) lays out a framework for the detention and removal of aliens who qualify for expedited removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (explaining that 8 U.S.C. § 1225(b)(1)(B)(ii) "mandate[s] detention").

Section 1225(b)(2)(A) "operates as a catchall provision that applies to all applicants for admission not covered by subsection (b)(1)." *Buenrostro-Mendez*, 166 F.4th at 499 (internal quotation, alteration, and citation omitted). That provision requires that those aliens be detained pending Section 1229a removal proceedings.

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (not "applicants for admission" specifically). *See* 8 U.S.C. § 1226. The statute 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." *Id.* § 1226(a).

Detention under § 1226(a) is generally discretionary. The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2). In practice, DHS makes an initial custody determination. 8 C.F.R. § 236.1(d)(1). The alien may then seek custody redetermination—a bond hearing—before an immigration judge and can appeal the immigration judge's custody determination to the Board of Immigration Appeals. 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19.

C. The government applies § 1225(b)(2)(A)'s requirement that all "applicants for admission" be detained pending removal proceedings.

For many years after IIRIRA, DHS and most immigration judges treated aliens who entered the United States without admission and were later detained as being subject to discretionary detention under 8 U.S.C. § 1226(a), rather than mandatory detention under 8 U.S.C. § 1225(b). *See Buenrostro-Mendez*, 166 F.4th at 500. The Board also adopted this interpretation in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216.

D. The Eighth Circuit held that § 1225(b)(2)(A) mandates detention of all applicants for admission.

In *Avila*, the Court of Appeals recognized that 8 U.S.C. § 1225(b) mandates detention without bond of applicants for admission who cannot prove "clearly and beyond a doubt" they are entitled to be admitted to the United States. – F.4th – (8th Cir. 2026). The Court reasoned that aliens who are present in the United States without admission are "applicants for admission" who are "seeking admission" under § 1225(b)(2)(A) and so are subject to mandatory detention under that provision. *Id.* at 3. The Court rejected the petitioner's interpretation of *Jennings v. Rodriguez*, which stated that § 1225 pertained to aliens detained at the border while § 1226 pertained to those in the interior. *Id.* at 5 (citing 583 U.S. 281, 287-89 (2018)). "While *Jennings* states that § 1226 generally authorizes the Government to detain "certain aliens already in the country," this does not preclude other statutory provisions—such as § 1225(b)(2)(A)—from also applying to such aliens." *Id.* Nor did previous administrations' lax interpretation of § 1225/1226 require the court to turn aside from the plain meaning of the statutory text, for the "[a]uthority granted by Congress

... cannot evaporate through lack of administrative exercise," as "the mere failure of [an] administrative agenc[y] to act is in no sense 'a binding administrative interpretation' that the Government lacks the authority to act." *Id. citing Bankamerica Corp. v. United States*, 462 U.S. 122, 131 (1983). Because the plain meaning of § 1225(b)(2)(A) was clear, and clearly encompassed all "applicants for admission" who is not "clearly and beyond a doubt entitled to be admitted," the petitioner was no entitled to a bond hearing under § 1226.

This also addresses Petitioner's **COUNT I**, claiming unlawful detention in violation of the INA.

II. PETITIONER'S DETENTION DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

Petitioner claims he is owed an individualized bond hearing under procedural due process. (ECF No. 1, ¶ 92). Likewise, Petitioner claims the "government's detention of Petitioner without any individualized assessment also violates substantive due process. Detaining an individual who has a pending U visa application, who has received a Bona Fide Determination, who has been granted deferred action, who has no criminal history, no potential dangerousness and no flight risk—without requiring the government to justify detention or consider less restrictive alternatives—renders the confinement excessive and punitive in effect." ECF No. 1 ¶ 93.

Neither due process claim is sound. The Court of Appeals rejected Petitioners' statutory claim for that relief in *Avila v. Bondi*, -- F.4th – (8th Ct. App. 2026)(WL 819258) and rejected his argument about due process in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024).

First, Petitioner does not assert a cognizable *procedural* due process claim. 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 the statute. Instead, they argue that they are entitled to a bond hearing to assess whether they are flight risks or dangerous—criteria that are irrelevant under the terms of § 1225(b)(2)(A).

