

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

MOHAMMAD HADI NOORI,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-100-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,¹	:	
	:	
Respondent.	:	

RESPONSE

On March 21, 2025, Petitioner filed a petition for a writ of habeas corpus (“Petition”) raising three claims: (1) his detention as an arriving alien under 8 U.S.C. § 1225(b) violates due process because he has not received a bond hearing, (2) the delay in adjudicating his parole request violates due process, and (3) the same delay violates the Administrative Procedure Act (“APA”). Pet. ¶¶ 89-98, ECF No. 3. For the reasons explained below, the Petition should be denied.

BACKGROUND

Petitioner is a native and citizen of Afghanistan who is mandatorily detained pre-final order of removal as an arriving alien under 8 U.S.C. § 1225(b). Waters Decl. ¶¶ 4, 6 n.1. On March 20, 2024, Petitioner applied for admission into the United States without a lawful entry document at the San Ysidro, California Port of Entry and entered Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”) custody the same day. Ex. A. On March

¹ In addition to the Warden of Stewart Detention Center, Petitioner names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as respondents. “[T]he default rule [for claims under 28 U.S.C. § 2241] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.” *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden of Stewart Detention Center as the sole appropriately named respondent.

23, 2024, ICE/ERO processed Petitioner for expedited removal. Waters Decl. ¶ 5 & Ex. B. Petitioner claimed fear of returning to Afghanistan. Pet. ¶ 25. On April 22, 2024, an asylum officer conducted a credible fear interview and found that Petitioner had a credible fear of returning to Afghanistan. *Id.* ¶ 27; Pet. Ex. 6, ECF No. 3-12.

On April 23, 2024, ICE/ERO served Petitioner with a Notice to Appear (“NTA”) charging him with removability pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) based on his application for admission without a valid entry document.² Waters Decl. ¶ 6 & Ex. C. On June 3, 2024, Petitioner appeared before an immigration judge (“IJ”) and conceded his charge of removability. Pet. ¶ 60. The IJ set a master hearing for June 26, 2024 and ordered Petitioner to file any applications for relief from removal by that date. *Id.* On June 25, 2024, Petitioner filed an application for relief from removal. *Id.* ¶ 30. The IJ then scheduled an individual merits hearing on Petitioner’s application for August 8, 2024. *Id.* ¶ 60.

On July 30, 2024, Petitioner requested a continuance of the merits hearing to gather additional evidence. *Id.* ¶ 61. The Department of Homeland Security (“DHS”) opposed Petitioner’s request. *Id.* The IJ granted Petitioner’s request and continued the merits hearing to November 6, 2024. Pet. ¶ 61; Pet. Ex. 10, ECF No. 3-16. On November 6, 2024, the IJ held the merits hearing. *Id.* ¶ 62. On December 20, 2024, the IJ issued an order granting Petitioner’s application for relief from removal. Waters Decl. ¶ 7 & Ex. D. The Department of Homeland Security reserved the right to appeal the IJ’s order to the Board of Immigration Appeals (“BIA”). Ex. D. On January 21, 2025, DHS filed its appeal with the BIA. Waters Decl. ¶ 8 & Ex. E. On

² The NTA incorrectly lists Petitioner as an “alien present in the United States who has not been admitted or paroled.” Waters Decl. ¶ 6 n.1 & Ex. C. Because Petitioner applied for admission at a port of entry, he is an arriving alien. *Id.* ¶ 6 n.1 & Exs. A, B, C; *see also* 8 U.S.C. § 1225(a), (b); 8 C.F.R. §§ 1.2, 1001.1(q).

March 4, 2025, Petitioner submitted his brief on appeal. *Id.* ¶ 8. On the same day, DHS filed its brief on appeal.³ *Id.* ¶ 8 & Ex. F. The appeal remains pending with the BIA. *Id.* ¶ 8.

Petitioner has submitted a request for parole. *See id.* ¶ 9; Pet. ¶¶ 26, 29, 31. Petitioner's parole request is pending review. Waters Decl. ¶ 9. On April 10, 2025, ICE/ERO served Petitioner with a Parole Advisal and Scheduling Notification as part of its assessment for potential parole. *Id.* ¶ 10 & Ex. G. The notice advises Petitioner that he will receive a parole interview and that he has the opportunity to submit documents in support of parole. *Id.* ¶ 10 & Ex. G. Petitioner's parole interview is scheduled for April 17, 2025. *Id.* ¶ 10 & Ex. G.

LEGAL FRAMEWORK

Petitioner is detained pre-final order of removal as an arriving alien. 8 U.S.C. § 1225(a)(1) provides that “[a]n 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.” 8 C.F.R. §§ 1.2 and 1001.1(q) define an “arriving alien”—a particular type of applicant for admission—as

an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.

