

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-02909-ECT-SGE

Steven V.Z.,

Petitioner,

v.

**RESPONSE TO PETITION
FOR WRIT OF HABEAS
CORPUS**

Todd Blanche, *et al.*,

Respondents.

Respondents respectfully submit this brief pursuant to the Court's June 11, 2026 order requiring the Respondents to address the basis for Petitioner's continued detention.

BACKGROUND

Petitioner unlawfully entered the country as a juvenile from Ecuador on or about January 18, 2023. See Ex. A ("NTA"). He was charged under § 1182(a)(6)(A)(i) and put into removal proceedings. *Id.* He was released from custody of the Office of Refugee Resettlement at that time. ECF No. 1 ¶ 7. Petitioner later filed a derivative I-918 U Visa Petition based on his father being a victim of domestic assault in 2024. ECF No. 1, ¶ 3 & ECF No. 1-4.

On May 12, 2026, Petitioner was arrested for Domestic Assault-Harm under Minnesota Statute § 609.2242.1(2) and Malicious Punishment of a Child under Minnesota

Statute § 609.377. Ganzhorn Decl. Ex. B (“I-213”).¹ This was followed by the issuance of a Criminal Domestic No Contact Order (DANCO) under Minnesota Statute § 629.75 on May 14, 2026.² See ECF No. 1-9, p. 2. Petitioner was released from local confinement on May 14 and placed in ICE custody soon after. Decl. Ex. B.

ARGUMENT

Petitioner is an applicant for admission who is not clearly and beyond a doubt entitled to be admitted to the United States, and therefore is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)(2025). *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026).

Habeas petitioners bear the burden of proving they are entitled to relief. *Copenhaver v. Bennett*, 355 F.2d 417, 422 (8th Cir. 1966); *Harris v. Tahash*, 353 F.2d 119, 123 (8th Cir. 1965). Petitioner bears the burden of proving his detention is unlawful by a preponderance of the evidence. *Jose J. O. E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025).

I. Petitioner cannot benefit from *ICWC v. Noem*

Petitioner first claims lies in an alleged violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). He claims that a recent order in the class action suit *ICWC v. Noem*, No. 2:25-cv-09848 (WL 1455004)(C.D. Cal. Oct. 14, 2025), makes his present

¹ Petitioner notes that the “charge had been reduced” from Malicious Punishment of a Child before his first court appearance. ECF. No. 1, ¶ 22. Malicious Punishment is described in as “an intentional act or a series of intentional acts with respect to a child, evidences unreasonable force or cruel discipline that is excessive under the circumstances” by a “parent, legal guardian, or caretaker.” Minn. Stat. § 609.377. It is punishable either as a gross misdemeanor or a felony, depending on the level of harm inflicted on the child. *Id.*

² Petitioner repeatedly refers to his charge as a “misdemeanor assault.” See ECF. No. 22, ¶¶ 4, 22. The charging document and existence of a DANCO both attest to the fact that it was a *domestic* assault rather than a simple assault.

detention unlawful under the APA. Because of Petitioner's arrest and charges for Domestic Assault, and the ensuring Domestic Abuse No Contact Order against him, he is not entitled to special relief under *ICWC*.

First, 8 U.S.C. § 1252(f)(1) bars *ICWC*'s class-wide stays and by extension invalidates Petitioner's Motion. The provision "generally strips lower courts of 'jurisdiction or authority' to 'enjoin or restrain the operation of' certain provisions of the INA. The ordinary meaning of the terms 'enjoin' and 'restrain' bars...class-wide relief." *Garland v. Aleman Gonzalez*, 596 U.S. 543, 543–44 (2022). The *ICWC* court was aware of this, noting in its opinion that § 1252(f)(1) "bars this district court from enjoining the operation of certain provisions of the INA with respect to anyone but an individual alien. Classwide injunctions are barred. Pointing to the phrase '[r]egardless of the nature of the action or claim,' (Federal) Defendants argue that this prohibition on the district court issuing classwide injunctions bars *all* classwide relief that Plaintiffs seek here." *ICWC* at *17. The *ICWC* court should have concluded its analysis there.