That is not a cognizable claim of procedural due process. Aliens "who asserts 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." *Conn. Dep't of Pub. Safety*, 538 U.S. at 8. 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.* Petitioner is not asserting cognizable *procedural* due process claims.

Even if it were otherwise, any procedural due process claim would be meritless. Under longstanding precedent, for aliens who have never "been admitted into the country pursuant to law, the decisions of executive and administrative officers, acting within the powers expressly conferred by Congress, are due process of law." *Thuraissigiam*, 591 U.S. at 138. Petitioner has received all the process he is entitled to under the statute; the due process clause requires nothing more.

Moreover, Petitioner is not challenging the procedures used to determine he is subject to the detention mandate of § 1225(b)(2)(A); instead, he is challenging Congress's substantive decision to mandate detention pending removal proceedings, without regard to an alien's flight risk or dangerousness. That *substantive* due process claim also is meritless. Congress's decision 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.

1. Procedural due process does not entitle Petitioners to a bond hearing to determine facts that are irrelevant to their detention under § 1225(b)(2)(A).

A. Petitioner's claims do not sound in procedural due process.

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 due process. *See Department of State v. Muñoz*, 602 U.S. 899, 910 (2024). A procedural due process analysis has two steps: "first, whether the plaintiffs have a protected interest at stake, and if so, what process is due." *Rochling v. Dept. of Veteran Affairs*, 725 F.3d 927, 931 (8th Cir. 2013) *citing Bliek v. Palmer*, 102 F.3d 1472, 1475 (8th Cir.1997).

A procedural due process claim takes as given the substantive determinations and criteria 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. For example, the statute in Mathews made the availability of disability benefits turn on whether a person is "completely disabled" within the meaning of the statute. *Id.* at 323, 336. The procedural due process claim did not challenge the statute's substantive criteria for who may receive benefits, but the adequacy of the procedures available to test whether a person fits within the criteria. *Id.* at 325-26.

By contrast, a substantive due process claim asserts a "substantial component" to due process "which forbids the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993). The very nature of a substantive right opens the door to strict scrutiny, and requires a starkly different interpretative method. *Dept. of State v. Munoz*, 602 U.S. 899 (2024). *Kerry v. Din*, 576 U.S. 86 (2015)(the Court has never recognized "implied nonfundamental rights" subject to the "full battery of procedural-due-process protections" but not subject to strict scrutiny)(concurring opinion).

1. Petitioner has 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). Petitioner is claiming the statutory criteria is a constitutionally insufficient basis on which to justify the deprivation of their liberty (*i.e.*, detention), absent an assessment of whether the alien poses a flight risk or danger to the community. This theory does not take § 1225(b)(2)(A)'s substantive determinations as a given, but challenges the lawfulness of those determinations vis-à-vis the statute. In other words, the court presumes an "applicant for admission" who cannot prove he is "clearly and beyond a doubt entitled to be admitted" has a constitutional liberty interest beyond that prescribed by statute. That is a substantive, not procedural, due process challenge.

A bond hearing is merely the vehicle for making the *substantive* determination about flight risk or dangerousness that the district courts believed to be necessary to justify Petitioner's detention, even though those factors are irrelevant under § 1225(b)(2)(A). Because § 1225(b)(2)(A) does not require such determinations, however, Petitioner's claim is a substantive due process challenge, not a procedural one.

Put differently, Congress decided as a substantive policy matter to impose mandatory detention on all applicants for admission, like Petitioner. Whether those aliens are flight risks or dangerous is irrelevant under that policy choice. And due process does not require procedures to adjudicate immaterial facts. Thus, Petitioner is actually attempting is to override Congress's substantive judgment under § 1225(b)(2)(A) that all applicants for admission must be detained. Procedural due process can do no such thing.

The only way the Petitioner could overcome Congress's substantive determination is by asserting a fundamental right that trumped the application of legislature's statutory scheme—in other words, by positing a substantive due process right.