If an immigration officer determines an arriving alien is inadmissible, the officer “shall order the [non-citizen] removed from the United States without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i). If the arriving alien “indicates either an intention to apply for asylum . . . or a fear of persecution,” 8 U.S.C. § 1225(b)(1)(A)(i), the “officer shall refer the alien for an interview by an asylum officer,” 8 U.S.C. § 1225(b)(1)(A)(ii). “If the officer determines at the time of the

³ Petitioner repeatedly represents that DHS “did not bother to submit a brief in support of its appeal.” Pet. ¶¶ 32, 63, 67, 82. Petitioner relies on this purported failure as evidence that DHS’s appeal is “baseless[.]” *Id.* ¶ 82. DHS’s brief is attached and includes a file stamp for March 4, 2025 on each page. Ex. F.

interview that an alien has a credible fear of persecution[,] . . . the alien shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).

Detention of all arriving aliens is mandatory. 8 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that an alien has a credible fear of persecution[,] . . . the alien *shall be detained* for further consideration of the application for asylum.” (emphasis added)); 8 U.S.C. § 1225(b)(2)(A) (“[I]f 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 [8 U.S.C. §] 1229a” (emphasis added)). The only exception is that ICE/ERO may—in its discretion—release arriving aliens on parole. 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. §§ 212.5(b), 235.3(c).

ARGUMENT

Petitioner raises three claims for relief. His first claim asserts that his detention violates due process because he has not received a bond hearing. Pet. ¶¶ 54-80, 89-92. Petitioner also asserts—without enumerating a separate claim—that to the extent the Court orders a bond hearing, ICE must bear the burden of proof, and the IJ must consider specific factors. *Id.* ¶¶ 81-83, 89. Petitioner’s first claim should be denied because as an arriving alien, he has no due process right to a bond hearing. Further, to the extent the Court orders a bond hearing, Petitioner is not entitled to a bond hearing employing the procedures he requests.

Petitioner’s second and third claims assert that ICE/ERO’s delay in adjudicating his parole request violates both his procedural due process rights and the APA under *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). *Id.* ¶¶ 84-88, 94-98. Both claims should be denied because they are not cognizable in habeas. In the alternative, the claims should be denied because the Court lacks jurisdiction to review the pace of ICE/ERO’s discretionary parole determinations.

I. The Petition should be denied because Petitioner's mandatory detention as an arriving alien complies with due process.

Petitioner claims his detention violates his due process rights because he has not received a bond hearing. Pet. ¶¶ 54-80. Specifically, he argues the Court must reach this conclusion by applying the tests set forth in *Sopo v. U.S. Attorney General*, 825 F.3d 1199 (11th Cir. 2016), *vacated sub nom.*, 890 F.3d 952 (11th Cir. 2018), and *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Id.* ¶¶ 54. And assuming the Court orders a bond hearing to remedy any due process violation, Petitioner argues the bond hearing requires two additional procedures: (1) ICE/ERO must bear the burden of proof by clear and convincing evidence, and (2) the IJ must consider Petitioner's ability to pay bond and alternative conditions of release. *Id.* ¶ 81-83.

Petitioner's claim should be denied. Supreme Court and district precedent make clear that as an arriving alien, Petitioner's due process rights are limited to those provided by statute. Neither *Sopo* nor *Mathews* applies to his claim. Because the INA does not permit bond hearings for arriving aliens, Petitioner has no due process right to a bond hearing.⁴

A. As this Court has recognized, arriving aliens' due process rights are limited to those provided by statute.

The Supreme Court has long held that arriving aliens' due process rights are limited to the procedures provided by statute, and the Court's decisions are based on fundamental principles which apply in all contexts. This Court has thoroughly analyzed these binding precedents and held that arriving aliens mandatorily detained under section 1225(b) have no due process right to a bond hearing. Accordingly, the Court need not apply *Sopo* or *Mathews* and should deny Petitioner's claim based on these binding precedents.

⁴ In reliance on district precedent, Respondent has not briefed the *Sopo* or *Mathews* factors because the Court has not applied these tests in this context. In the event the Court departs from its existing district precedent, Respondent respectfully requests the opportunity to submit supplemental briefing on these tests.

As a starting point, Congress and the Executive have plenary power over the admission of arriving aliens like Petitioner. “For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government.” *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Indeed, “over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.” *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (internal quotations and citations omitted). For this reason, the Supreme Court has “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.” *Id.* (collecting cases).