However, the court pressed on, believing it found a novel way to solve its jurisdictional problem: a stay under APA § 705 that supposedly provided a materially identical form of classwide relief. *ICWC* at *47 ("Pursuant to 5 U.S.C. § 705, the Court hereby **STAYS** the 2025 Guidance. This stay applies in favor of All Individual Plaintiffs, the current and future clients of the Organizational Plaintiffs, and the members of all three Classes."). The problem is that this materially functions as an injunction.

The *ICWC* court's actions cannot survive *Garland v. Aleman Gonzalez*, which held that the prohibition under § 1252(f)(1) applies "[r]egardless of the nature of the action or

claim,” and the word “restrain” as used in the statute means broadly “to check, hold back, or prevent.” 596 U.S. 543, 549–51 (2022); *accord Biden v. Texas*, 597 U.S. 785, 798 (2022).³ In other words, Section 1252(f)(1)’s bar turns on what a particular order does, not what it is captioned. This is because, like the Constitution, the INA “deals with substance, not shadows.” *SFFA v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023); *cf. San Juan Cellular Tel. Co. v. PSC*, 967 F.2d 683, 684 (1st Cir. 1992) (Breyer, J.) (a declaratory judgment of unlawfulness “is equivalent to an injunction”).

The fundamental flaw with the *ICWC* court’s purported stay is that, ultimately, courts may not accomplish in two steps (a classwide stay plus follow-on injunctions) what Congress has forbidden them to do in one (a classwide injunction). *Cf. California v. Grace Brethren Church*, 457 U.S. 393, 408 (1982) (“[B]ecause there is little practical difference between injunctive and declaratory relief, we would be hard pressed to conclude that Congress intended to prohibit taxpayers from seeking one form of anticipatory relief against state tax officials in federal court, while permitting them to seek another.”).

Nken v. Holder, 556 U.S. 418, 428 (2009), confirms that the *ICWC* Order is an injunction in substance: An injunction “tells someone what to do or not to do,” whereas “a stay operates upon the judicial proceeding itself.” Here, the *ICWC* Order directs DHS’s conduct toward three classes, not a particular judicial proceeding. For this reason, the court

³ “[N]o court (Other than the Supreme Court) shall have jurisdiction or authority *to enjoin or restrain* the operation of the provisions of part IV of this subchapter.” 8 U.S.C. § 1252(f)(1) (*italics added*).

lacked authority under § 1252(f)(1) to enter it, and Petitioner’s effort to obtain relief in this Court based on *ICWC* is unavailing.⁴

Critically, even if we accept Petitioner’s assertions about the general sweep of *ICWC* (see ECF No. 1, ¶¶ 42-74) he is not entitled to relief. Petitioner ignores the fact that, notwithstanding his alleged class status, he is still subject to detention under the policy and rule imposed by *ICWC*. The class action prohibited Respondents from following guidance provided by the Trump Administration in ICE Directive 11005.4, *Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits* (issued Jan. 30, 2025). It reinstituted the Biden-era rule detailed in ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (issued Dec. 2, 2021) and Obama-era policy detailed in ICE Policy 10076.1, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (issued June 17, 2011).

ICE Directive 11005.3 states that Respondents would not detain aliens who had applied for U Visas barring “exceptional circumstances.” *Id.* “Exceptional circumstances generally exist only in the following circumstances: a) The [alien] poses national security concerns; or b) The [alien] poses an articulable risk of death, *violence, or physical harm to*

⁴ The Ninth Circuit authority the *ICWC* Court invoked—*Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 990 (9th Cir. 2025) (“§ 1252(f)(1) does not bar the district court’s stay pursuant to § 705 of the APA”), and *National TPS Alliance v. Noem*, 166 F.4th 739, 761 (9th Cir. 2026) (“Set aside relief under the APA is thus not barred by § 1252(f)(1)”—is distinguishable. Those orders set aside agency action and restored the status quo, whereas *ICWC*’s Order affirmatively reinstates a superseded policy and operationally dictates future enforcement.