2. The Supreme Court's holding in *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), is definitive on this point. The statute in that case required sex offenders to register with the state so their information could be published on a sexoffender registry. *Id.* at 4-5. John Doe, who had previously been convicted of a sex offense, claimed that the statute violated his procedural due process rights by requiring him to register without a "hearing to determine whether" he was "currently dangerous." *Id.* at 4 (citation omitted).

The Court rejected Doe's claim. 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. So "[u]nless [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 Department of Public Safety* is simple and 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 9. 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.

3. Accordingly, Petitioner has no procedural due process right to a bond hearing on whether he is a flight risk or dangerous. Individualized findings about flight risk and danger are irrelevant under the terms of § 1225(b)(2)(A), which subject Petitioner to mandatory detention based on his uncontested status as "applicants for admission" who is not "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(a)(1), (b)(2)(A). There is no dispute that Petitioner falls within the terms of the statute as interpreted by *Avila*. Therefore, as in *Connecticut Department of Public Safety*, any claim that Petitioner is entitled to a bond hearing "'must ultimately be analyzed' in terms of substantive, not procedural, due process." 538 U.S. at 7-8; *see Flores*, 507 U.S. at 308 (holding that a challenge to a regulation on the ground that it failed to require a determination of a detainee's "interests" was "just [a] 'substantive due process' argument recast in 'procedural due process' terms"); *Michael H. v. Gerald D.*, 491 U.S. 110, 119, 121 (1989) (plurality opinion) (treating a request for an "evidentiary hearing" on an issue that the statutory scheme deemed "*irrelevant*" as a "substantive due process" claim).

It follows that Petitioner's desire to use *Mathews* to evaluate his claims is in error. ECF No. 1 ¶ 92. *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. Again, *Mathews* takes the "nature of the relevant inquiry" as given, 424 U.S. at 343, and asks only whether the "procedures" for conducting that factual inquiry are adequate, *id.* at 335. Here, in stark contrast, Petitioners contend that the Constitution requires a different factual inquiry altogether—*i.e.*, one that evaluates factors that Congress chose not to make relevant to the detention issue. Because that is a substantive, rather than procedural, due process challenge, the district court erred in applying *Mathews* as the governing test.

Likewise, caselaw leaves no place for an individualized "multi-factor reasonableness test" in judging whether a due process violation had occurred. *Banyee v.*

Garland, 115 F.4th 928, 933 (8th Cir. 2024). Though the *Mathews* holding has been used to make individualized assessments relating to individual petitions (see e.g. *Maldonado v. Olson*, 795 F.Supp.3d 1134, 1154 (D. Minn. 2025); *Selvin Adonay E.M. v. Noem*, -- F.Supp.3d --- (D.Minn. 2025)), the *Mathews* holding itself does not deal with individualized assessments, but whether an administrative procedure, *in toto*, provides due process. The holding in *Mathews* did not employ a method individualized towards the claimant, but asked whether the general procedure for depriving individuals of disability benefits passed constitutional muster. The *Mathews* test would be an improper interpretative test, even if the Petitioner's claims sounded in procedural due process.[3]

More than this, the Eighth Circuit Court of Appeals has unambiguously foreclosed the use of individualized "balancing tests" in immigration detention decisions. *Banyee v. Garland*, 115 F.4th 928, 930-31 (8th Cir. 2024), abrogating *Muse v. Sessions*, 409 F. Supp. 3d 707, 715 (D. Minn. 2018)(applying multifactor individualized test in considering whether alien's continued detention was reasonable in habeas case). In *Banyee*, an alien detained through the course of his deportation proceedings argued that due process entitled him to an individualized review of his confinement. *Id.* at 930-31. The Court rejected his claim, and the use of the judge-made, multi-part reasonableness balancing test set out in *Muse*. The Court noted that "*Zadvydas* and *Demore* have already done whatever balancing is necessary," and noted the Supreme Court's consistent rejection of individualized determinations of detainment decisions. *Id.* at 933. Instead, the courts had imposed a bright-

[3] It is telling that the now-abrogated balancing test employed in the 8th Circuit did not use the *Mathews* test. See *Muse v. Sessions*, 409 F. Supp. 3d 707, 715 (D. Minn. 2018).

line rule, that "the government can detain an alien for as long as deportation proceedings are still '*pending*.'" *Id.* citing *Demore*, 538 U.S. at 527. In coming to this conclusion, the Court made no mention of a detainee's criminal record in imposing a bright-line rule. *Id.*

The Eighth Circuit has removed any doubt: Individualized, multi-factor inquiries into reasonableness are not an avenue for a procedural due process challenge.