“[A] concomitant of that power [over the admission of aliens] is the power to set the procedures to be followed in determining whether an alien should be admitted.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). “[T]hat the formulation of these policies is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government.” *Kleindienst v. Mandel*, 408 U.S. 753, 767 (1972).

In assessing due process protections arising from the application of these procedures, the Supreme Court has recognized that while all non-citizens are entitled to due process protections, this “does not lead . . . to the conclusion that all aliens must be placed in a single homogeneous legal classification.” *Mathews v. Diaz*, 426 U.S. at 77-78. Rather, “[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citations omitted); *see also Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (“[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.”).

In recognition of these plenary powers to determine the procedures for admission, over the course of more than a century, the Supreme Court has consistently held in multiple contexts that the due process rights of arriving aliens seeking admission into the United States—like Petitioner here—are limited to only the procedures provided by statute. *Thuraissigiam*, 591 U.S. at 138-40 (“[A]n alien [who is an arriving alien] has only those rights regarding admission that Congress has provided by statute.”); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“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.” (citations omitted)); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.” (internal quotations and citation omitted)); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) (same); *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (“[T]he decisions of executive or administrative officers, acting within powers expressly conferred by congress, are due process of law.”).

This Court has applied these principles and addressed the precise issue presented here. In *D.A.V.V. v. Warden, Irwin Cty. Det. Ctr.*, No. 7:20-cv-159-CDL-MSH, 2020 WL 13240240 (M.D. Ga. Dec. 7, 2020), an arriving alien filed a habeas petition, claiming, *inter alia*, that her mandatory detention under 8 U.S.C. § 1225(b) without a bond hearing violated due process. *D.A.V.V.*, 2020 WL 13240240, at *1-2. The Court denied the arriving alien’s claim because “longstanding Supreme Court precedent” makes clear that “arriving aliens’ procedural due process rights entitle them only to the relief provided by the INA.” *Id.* at *6 (citing *Thuraissigiam*, 591 U.S. at 140; *Landon*, 459 U.S. at 32; *Mezei*, 345 U.S. at 212; *Nishimura Ekiu*, 142 U.S. at 660). “[B]ecause the INA does not provide arriving aliens the right to bond, Petitioner has no independent procedural due process right to a bond hearing.” *Id.* (citations omitted).

Courts throughout the country have reached the same conclusion as this Court: arriving aliens' due process rights are limited to the procedures provided by statute, and they do not have a due process right to a bond hearing. See *Mendoza-Linares v. Garland*, No. 21-cv-1169, 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 676-79 (S.D. Tex. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 332-336 (W.D.N.Y. 2021); *Ford v. Ducote*, No. 20-1170, 2020 WL 8642257, at *2 (W.D. La. Nov. 2, 2020); *Bataineh v. Lundgren*, No. 20-3132-JWL, 2020 WL 3572597, at *8-9 (D. Kan. July 1, 2020); *Mendez-Ramirez v. Decker*, 612 F. Supp. 3d 200, 220-21 (S.D.N.Y. 2020); *Gonzalez Aguilar v. McAleenan*, 448 F. Supp. 3d 1202, 1208-12 (D.N.M. 2019).

B. Neither *Sopo* nor *Mathews* defines the scope of Petitioner's due process rights, and the Court should not depart from its precedent.

Petitioner asserts that *D.A.V.V.*⁵ was wrongly decided. Pet. ¶ 54 n.2. In support, he claims that the Supreme Court's century-old due process holdings outlined above are distinguishable and do not apply to his claim for a bond hearing. *Id.* ¶¶ 44-45. In his view, the Court must turn to either *Sopo* or *Mathews* in assessing his claim. *Id.* ¶¶ 54. For four reasons, the Court should reject Petitioner's assertions and continue to apply *D.A.V.V.*

First, Petitioner fails to distinguish Supreme Court precedent which makes clear that arriving aliens' due process rights are limited to the procedures provided by statute, even in the context of challenges to detention. Petitioner focuses on *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), where the Supreme Court most recently "reiterated th[e] important rule," 591 U.S. at 138, that an arriving alien "has no entitlement" to *any* legal rights, constitutional or otherwise, other than those expressly provided by statute, *Id.* at 107 ("Congress is

⁵ Petitioner references this Court's analogous decision in *A.M.Y. v. Warden, Irwin County Detention Center*, No. 7:20-cv-61-CDL-MSH, Order & R. (M.D. Ga. Oct. 13, 2020), ECF No. 47. Pet. ¶ 54 n.2.

entitled to set the conditions for an alien's lawful entry into this country and [] as a result [] an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause.”); *id.* (holding that an arriving alien “has no entitlement to procedural rights other than those afforded by statute”); *id.* at 140 (An arriving alien “has only those rights regarding admission that Congress has provided by statute” and “the Due Process Clause provides nothing more[.]”).