any person.” Id. (emphasis added).⁵ ICE Policy 10076.1 states that ICE would “avoid deterring individual from reporting crimes” in making detention and enforcement decisions, barring “serious adverse factors” such as whether an alien “poses a threat to public safety.”⁶

Petitioner has been detained since being arrested and charged with Domestic Assault. The prosecutorial discretion described in ICE Directive 11005.3 does not apply to him. While Petitioner is a derivative U-Visa applicant, he is also an alien who poses a risk of physical harm to another person, and poses a threat to public safety. This is proved by his Domestic Assault charges, as well as the Domestic Assault No Contact Order which protects the victim in his case.⁷ As such, Petitioner is subject to no special consideration under ICE Directive 11005.3 or ICE Policy 10076.1.

Put another way, there was no point when Petitioner would have been able to avail himself of favorable discretion to avoid otherwise lawful detention. Under the Biden-era and Obama-era rules, he still would have been arrested and detained. Respondents have a right and duty to keep people who pose a danger to public safety off the streets, regardless

⁵ Petitioner notes that Directive 11005.3 does not apply in “exceptional circumstances” in his brief. ECF No. 1, ¶ 90. But he does not bother to name what these “exceptional circumstances” are.

⁶ Because Policy 10076.1 applies only to “victims of crime” rather than U Visa derivatives, it is not clear that this policy applies to Petitioner at all. It was Petitioner’s father who was the alleged victim of crime, not Petitioner. Regardless, Petitioner’s Domestic Assault arrest and DANCO are enough to establish he is a threat to public safety.

⁷ Petitioner notes that the Anoka County District Court must have “necessarily” determined he was not a danger to public safety by virtue of his release. This ignores the fact that the same court issued a DANCO, which strongly suggests the court thought Petitioner posed a future danger to at least one person.

of their U Visa status. Because Petitioner poses an articulable risk of physical harm to another, and because he poses a threat to public safety, he is not entitled to favorable discretion under Directive 11005.3 or Policy 10076.1.

II. Petitioner's pre-removal detention does not violate procedural due process

Petitioner claims his procedural due process rights are violated by his current detention. The claim is without merit.

A. Petitioner does not assert a cognizable general 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.” Petitioner does not dispute that he falls within the statute. Instead, he argues he is entitled to a bond hearing to assess whether he is a flight risk or dangerous—criteria that are irrelevant under the terms of § 1225(b)(2)(A).

That is not a cognizable claim of procedural due process. An alien “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.” *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1, 8 (2003). 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.*

Even were it 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.” *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138 (2020). 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 his 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 v. Kim*, 538 U.S. 510, 523 (2003).

1. Petitioner has not challenged the process for determining whether he is an “applicant for admission” as a factual matter, or whether he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Instead, Petitioner claims that a determination that he falls within the statutory criteria is a constitutionally insufficient basis on which to justify the deprivation of his liberty (*i.e.*, detention), absent an assessment of whether he poses a flight risk or danger to the community. His claim 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, he 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.

But a bond hearing is merely the vehicle for making the *substantive* determination about flight risk or dangerousness that Petitioner believes necessary to justify his detention, even though those factors are irrelevant under § 1225(b)(2)(A). Because § 1225(b)(2)(A) does not require such determinations, however, his 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 he is flight risks or dangerous is irrelevant under that policy choice. And due process does not require procedures to adjudicate immaterial facts. Thus, Petitioner is attempting 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. And this is, in effect, what he has done.

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 sex-offender 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. 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).

Petitioner suggests the USCIS’s previous determination that an alien does not pose a flight risk or a danger to public safety in the course of a U Visa application must determine the present custody decision. ECF No. 1, ¶ 86. There is no merit to this. Even if Respondents were somehow bound to USCIS’s determination that Petitioner is not a flight risk or danger to public safety, it has no relevancy under § 1225(b)(2), which requires no finding of flight risk or danger to justify detention. “[D]ue process does not require the opportunity to prove a fact that is not material to the State’s statutory scheme.” *Connecticut Department of Public Safety*, 538 U.S. at 7. As such, USCIS’s previous determination has no impact on application of § 1225(b)(2).