B. Even if Petitioner were asserting a cognizable procedural due process claim, it would be meritless.

A procedural due process analysis has two steps: "first, whether the plaintiffs have a protected interest at stake, and if so, what process is due." *Rochling v. Dept. of Veteran Affairs*, 725 F.3d 927, 931 (8th Cir. 2013) citing *Bliek v. Palmer*, 102 F.3d 1472, 1475 (8th Cir.1997). The analysis presented in strictly procedural due process cases like *Mathews*, *Conn. Dep't of Pub. Safety,* and *Demore* focus on the second element, weighing the liberty/property interest against the procedures used to restrain or deprive an individual of that interest. Yet almost all cases citing "procedural due process" attempt to sneak in a claim that "*substantive* rule of law is defective (by conflicting with a provision of the Constitution)." *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1, 8 (2003). Yet the protected interests of "applicants for admission" are well-defined, and fall well within constitutional bounds.

For more than a century, the rule has been that for aliens who have never "been admitted into the country pursuant to law, the decisions of executive and administrative officers, acting within the powers expressly conferred by Congress, are due process of law." *Thuraissigiam*, 591 U.S. at 138 (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)).[4] This is true even of aliens "paroled elsewhere in the country for years pending removal" who have developed significant ties to the country. *Id.* at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). They are "'treated' for due process purposes 'as if stopped at the border.'" *Id.* This includes those who successfully evade inspection at the border: "[A]n alien who tries to enter the country illegally is treated as an 'applicant for admission'"—*i.e.*, treated the same as if they lawfully presented themselves at a port of entry or were caught at the border. *Id.* at 140.

The Supreme Court has elsewhere made clear 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. 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 "the power to admit or exclude aliens is a sovereign prerogative," and "the Constitution gives the political department of the government plenary authority to decide which aliens to admit." *Id.* at 32; *see also Nishimura Ekiu*, 142 U.S. at 659.

That is consistent with *Kaplan v. Tod*, 267 U.S. 228 (1925), decided years before, where the Supreme Court held that a child paroled into the care of relatives for nearly nine

[4] Although Thuraissigiam "was apprehended within 25 yards" of the border, the Supreme Court's reasoning in that case was not so limited. Rather, the Court emphasized the broader principle that "[a]n alien who tries to enter the country illegally is treated as an 'applicant for admission,'" and "aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are 'treated' for due process purposes 'as if stopped at the border[.]'" 591 U.S. at 139-40.

years—but never admitted—must be "regarded as stopped at the boundary line" and "had gained no foothold in the United States." *Id.* at 230-31. That was so even though the child had been living in the interior of the country with her naturalized-citizen father and thus was presumably forming connections to the United States. *Id.* at 229.

The same result should follow here. Petitioner's entry into the United States constituted a criminal act, *see* 8 U.S.C. § 1325(a). He has never had any lawful status in this country following this illegal entry. If he were to receive new due process for committing illegal acts, the courts would constitutionalize the same perverse dynamic that this Court rejected as a statutory matter in *Avila*. As recognized above, by enacting § 1225, Congress sought to eliminate the preferential treatment of aliens who violate the country's immigration laws by entering illegally and evading detection. *Buenrostro-Mendez*, 166 F.4th at 499 & n.2.

Petitioner is right now in removal proceedings. He is receiving all the process due to him under the statute; that is "due process of law." *Thuraissigiam*, 591 U.S. at 138. While the Fifth Amendment prohibits the government from depriving an alien of his liberty without due process of law, "that right affords no protection against the deprivation of liberty interests that are not constitutionally cognizable." *Sanchez-Velasco v. Holder*, 593 F.3d 733, 737 (8th Cir. 2010) citing *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972); *Movers Warehouse, Inc. v. City of Little Canada*, 71 F.3d 716, 718 (8th Cir. 1995). Ultimately, the Petitioner's due process rights extend to the procedures authorized by Congress through the INA. Any right suggested beyond this is not constitutionally cognizable.