Petitioner attempts to cabin *Thuraissigiam*'s due process holdings, arguing the Court “did not weigh in on the due process rights of noncitizens with regard to detention[.]” Pet. ¶¶ 44; *see also id.* ¶ 54 n.2. He claims that “the Supreme Court emphasized the distinction between habeas petitions challenging detention versus those seeking judicial review of removal proceedings.” *Id.* ¶ 44 (citation omitted). Indeed, the Court *did* distinguish habeas petitions which seek release from the claims at issue in that case. But it did so in reaching its separate conclusion that a court lacks jurisdiction in a habeas action to issue “an order directing [ICE] to provide [a petitioner] with a new opportunity to apply for asylum[.]”⁶ *Thuraissigiam*, 591 U.S. at 118 (internal quotations, alterations, and citations omitted). The Court did *not* hold, as Petitioner asserts, that the due process limitations for arriving aliens change in the context of detention. Rather, as this Court recognized in *D.A.V.V.*, the Supreme Court’s “pronouncements as to arriving aliens’ due process rights . . . are broad and . . . extend to the detention context.” 2020 WL 13240240, at *5.

Further, the Supreme Court has applied the same due process principles in the detention context. *Id.* at *5 (“[I]n describing the extent of arriving aliens’ due process rights, the Court relied on decisions which did concern immigration detention.” (citations omitted)). In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), an arriving alien denied admission into the United States filed a habeas petition challenging his detention during exclusion proceedings based on his

⁶ The significance of *this* distinction between remedies available in a habeas action and those available in a civil action is discussed more thoroughly below. *See infra* at III.

lack of a hearing. 345 U.S. at 207-209. The Supreme Court held that his detention without a bond hearing complied with due process. *Id.* at 212-15. In reaching its decision, the Supreme Court explained that other cases requiring hearings for immigration detainees were distinguishable because the non-citizens in those cases had already entered the country. *Id.* at 213-15. By contrast, the arriving alien in *Mezei* had been denied admission, and the Court reiterated its longstanding principle that “[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.” *Id.* at 212 (internal quotations and citations omitted). Because the procedures applicable in exclusion proceedings permitted detention without a hearing, the Court found that the arriving alien’s detention complied with due process. *Id.* at 214-15.

Thus, the Supreme Court’s longstanding limitations on arriving aliens’ due process rights are broad and not limited to non-detention contexts. As this Court and others have held, they govern claims challenging mandatory detention without a bond hearing like Petitioner raises here. *D.A.V.V.*, 2020 WL 13240240, at *4-6; *Mendoza-Linares*, 2024 WL 3316306, at *2; *Petgrave*, 529 F. Supp. 3d at 676-79; *Gonzales Garcia*, 513 F. Supp. 3d at 332-336; *Ford*, 2020 WL 8642257, at *2; *Bataineh*, 2020 WL 3572597, at *8-9; *Mendez-Ramirez*, 612 F. Supp. 3d at 220-21; *Gonzalez Aguilar*, 448 F. Supp. 3d at 1208-12; *Moore*, 2019 WL 2152582, at *3.

Second, mandatory detention under section 1225(b) is not indefinite. Section 1225(b) mandates detention only during ongoing removal proceedings, and this “detention during [removal] proceedings is a constitutionally valid aspect of the process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (upholding that mandatory detention under section 1226(c)). The only time the Supreme Court has limited ICE/ERO’s detention authority under the modern INA on due process grounds was *Zadvydas v. Davis*, 533 U.S. 678 (2001), which arose from post-final order of removal detention under 8 U.S.C. § 1231(a)(6). This is because that detention could become “indefinite” and “potentially permanent” if ICE/ERO cannot remove a non-citizen. *Zadvydas*, 533 U.S. at 690.

But by its very nature, pre-final order of removal detention—including detention under section 1225(b)—has “a definite termination point” because removal proceedings will conclude. *Demore*, 583 U.S. at 529. Thus, the concerns that motivated the limitations imposed in *Zadvydas* are not present for detention under section 1225(b). Indeed, in every case it has heard involving detention during removal proceedings, the Supreme Court has concluded that such detention is constitutional. *Demore*, 538 U.S. at 513; *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896).