4. Petitioner might claim that *Banyee* applies only to § 1226(c), owing to the additional criminal findings necessary to justify detention under that statute. But careful reading must show that the *Banyee* and *Demore* holdings apply to detainees under 8 U.S.C. § 1225(b)(2) as much as they do to those under § 1226(c). To see why, it is helpful to approach these holdings through the lens of *Jennings* and *Thuraissigiam*.

Start with *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). 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 detention statutes §§ 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 doctrine. 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 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*, 538 U.S. at 512.

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” 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 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 the due process challenge. For “foreigners who have never been naturalized, nor acquired any domicile 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.” *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, which Petitioner recently completed), 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) (“Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”). But if *Thuraissigiam* 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 Court’s reasoning is unambiguous and inescapable.

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 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*, 538 U.S. at 523 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.

The crux of whether detention satisfies due process is not whether the alien is subject to an asylum interview (as with Thuraissigiam) or whether he was subject to the “catchall” of § 1225(b)(2), or whether he has committed one of the crimes listed in § 1226(c). The

operative question in due process is whether the proceeding is *indefinite*. And a pending immigration proceeding is *not* indefinite as a matter of law—it will end either with an order of removal, or with the alien granted some status under the INA. *Banyee* 115 F.4th at 933.

Thus “[a]lthough Sections 1225(b) and 1226(c) require detention under different circumstances, the core issue—mandatory detention during removal proceedings—is the same.” *Romero v. Brown*, -- F.Supp.3d – (WL 1021455)(S.D. Iowa April 15, 2026). “[T]he Eighth Circuit has foreclosed application of the *Mathews* procedural due process analysis here and, so long as none of the *Banyee* exceptions arise, the government can detain [Romero] for as long as deportation proceedings are still pending.” *Id.* at 5 (quotations removed).

B. Petitioner is not entitled to relief under *Mathews v. Eldridge*

In addition to a generalized procedural due process claim, Petitioner asserts a claim in due process under *Mathews v. Eldridge*, 424 U.S. 319 (1976). Petitioner asks the Court to apply *Mathews* as an individualized test weighing equities, a task which it was never designed for. Even if *Mathews* were an acceptable route for individualized relief, it would not entitle Petitioner to the bond hearing he seeks. Moreover, even if the *Mathews* factors were applied to the equities in this case, Petitioner would not be entitled to a bond hearing on that basis.

1. *Mathews* is not an individualized test

A statute that does not satisfy the demands of due process is unconstitutional. This is of course black-letter law, but is an observation worth making in discussing many courts’ recent reliance on *Mathews v. Eldridge*. To say that due process requires some deviation

from the clear language of a statute is to assert that the statute is either unconstitutional on its face or as applied. “Due process” is not a blanket concept enabling circumvention of a plain statutory mandate, but an analytical tool for determining whether a statute comports with fundamental notions of fairness. *See U.S. v. Salerno*, 481 U.S. 739, 745 (1987)(describing “substantive” and “procedural” due process).

A successful due process challenge generally arises in one of two ways: the court declaring a statute is facially unconstitutional, or that it is unconstitutional as applied to the parties involved. *Salerno*, 481 U.S. at 745; *U.S. v. Stephens*, 594 F.3d 1033, 1037 (8th Cir. 2010). “A facial challenge to a legislative Act...must establish that no set of circumstances exists under which the Act would be valid.” *Id.* “Facial challenges... are...to be discouraged. Not only do they invite judgments on fact-poor records, but they entail a further departure from the norms of adjudication in federal courts: overbreadth challenges call for relaxing familiar requirements of standing, to allow a determination that the law would be unconstitutionally applied to different parties and different circumstances from those at hand.” *Id. citing Sabri v. U.S.*, 541 U.S. 600, 608-09 (2004). As-applied challenges are more fact-specific, and apply only to the parties before the court. *Minnesota Majority v. Mansky*, 708 F.3d 1051, 1059 (8th Cir. 2013). The difference between a facial versus as-applied challenge goes more to the remedy employed by the court than the contents of a pleading. *Stephens*, 594 U.S. 1039-40, *referring to Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010).