2. Petitioner does not have a substantive due process right to a bond hearing.

Petitioner also claims rights in substantive due process. (ECF No. 1 ¶ 93). Petitioner cites no caselaw to support this contention. As the Supreme Court recently noted in *Munoz*, the proper analysis of a substantive due process right—whether or not it is identified as such—is provided by *Glucksberg*.

Glucksberg's two-step inquiry disciplines the substantive due process analysis. First, it insists on a "careful description of the asserted fundamental liberty interest." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)(internal quotation marks omitted). Second, it stresses that "the Due Process Clause specially protects" only "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Id.,* at 720–721 (internal quotation marks omitted).

Petitioner's detention without a bond hearing during the pendency of removal proceedings does not implicate any fundamental rights. "[P]rior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings," *Demore*, 538 U.S. at 523 n.7, so such a right cannot possibly be "'objectively, deeply rooted in this Nation's history and tradition.'" *Muñoz*, 602 U.S. at 910 (quoting *Glucksberg*, 521 U.S. at 720-21). Accordingly, rational-basis review is the appropriate standard for analyzing Petitioners' substantive due-process claims. *Glucksberg*, 521 U.S. at 728. Under that standard, detention under § 1225(b)(2)(A) is constitutionally permissible as long as it is "rationally related to legitimate government interests." *Id.*

Section 1225(b)(2)(A) easily clears the rational basis bar. 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 petitioner 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," because "deportation proceedings 'would be vain if those accused could not be held in custody pending the inquiry into their true character.'" *Id.* at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *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"). Therefore, because "[d]etention during removal proceedings is a constitutionally permissible part of that process," the Court held that the aliens substantive due process "claim must fail." *Id.* at 531.

In reaching its holding, *Demore* distinguished the Court's prior decision in *Zadvydas*, 533 U.S. at 693, which addressed the constitutionality of indefinite detention after a final order of removal under a different provision of the INA. *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 the circumstances, the Court explained, "the detention . . . did not serve its purported immigration purpose." *Id.* at 690. 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." *Demore*, 538 U.S. at 528. 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.* at 528.

The foregoing disposes of Petitioner's **COUNT IV,** claiming violation of Equal Protection under the Fifth Amendment.(ECF No. 1 p. 38).

B.

The *Demore* and *Banyee* courts were both directly treating 8 U.S.C. § 1226(c), but a thorough reading of the holdings shows that they apply to § 1225(b)(2) just the same. To see why, it is helpful to approach these holdings through the lens of *Jennings* and *Thuraissigiam*.

Return to *Jennings*. 583 U.S. at 281. Rodriguez was a lawful permanent resident who had been in the interior of the United States for 17 years before being deported in June 2004. *Id.* at 289-90. Rodriguez brought a habeas petition, alleging he was entitled to a bond hearing to determine if his detention was justified. *Id.* at 281. He and a class of aliens challenged §§ 8 U.S.C. 1225(b), 1226(a), and 1226(c) on the theory that "prolonged" detention under these statutes was barred under the Due Process Clause of the Fifth Amendment. *Id.* at 291. In a previous holding, the Ninth Circuit had applied to these statutes a six-month limit on detention, claiming that interpreting the statutes otherwise would raise doubts about the constitutionality of the statutes. *Id.* at 291-92. The *Jennings* Court overruled this misapplication of constitutional-avoidance canon. The detention statutes at issue were unambiguous, and did not open the door for any "reasonableness" limitation required for Due Process. *Id.* at 302-03. Because detention under §§ 1225(b), 1226(a), and 1226(c) is not indefinite, but lasts only until the termination of removal proceedings, any Due Process concerns were ameliorated. *Id.* at 310-11.

Though the *Jennings* court, strictly speaking, dealt only with the issue of constitutional avoidance, the court explicitly rejected the notion put forth by the dissent that the detention statutes violated Due Process, and required a test of "reasonableness" under the Fifth Amendment. *Id.* at 305-06. The court noted that it had previously conducted a due process analysis of § 1226(c) in *Demore*, and that such proceedings passed constitutional muster precisely because they had "definite termination point"—namely, the conclusion of removal proceedings. *Id.* at 304, *citing Demore v. Kim*, 538 U.S. 510, 512 (2003). Of course, the same holds true for § 1225(b)(1) and § 1225(b)(2).