Third, *Sopo* did not apply to arriving aliens’ due process challenges to detention.⁷ In *Sopo*, the Eleventh Circuit interpreted the statutory language of 8 U.S.C. § 1226(c) by applying the canon of constitutional avoidance and held that the statute could implicitly permit bond hearings for criminal non-citizens detained within its purview. 825 F.3d at 1215-17. The case did not concern the mandatory detention under section 1225(b) of an arriving alien who had never been admitted, and the Court has never applied *Sopo* in this context. Applying this vacated standard to claims by arriving aliens would disregard “[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.” *Zadvydas*, 533 U.S. at 693.

Further, *Sopo* did not even set forth an as-applied due process analysis in the first instance. Rather, the Eleventh Circuit found *as a matter of statutory interpretation* that an entirely different statute—8 U.S.C. § 1226(c)—implicitly permitted bond hearings for criminal non-citizens detained pre-final order of removal after previously effecting entry into the United States. *Sopo*, 825 F.3d at 1212-14. The Supreme Court has described a similar interpretation of the same statute

⁷ The Court should decline to apply *Sopo* because it has been vacated. *Sopo II*, 890 F.3d at 953-54. The *Sopo* factors no longer serve as precedent in *any* context. The decision conflicts with the Supreme Court’s decisions in *Demore v. Kim*, 538 U.S. 510 (2003) and *Jennings* even as applied in its original context.

as “textual alchemy,” *Jennings*, 583 U.S. at 304, and the Eleventh Circuit has vacated that interpretation, *Sopo II*, 890 F.3d at 953-54. The Court should reject Petitioner’s attempt to transform a vacated statutory interpretation of one statute into an as-applied due process analysis of detention under an entirely different statute.

Fourth, the Court need not resort to the *Mathews* test because the Supreme Court has already defined the extent of arriving aliens’ procedural due process protections. In *Mathews*, the Court considered “whether the Due Process Clause of the Fifth Amendment requires that prior to the termination of Social Security disability benefit payments the recipient be afforded an opportunity for an evidentiary hearing.” 424 U.S. at 323. More specifically, the Court crafted a procedural due process test to determine whether “existing administrative procedures . . . provide all the process that is constitutionally due[.]” *Id.* at 332-33. Thus, at its core, the case presumed that due process could require additional protections beyond existing statutory and regulatory procedures to sufficiently protect a property interest. *Id.* at 335-49.

But “[t]he constitutional sufficiency of procedures provided in any situation, of course, varies with the circumstances.” *Plasencia*, 459 U.S. at 32. The core presumption in *Mathews* that a statutory scheme may not provide sufficient procedural protections does not apply here because, as to the arriving aliens, the Supreme Court has repeatedly and consistently held that their due process rights are *defined* by statute. *Thuraissigiam*, 591 U.S. at 138-40; *Mezei*, 345 U.S. at 212; *Knauff*, 338 U.S. at 544; *Nishimura Ekiu*, 142 U.S. at 660. The Court need not resort to the *Mathews* test to potentially move beyond the procedures provided by the existing statutes governing the detention of arriving aliens because “the Due Process Clause *provides nothing more[.]*” *Thuraissigiam*, 591 U.S. at 140 (emphasis added). Applying *Mathews* to require additional procedures beyond the statutory scheme—as Petitioner requests—would contradict this fundamental limitation on the extent of his due process rights. The Court should decline to do so.

In sum, more than a century of Supreme Court cases have delineated the scope of arriving aliens' due process rights, and those precedents dictate that arriving aliens' due process rights are limited to the procedures provided by statute. As this Court has recognized, that is *the test* applicable to an arriving alien's due process challenge, including the one Petitioner raises here. Petitioner fails to show that the Court should not abide by Supreme Court and its own precedent.

C. Because the INA does not permit bond hearings for arriving aliens, Petitioner has no due process right to a bond hearing.

Because binding Supreme Court precedent makes clear that the scope of Petitioner's due process rights is limited to the procedures provided by statute, the question is whether section 1225(b) permits bond hearings for arriving aliens. But the Supreme Court has answered this question as well. Specifically, the Court has held that section 1225(b)—which governs Petitioner's detention—"unequivocally mandate[s] that aliens falling within [its] scope shall be detained." *Jennings*, 583 U.S. at 300 (internal quotations omitted). As the Court recognized, "neither [section] 1225(b)(1) nor [section] 1225(b)(2) says anything whatsoever about bond hearings." *Id.* at 297. Rather, "the plain meaning" of the statute "is that detention must continue until . . . removal proceedings have concluded[.]" *Id.* at 299 (citing 8 U.S.C. § 1225(b)(2)(A)). Because "[d]etained" does not mean "released on bond," the Court concluded that the statute does not permit bond hearings for arriving aliens. *Id.* at 312. "In sum, [sections] 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings[.]" *Id.* at 302.