Courts have recently begun using *Mathews* as a form of individualized assessment governing whether a detainee is entitled to another individualized assessment, namely a

bond hearing. It is peculiar that *Mathews v. Eldridge* has become the fallback test for individualized, as-applied due process challenges to immigration detention, because *Mathews* from its inception was never conceived—and cannot easily function—as an individualized test. The very nature of the *Mathews* holding makes it clear that it applies to statutory schemes as a whole, mostly in the form of facial challenges to said schemes. Eighth Circuit precedent supports this use of *Mathews*. See *Johnson v. Mathews*, 539 F.2d 1111, 1122 (8th Cir. 1976)(due process requires notice of termination of disability benefits); *Mickelson v. Ramsey County*, 823 F.3d 918 (8th Cir. 2016)(pre-deprivation hearing not required before collecting \$25 booking fee); *Business Communications Inc. v. U.S. Dept. of Educ.*, 739 F.3d 374 (8th Cir. 2013)(hearing was necessary to assess agency firing of alleged whistleblowers); *Walters v. Wolf*, 660 F.3d 307 (8th Cir. 2011)(city was required to hold hearing before depriving petitioner of firearm); *Berg v. Shearer*, 755 F.2d 1343 (8th Cir. 1985)(pretermination hearing not required before revoking unemployment compensation).

In cases where *Mathews* is used to conduct as-applied challenges, the Eighth Circuit has still refrained from using it as an individualized test. In *Talamantes-Penalver v. INS* an alien living in Minnesota claimed that a stringent ten-day time limit for appeals violated due process for those who were too “remote” from the filing location. 51 F.3d 133, 134 (8th Cir. 1995). The court noted that an alien’s right to appeal is entirely a creature of statute, but that once that right is created, the government must provide appellants with meaningful process in order to enjoy this right. *Id.* at 135 citing *Evitts v. Lucey*, 469 U.S. 387, 393 (1985). The court found the ten-day period sufficient, applying the *Mathews*

factors not in a totally individualized manner, but to a class of “aliens living in remote locations who make reasonable efforts to comply with the regulation.” *Id.* The court took a similar approach in *Holder v. Gonzales*, finding that a strict 30-day limit for mailing an appeal to Virginia did not violate due process. 499 F.3d 825, 829 (8th Cir. 2007).

Mathews is not an individualized test. It is a means of assessing whether statutorily created rights comport with due process, either on the face of the statute or as-applied to particular classes (e.g. the “remote” in *Talamantes-Penalver*). The fact that *Mathews* can be employed in as-applied challenges does not make it an individualized test (such as a bond hearing). An individualized test is meant to weigh the equities of the parties *based on a given framework*. In contrast, the *Mathews* test is about the *validity of the framework itself*, whether at a facial level or as-applied.

A recent case in this district conflated as-applied challenges with individualized tests. “To determine whether civil detention violates a detainee’s Fifth Amendment due process rights, courts apply the three-part test in *Mathews v. Elrdige*.” *Maldonado v. Olson*, 795 F.Supp.3d 1134, 1148 (D. Minn. 2025). This is inconsistent with the principles and precedent discussed above. Whether a singular civil detention violates due process depends on the relevant variables in the statutory or constitutional scheme; whether civil detention is legal more broadly depends on a host of other variables, including whether the detention is punitive and whether it serves a legitimate state interest. *Schall v. Martin*, 467 U.S. 253, 269-273 (1984). Testing the statutory framework “against erroneous and unnecessary deprivations of liberty” is only one part of assessing civil detention. *Id.* at 274-75.

2. *Mathews* does not entitle Petitioner to a bond hearing

Even presuming *Mathews* granted relief, Petitioner is not entitled to a bond hearing, whether under § 1226(a) or any other framework. Put simply, once it is established that Petitioner is subject to mandatory detention under § 1225(b)(2), there is no mechanism for Petitioner to assert he is owed a bond hearing.