Also instructive is *Thuraissigiam*, 591 U.S. at 138. The case dealt with an alien who had been detained after illegally entering the country at the southern border. He was determined to be an "applicant for admission" [5] under 8 U.S.C. § 1225(a)(1) and placed in expedited removal proceedings under § 1225(b)(1). *Id.* at 108. Thuraissigiam brought a habeas challenge to his mandatory detention, alleging his due process rights were violated

[5] An "applicant for admission" is one who "is present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). "The terms 'admission' and 'admitted' mean, with respect to an alien, 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).

by unconditional detention and the process of expedited removal, and seeking "conditional release pending a lawful adjudication." *Id.* at 117 n.13. The Ninth Circuit agreed with the petitioner, finding that as an applicant for admission under § 1225(b)(1), he "ha[d] procedural due process rights" beyond the letter of the statute. 917 F.3d 1097, 1111 (2019), *quoting U.S. v. Raya-Vaca*, 771 F.3d 1195, 1203 (9th Cir. 2014)).

The Court denied this interpretation. For "foreigners who have never been naturalized, nor acquired any domicil 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." *Department of Homeland Security v. Thuraissigiam*, 591 U.S. at 138, *citing Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)(quotations removed). "This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). "[Thuraissigiam] therefore has no entitlement to procedural rights other than those afforded by statute." *Thuraissigiam*, 591 U.S. at 107.

The holding in *Thuraissigiam* resolves any due process concern about § 1225(b)(2). Although Thuraissigiam was subject to expedited removal proceedings under § 1225(b)(1) (rather than regular removal proceedings under § 1229a), his *detention* was based entirely on the fact that he was an applicant for admission under § 1225(a)(1). As the court helpfully explained in *Jennings,* "Applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2). Section 1225(b)(1) applies to aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. Section 1225(b)(1) also applies to certain other aliens designated by the Attorney General in his discretion. Section 1225(b)(2) is broader. It serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* 287 (citations removed). "In sum, [both] §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin." *Jennings* 583 U.S. at 302.

Because Thuraissigiam was an applicant for admission who was making an asylum claim, he was detained until his asylum interview could take place. § 1225(a)(1)(B)(iii)(IV). But if he had not been seeking asylum, he would have been detained just the same under the "catchall" provision of § 1225(b)(2). And his detention in this case would satisfy Due Process just as well as it was satisfied under § 1225(b)(1), because "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."

The *Demore* and *Banyee* holdings confirm the abovementioned precedents—that the detention statutes §§ 1225(b), 1226(a), and 1226(c) satisfy due process in general—and add the specific conclusion that due process does not require individualized tests are not required in making detention decisions. "[T]his Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process. As we said more than a century ago, deportation proceedings 'would be vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore v. Kim*, 538 U.S. 510, 523 (2003) *citing Wong Wing v. U.S.*, 163 U.S. 228, 235 (1896). And "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.

The court in *Banyee* made things even clearer. "Due process imposes no time limit on detention pending deportation[.]" *Banyee v. Garland*, 115 F.4th 928, 930 (8th Cir. 2024)(quotations removed). Though the *Banyee* holding centered around a onetime legal permanent resident deportable under § 1226(c) rather than § 1225(b), the court made clear that this distinction does not matter. What matters under due process analysis is whether the detention has a "definitive termination point," and proceedings under § 1225(b) undoubtedly do. *Id.* at 932, *citing Demore* 538 U.S. at 513.