As this Court has held—along with other courts around the country—because arriving aliens' due process rights are limited to the procedures provided by statute, an arriving alien has

II. In the alternative, Petitioner is not entitled to a bond hearing applying procedures beyond those provided by the INA and applicable regulations.

If the Court finds and remedies any due process violation by ordering a bond hearing before an IJ—which it should not for the reasons explained above—the bond hearing should apply the existing bond procedures applicable in removal proceedings.

IJs conduct bond proceedings under procedures set forth in 8 C.F.R. § 1003.19. 8 C.F.R. § 236.1(d)(1). The non-citizen has the burden to establish that he or she is not “a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk.” *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006). IJs have extremely broad discretion in deciding whether to release a non-citizen on bond. *Guerra*, 24 I. & N. Dec. at 39. They can consider multiple discretionary factors, including any information that the IJ may deem to be relevant, and “may choose to give greater weight to one factor over others, as long as the decision is reasonable.” *Id.* at 40. Further, the INA in no way “limit[s] the discretionary factors that may be considered” in bond determinations. *Id.*; see also 8 C.F.R. § 1003.19(d) (“The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available . . .”).

Petitioner, however, argues that the Court should order a bond hearing applying different procedures. Pet. ¶ 81-83, 93. In support, he relies on out-of-circuit cases and this Court’s decision in *J.G. v. Warden, Irwin County Detention Center*, 501 F. Supp. 3d 1331 (M.D. Ga. 2020), where the Court held that a non-citizen detained under 8 U.S.C. § 1226(a) was entitled to a bond hearing where ICE bore the burden of proof.⁸ *Id.* (citing *J.G.*, 501 F. Supp. 3d at 1336-41).

⁸ Respondent respectfully contends that *J.G.* was wrongfully decided and that the bond procedures set forth by the INA and applicable regulations comply with due process even when applied to non-citizens detained pre-final order of removal under 8 U.S.C. § 1226(a). However, given that this Court has found that a bond hearing applying the procedures set forth by the INA—not those set forth in *J.G.*—is the appropriate remedy for a due process violation under *Sopo*, the Court need not reach this issue. To the extent the Court considers *J.G.* anew in remedying any due process violation here, Respondent respectfully requests the opportunity to submit supplemental briefing on this issue.

This Court has rejected Petitioner’s argument that a bond hearing under *Sopo* requires ICE to bear the burden of proof. *O.D. v. Warden, Stewart Det. Ctr.*, No. 4:20-cv-222-CDL-MSH, 2021 WL 5413968, at *5 (M.D. Ga. Jan. 14, 2021), *recommendation adopted*, 2021 WL 5413966 (M.D. Ga. Apr. 1, 2021). Other courts in the Eleventh Circuit have similarly declined to order bond hearings which place the burden of proof on the Government. *See Stephens v. Ripa*, No. 1:22-cv-20110, 2022 WL 1110104, at *8-9 (S.D. Fla. Feb. 18, 2022), *recommendation in part adopted by* 2022 WL 621596 (S.D. Fla. Mar. 3, 2022); *Aham v. Gartland*, No. 5:19-cv-46, 2020 WL 806929, at *3 n.3 (S.D. Ga. Jan. 29, 2020), *recommendation adopted*, 2020 WL 821005 (S.D. Ga. Feb. 18, 2020); *Khan v. Whiddon*, No. 2:13-cv-638, 2016 WL 4666513, at *7 (M.D. Fla. Sept. 7, 2016).

In reaching this outcome, those courts noted that in *Sopo*, the Eleventh Circuit ordered that a non-citizen mandatorily detained under section 1226(c) be provided a bond hearing applying the section 1226(a) bond procedures. *Sopo*, 890 F.3d at 1220. In doing so, the Eleventh Circuit acknowledged that “[l]ike non-criminal aliens, the criminal alien carries the burden of proof and must show that he is not a flight risk or danger to others.” *Id.* Although *Sopo* was later vacated, the fact that the Eleventh Circuit *remedied* a due process violation by ordering a bond hearing applying the section 1226(a) bond procedures shows that those procedures are, themselves, compliant with due process. Thus, to the extent the Court orders a bond hearing—which it should not—the Court should order a hearing under the procedures set forth in 8 U.S.C. § 1226(a).

III. Petitioner’s due process and APA challenges to ICE/ERO’s adjudication of his parole request should be denied because they are not cognizable in habeas.

In his second and third claims, Petitioner asserts that ICE/ERO’s delay in adjudicating his parole request violates both the APA and his procedural due process rights. Pet. ¶¶ 84-88, 94-98. He requests that the Court either adjudicate his parole request or order ICE/ERO to do so. *Id.* ¶ 88.