Make no doubt: Courts have previously read into detention statutes constitutional saving graces in order to avoid striking them down for due process violation. They do this by the canon of constitutional avoidance, that is, “[w]hen a serious doubt is raised about the constitutionality of an act of Congress, [the court] will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.” *Nielsen v. Preap*, 586 U.S. 392, 419 (2019)(quotations removed). Such was the basis for the six-month reasonability test employed in *Zadvydas v. Davis*, 533 U.S. 678, 706 (2003)(“The majority invokes the canon of constitutional doubt to read that implied term into the statute.”)(J. Scalia dissenting); *see also Jennings*, 583 U.S. 281, 297 (2018). But critically, the canon of constitutional avoidance “has no application absent ambiguity.” *Nielsen*, 586 U.S. at 419, *citing Warger v. Shauers*, 574 U.S. 40, 50 (2014)(quotations removed).

And there is no ambiguity in § 1225(b)(2). An applicant for admission who cannot prove he is clearly and beyond a doubt entitled to be admitted is to be held without bond—any ambiguity on this point disappeared with *Avila*. If § 1225(b)(2) really does run afoul of due process, whether under the *Mathews* factors or otherwise, the canon of constitutional avoidance cannot be used to “save” it by requiring a bond hearing. A statute that unambiguously requires detention without bond cannot be read to require bond. This runs against the basic logic of statutory interpretation, and flies in the face of Congress’s clearly

asserted will. Likewise, it is refuted by the conclusion of courts which have affirmed the constitutionality of bondless detention under § 1225(b) and § 1226(c). *Department of Homeland Security v. Turaissigiam*, 591 U.S. 103 (2020); *Demore v. Kim*, 538 U.S. 510 (2003).

3. Even applying the *Mathews* factors, Petitioner's claim must fail.

Even if the *Mathews* factors were applied, Petitioner's plea must fail.

[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335.

The "private interest" here is insubstantial. Petitioner's detention without a bond hearing during the pendency of his removal proceedings does not implicate any fundamental rights. 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). And none of the rights alleged by Petitioner are cognizable. 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*, 142 U.S. at 660. 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)). “[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.” *Department of State v. Muñoz*, 602 U.S. 899, 910(2024), *quoting Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). Ultimately, the Petitioner’s due process rights extend to the procedures authorized by Congress through the INA. Petitioner cannot be deprived of a liberty interest he does not possess.

Nor is there any substantial risk Petitioner will be erroneously deprived of his rights. Petitioner has already undergone removal proceedings, where he was given reasonable opportunity to make a case why he should be permitted to remain in the United States. Immigration proceedings remove any substantial risk that an alien will be erroneously deprived of his rights. This was the conclusion of the court that inaugurated the present use of *Mathews* in immigration decisions, which found that the procedures of immigration court “ensured that the risk of erroneous deprivation would be ‘relatively small.’” *Rodriguez Diaz v. Garland*, 53 F.3d 1189, 1210 (9th Cir. 2022). There is no reason to believe otherwise here.

In contrast, Respondents have strong historical and practical interests in seeing Congress's will given effect. "The Supreme Court has...specifically instructed that in a *Mathews* analysis, we 'must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.'" *Rodriguez Diaz*, 53 F.4th at 1208, citing *Plasencia*, 459 U.S. at 34. 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*, 345 U.S. at 210 ("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*, 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.").

Respondents' interest is particularly strong here. He is charged with Domestic Assault and subject to a DANCO. Though he claims that the Anoka County District Court must necessarily have determined he is not a danger to public safety (ECF No. 1, ¶ 107), he ignores the fact that the court thought he was enough of a danger to prohibit contact with the protected party. That the victim was apparently a child only increases Respondents' concerns.