In short, removal remains a practically-attainable goal, and while the proceedings remain pending, each Petitioner's detention under § 1225(b)(2)(A) bears a reasonable relation to the legitimate purposes that this Court identified in *Demore*. Section 1225(b)(2)(A) is therefore constitutional as applied to Petitioner. See *Gach v. Charles*, WL 4774175 (D. Minn. 2024) (if deportation proceedings re ongoing, detention is *per se* constitutional); *Leiva v. Berg*, WL 948430 (D. Neb. 2026)(Fifth Amendment does not entitle habeas petitioner to individualized bond hearing); *Rodriguez v. Jeffreys*, WL 3754411 (D. Neb. 2025)("Supreme Court has already performed the due process balancing test for immigration cases and found that detention is reasonable"); *Romero v. Brown*, -- F.Supp.3d – (WL 1021455)(S.D. Iowa 2026)(April 15, 2026) ("Although Sections 1225(b) and 1226(c) require detention under different circumstances, the core issue—mandatory detention during removal proceedings—is the same.")

III. Detention is not Arbitrary and Capricious under the APA

The next claim is that Respondents violated the APA by "implementing and applying a blanket detention policy that treats *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as eliminating all meaningful individualized custody discretion and review." ECF No. 1 ¶ 98. He claims the practice was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2). But the *Hurtado* interpretation of § 1225/1226 *is* the law after *Avila*. Any claim that DHS is acting arbitrarily and capriciously by following Eighth Circuit precedent is baseless.

Petitioner also complains that the Court in *Avila* failed to perform a proper analysis based on the principles of *Skidmore* deference. ECF No. 1 ¶ 65. The complaint is without merit. *Avila* is grounded in plain statutory interpretation; it did not mention *Hurtado* at all. Administrative agency interpretation has next to nothing to do with the plain meaning of statutes. Petitioner is putting the administrative cart before the statutory horse, forgetting that agency action is bound by proper interpretation of statute, not the other way around.

V. The Suspension Clause is not implicated in these proceedings

Petitioner claims a violation of the Suspension Clause. It is not clear what relevance the Suspension Clause has here. Respondents are not contesting habeas jurisdiction in this case. Respondents are asking the court to deny Petitioner's habeas claim not because it lacks jurisdiction, but because it lacks merit. Insofar that there are jurisdiction-stripping sections of the INA, Petitioner does not have standing to contest them.

VI. A warrantless arrest does not run afoul of *Accardi* and is not liable for exclusion

Petitioner was validly arrested on an administrative warrant following a detainer. *See* Detainer and Warrant. However, even if Petitioner were to raise issue with the validity of the warrant (say), he is not owed a habeas remedy as a result.

Petitioner's last claim lies in an application of the so-called *Accardi* doctrine requiring administrative agencies to observe their own regulations. *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). The *Accardi* doctrine does not lie in constitutional law or any principle of equity; rather, it is a "judicially evolved rule of administrative law." *Vitarelli v. Seaton*, 359 U.S. 535, 547 (1959)(Frankfurter, J., concurring in part, dissenting in part). Hence, the Court has confirmed, *Accardi* "enunciate[s] principles of federal administrative law rather than constitutional law binding upon the States." *Board of Curators of the University of Missouri v. Horowitz*, 435 U.S. 78, 92 n. 8 (1978). As a principle in administrative law, it is grounded in procedural due process. *C.G.B. v. Wolf*, 464 F.Supp.3d 174, 226 (D.D.C. 2020). "But agency regulations do not create substantive due process rights." *Id.*; *see also U.S. v. Caceres*, 440 U.S. 741, 754 (1979)(IRS's failure to follow its own regulation on recording procedures did not require Fourth Amendment exclusion of evidence in criminal case.)

Because administrative procedures create no substantive rights, the mere failure to follow these procedures cannot, standing alone, constitute a substantive deprivation of rights. A showing of prejudice is necessary. This legal rule is apparent in removal proceedings. "Violation of a regulation does not invalidate a deportation proceeding unless the regulation serves a purpose of benefit to the alien. Violation of a regulation renders a deportation unlawful only if the violation prejudiced interests of the alien which were protected by the regulation." *U.S. v. Calderon-Medina*, 591 F.2d 529, 530 (9th Cir. 1979); *see also U.S. v. Barraza-Leon*, 575 F.2d 218, 221-22 (9th Cir. 1978)(Immigration Judge's failure to make inquiry required by C.F.R. was harmless absent credible showing from alien that he was entitled to relief from deportation).