Because Petitioner's second and third claims neither challenge the legality of his detention nor seek release from custody, the claims are not cognizable in habeas and should be denied.

"[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Thuraissigiam*, 591 U.S. at 125 n.20. "Habeas is at its core a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody[.]" *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). "Simply stated, habeas is not available to review questions unrelated to the cause of detention. Its sole function is to grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose." *Pierre v. United States*, 525 F.2d 933, 935-36 (5th Cir. 1976).⁹ Habeas "cannot be utilized as a base for the review of a refusal to grant collateral administrative relief or as a springboard to adjudicate matters foreign to the question of the legality of custody." *Id.* at 936.

The available relief in habeas is also limited. "[T]he traditional function of the writ is to secure release from illegal custody." *Preiser*, 411 U.S. at 484. For this reason, in a habeas proceeding, a "federal court has the power to release" a detainee who is unlawfully confined. *Fay v. Noia*, 372 U.S. 391, 431 (1963), *overruled on other grounds by Wainwright v. Sykes*, 433 U.S. 72 (1977). But a federal court "has no other power" in habeas, and "it can act only on the body of the petitioner." *Fay*, 372 U.S. at 431 (citation omitted). Thus, as the Supreme Court recently recognized, relief other than "simple release" is not available in a habeas action. *See Thuraissigiam*, 591 U.S. at 119.

⁹ In *Bonner v. City of Prichard, Alabama*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Here, Petitioner's second due process claim and APA claim are not cognizable in habeas for two reasons. *First*, the claims seek only review of ICE/ERO's pace in adjudicating his parole request. Pet. ¶¶ 84-88, 94-98. But discretionary parole determinations and the pace of those determinations are both "unrelated to the cause of [Petitioner's] detention." *Pierre*, 525 F.2d at 935-36. Rather, the cause of Petitioner's detention is his presentation at the border without a valid entry document and his ongoing removal proceedings to review his claims for relief from removal. At most, parole determinations constitute a form of "collateral administrative relief" arising from Petitioner's detention, but these still fall outside the scope of habeas. *See id.* at 936. Indeed, whereas Petitioner's first due process claim asserts that his lack of a bond hearing renders his *detention itself* unlawful, his second and third claims assert only that ICE/ERO's delay renders the *parole process* unlawful.

Put differently, on their face, these two claims are about the legality of a particular administrative process—not the legality of Petitioner's underlying immigration detention. Such claims may be hypothetically cognizable in a civil action under the APA or the Mandamus Act, but they are not cognizable in habeas. For instance, in the cases Petitioner cites in support of his second and third claims, the arriving aliens challenged the sufficiency of ICE/ERO's parole process through *civil actions* raising *Accardi* claims under the Due Process Clause and the APA—not *habeas*.¹⁰ *See Mons v. McAleenan*, No. 19-1593 (JEB), 2019 WL 4225322, at *2 (D.D.C. Sept. 5, 2019); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 323 (D.D.C. 2018); *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 124 (D.D.C. 2018).

¹⁰ Allowing Petitioner to proceed on these civil claims in a habeas proceeding also deprives Respondent of procedural rights ensured by the Federal Rules of Civil Procedure. These rules differ entirely from the rules available in a habeas proceeding.

This Court has reached this same conclusion in considering non-citizens' attempts to raise APA and due process claims in habeas actions challenging the procedures applied to their requests for immigration relief. *Villafuerte v. Warden, Stewart Det. Ctr.*, No. 4:18-cv-116-CDL-MSH, 2018 WL 6626640, at *2-3 (M.D. Ga. Nov. 27, 2018), *recommendation adopted*, 2018 WL 6620890 (M.D. Ga. Dec. 18, 2018). As the Court found, such claims "are not cognizable" in habeas. *Id.* at *3. The Court should similarly find that Petitioner's claims are not cognizable in habeas.

Second, Petitioner's second and third claims are not cognizable in habeas because they seek procedural relief which is not available in a habeas proceeding. As a remedy for his second and third claims, Petitioner requests only adjudication of his parole request by either the Court or ICE/ERO. Pet. ¶ 88. He does not seek release from custody as a remedy for these claims. But in this habeas proceeding, the Court is empowered only to consider claims seeking release from unlawful custody. *Fay*, 372 U.S. at 431. Thus, Petitioner's request for an order directing ICE/ERO to more swiftly adjudicate his parole request falls outside this Court's habeas jurisdiction.