A regulatory violation will not serve to exclude evidence or invalidate deportation proceedings unless the "regulation in question serves a purpose of benefit to the alien and the violation prejudiced interests of the alien which were protected by the regulation." *Puc-Ruiz v. Holder*, 629 F.3d 771, 780 (8th Cir. 2010) *applying In Matter of Garcia-Flores*, 17 I.&N. Dec. 325, 329 (BIA 1980)(adopting "prejudice" test put forth by the 9th Circuit in *Calderon-Medina*). Prejudice must be specifically demonstrated unless compliance with the regulation is mandated by the Constitution, in which case prejudice will be presumed. *Id.* In that case, the burden lies on the petitioner to show the "regulatory violations potentially affected the outcome of his deportation proceeding." *Id.*

Recent uses of the *Accardi* doctrine are a novelty. While *Accardi* has been around for decades, few habeas petitioners citing *Accardi* recognize any of the caselaw that has refined the "doctrine" since 1954. This haphazard application of *Accardi* raises grave concerns, especially in the realm of immigration law.[6] The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport. *See Shaughnessy*

[6] "The doctrine seems proof of the adage that hard cases make bad law." *Accardi*, 347 U.S. at 268 (J. Jackson dissenting). Such a statement from a man of Justice Jackson's legal insight and moral integrity must be taken seriously.

v. United States, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."). *See also Nguyen v. Noem*, 797 F.Supp.3d 651 (N.D. Tex. 2025).

VII. Administrative principles do not bar warrantless arrests

The court has inquired whether the absence of a warrant preceding Petitioner's arrest necessitates his release. As noted above, ICE obtained a warrant before arresting Petitioner. *See* Detainer and Warrant. But even if ICE had failed to do so, he would not be owed immediate release as a result.

"[W]hile the Court has expressed a preference for the use of arrest warrants when feasible, it has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant." *Gerstein v. Pugh*, 420 U.S. 103, 113 (1975)(citations removed). This holds in the realm of immigration law, where Congress has plenary power to "expel [aliens] under the sovereign right to determine what noncitizens shall be permitted to remain within our borders." *Carlson v. Landon*, 342 U.S. 524, 534 (1952)(upholding Attorney General's issuance of administrative arrest warrants).

The specific powers of immigration officers related to interrogation, detention, and arrest are laid out in the INA. 8 U.S.C. § 1357(a)(2)(2006). Regulations likewise lay out procedure for taking aliens into custody. *See* 8 C.F.R. § 287.7(c)(2)(2011). The Eight Circuit has confirmed that these statutory and regulatory rules taken together satisfy the Fourth Amendment. *U.S. v. Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010).

Mere failure to follow these regulations does not require dismissal of removal proceedings. A regulatory violation will not serve to exclude evidence or invalidate deportation proceedings unless the "regulation in question serves a purpose of benefit to the alien and the violation prejudiced interests of the alien which were protected by the regulation." *Puc-Ruiz v. Holder*, 629 F.3d 771, 780 (8th Cir. 2010) *applying In Matter of Garcia-Flores*, 17 I.&N. Dec. 325, 329 (BIA 1980)(adopting "prejudice" test put forth by the 9th Circuit in *Calderon-Medina*). Prejudice must be specifically demonstrated unless compliance with the regulation is mandated by the Constitution, in which case prejudice will be presumed. *Id.* Otherwise, the burden lies on the petitioner to show the "regulatory violations potentially affected the outcome of his deportation proceeding." *Id.* Because compliance with 8 C.F.R. § 287.3(a) and § 287.3(c) are not constitutionally mandated, prejudice cannot be presumed from a failure to follow them. *Puc-Ruiz v. Holder*, 629 F.3d at 780 (8th Cir. 2010); see also *Ali v. Gonzales*, 440 F.3d 678, 682 (5th Cir. 2006) (finding prejudice cannot be presumed for violations of 8 C.F.R. § 287.3).

Thus, even if a warrant had not been issued for Petitioner, mere failure to follow procedures would not justify his release.

EVIDENTIARY HEARING

Given the foregoing, there is no need for an evidentiary hearing in this matter.

CONCLUSION

All habeas relief must be denied.

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