On this point, the Supreme Court's reasoning in *Thuraissigiam* is again instructive. There, the arriving alien's underlying habeas claim challenged the sufficiency of the procedures applied during his credible fear determination. *Thuraissigiam*, 591 U.S. at 114. Specifically, he asserted that "immigration officials deprived him of a meaningful opportunity to establish his claims and violated credible-fear procedures by failing to probe past his denial of the facts necessary for asylum[]" and by "fail[ing] to apply the correct standard to his claims[.]" *Id.* (internal quotations omitted). As a remedy for his habeas claim, the arriving alien requested that the district court issue an order "directing [immigration officials] to provide him a new opportunity to apply for asylum and other applicable forms of relief." *Id.* at 115 (internal quotations and alterations omitted). After the Ninth Circuit found that the arriving alien was entitled to this remedy, the Supreme Court reversed, finding, *inter alia*, that Petitioner's requested "relief falls outside the scope of the

common-law habeas writ.” *Id.* at 118. The Court thoroughly discussed the history of habeas, emphasizing the longstanding principle that a writ of habeas corpus “simply provided a means of contesting the lawfulness of restraint and securing release.” *Id.* at 117

Petitioner requests nearly identical relief in this case: an order for a swifter parole determination. Because this requested relief is not available in habeas, the Court should deny Petitioner’s second and third claims because they are not cognizable here.

IV. In the alternative, the Court lacks jurisdiction over Petitioner’s challenges to ICE’s denials of his parole requests.

To the extent the Court determines that Petitioner’s second and third claims are cognizable in habeas—which they are not—those claims should still be denied because the Court lacks subject matter jurisdiction to review ICE/ERO’s parole determinations under 8 U.S.C. § 1252.

8 U.S.C. § 1252(a)(2)(B)(ii)—promulgated as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”)—limits federal courts’ jurisdiction to judicially review discretionary determinations in the immigration context as follows:

Notwithstanding any other provision of law (statutory or nonstatutory), . . . no court shall have jurisdiction to review . . . any . . . decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security[.]

“[M]any provisions of IIRIRA are aimed at protecting the Executive’s discretion from the courts—indeed, that can fairly be said to be the theme of the legislation.” *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 486 (1999) (emphasis in original) (citations omitted). In promulgating section 1252(a)(2)(B)(ii) specifically, “Congress barred court review of discretionary decisions only when Congress itself set out [ICE/ERO’s] discretionary authority in the statute.” *Kucana v. Holder*, 558 U.S. 233, 247 (2010).

Here, Petitioner seeks review of ICE/ERO’s pace of adjudicating his parole request. Pet. ¶¶ 84-88. By statute, 8 U.S.C. § 1182(d)(5)(A) explicitly commits parole decisions to ICE/ERO’s

discretion: “The Attorney General may . . . *in his discretion* parole into the United States . . . any alien applying for admission[.]” (emphasis added); *see also Pouzo v. U.S. Citizenship & Immigr. Servs.*, 516 F. App’x 731, 731 (11th Cir. 2013) (per curiam); *Alonso-Escobar v. USCIS Field Off. Dir. Miami, Fla.*, 462 F. App’x 933, 935 (11th Cir. 2012) (per curiam).

Petitioner does not dispute that the parole process is ongoing. Indeed, his parole interview is scheduled for next week. Waters Decl. ¶ 10 & Ex. G. Rather, Petitioner challenges the pace of that process. But as the Eleventh Circuit has held in another immigration context, section 1252(a)(2)(B)(ii) deprives the district court of jurisdiction over plaintiffs’ claims alleging unreasonable delay of a determination that is committed to agency discretion. *Kanapuram v. Dir., U.S. Citizenship & Immigr. Servs.*, 131 F.4th 1302, 1306-08 (11th Cir. 2025) (holding that a district court lacked jurisdiction over an APA unreasonable-delay claim concerning the pace of adjudication for adjustment of status because 8 U.S.C. § 1255 commits that determination to agency discretion).

For these reasons, even assuming Petitioner’s second and third claims are cognizable in habeas—which they are not—the Court should still deny those claims for lack of subject matter jurisdiction. The Petition should therefore be denied.

CONCLUSION

As to his lead claim, Petitioner would have the Court disregard apply a vacated Eleventh Circuit test created for an entirely different statute and a due process analysis that the Supreme Court has never applied in this context. But this Court has addressed Petitioner’s precise due process claim and held that he is not entitled to relief based on over a century of Supreme Court precedent. Petitioner also asks the Court to expand the contours of habeas corpus to cover claims regarding the pace of a collateral administrative process. That claim is not cognizable here, and the Court lacks jurisdiction anyway. The Petition should be denied.

Respectfully submitted, this 11th day of April, 2025.

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