III. Petitioner has no claim in substantive due process

Having eliminated the possibility of relief in procedural due process, we move to

Petitioner's claim in "substantive" due process. ECF No. 1 ¶ 97. Because a substantive due process claim deals with a right that can be infringed only on the basis of strict scrutiny (see *Reno v. Flores*, 507 U.S. 292, 302 (1993)), Petitioner not willing to openly state that it is substantive rather than procedural due process they are dealing with. Courts that have accepted a "balancing test" have not alleged that the liberty interest of detainees triggers strict scrutiny. Rather, he employs (or misemploys) the laxer standards of *Mathews*. See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022)(though noting "the Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*."); *Y.M. v. Wofford*, WL 3228125 (E.D. Calif. 2025)(applying *Mathews* in an individualized setting). This method essentially imposes a level of scrutiny more stringent than what procedural due process requires, yet less stringent than the strict scrutiny which would be required, were a substantive right actually involved.

The situation is similar to that recently faced by the Supreme Court in *Dept. of State v. Munoz*, in which an American citizen claimed a due process right to bring her alien spouse to the United States. 602 U.S. 899 (2024). The Court noted the strange character of the asserted right, "fundamental enough to be implicit in 'liberty;' but, unlike other implied fundamental rights, its deprivation does not trigger strict scrutiny...This right would be in a category of one: a substantive due process right that gets only procedural due process protection." *Id.* at 911, referring to *Kerry v. Din*, 576 U.S. 86, 99 (2015) (plurality opinion) (observing that this argument posits "two categories of implied rights protected by the Due Process Clause: really fundamental rights, which cannot be taken away at all absent a

compelling state interest; and not-so-fundamental rights, which can be taken away so long as procedural due process is observed”). Yet the Court commended the logic behind the petitioner’s nebulous classification, for a truly “fundamental” right would require a showing of strict scrutiny “—and it would be remarkable to put the Government to the most demanding test in constitutional law in the field of immigration, an area unsuited to rigorous judicial oversight.” *Id.*

But as the Court noted in *Munoz*, the proper analysis of a substantive due process right—whether or not it is identified as such—is provided by *Glucksberg*.

A. To that end, *Glucksberg*’s two-step inquiry disciplines the substantive due process analysis. First, it insists on a “careful description of the asserted fundamental liberty interest.” *Id.*, at 721, 117 S.Ct. 2258 (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, 117 S.Ct. 2258 (internal quotation marks omitted).

Petitioner’s detention without a bond hearing during the pendency of his 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 Petitioner’s 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 Petitioner 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.

Second, and in the same vein, *Demore* emphasized that “the period of detention at issue in *Zadvydas* was ‘indefinite’ and ‘potentially permanent,’” whereas detention under § 1226(c) pending removal proceedings “is of a much shorter duration” and “ha[s] a definite termination point.” *Demore*, 538 U.S. at 530.

B. The same reasons for upholding mandatory detention under § 1226(c) apply to § 1225(b)(2)(A). Petitioner does not allege that his ultimate removal is “unattainable,” so detention under § 1225(b)(2)(A) serves the same legitimate interest recognized by *Demore*—preventing aliens “from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.” 538 U.S. at 528.

Nor is detention under § 1225(b)(2)(A) “indefinite” or “permanent.” *Demore*, 538 U.S. at 530. As with § 1226(c), detention under § 1225(b)(2)(A) lasts only for the duration of “a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A); *see Jennings*, 583 U.S. at 297 (“Once [removal] proceedings end, detention under § 1225(b) must end as

well.”). 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”).

IV. Petitioner’s prior UAC status does not confer any new rights

Given the foregoing, Petitioner has no special claims to status owing to his previous designation as an unaccompanied child. Petitioner repeatedly makes the claim that he has been “re-detained.” Petitioner is not specific about what (if any) effect a prior detention would have on his substantive rights, and he cites no binding caselaw to suggest that his previous detention and release as an unaccompanied child at the border affects his present detention as an adult. In fact, Petitioner’s prior detention and release as an unaccompanied child have no bearing on his present detention under § 1225(b)(2).

Petitioner entered the country as an unaccompanied child. An unaccompanied child is a minor with “no lawful immigration status in the United States and who has not attained 18 years of age; and with respect to whom: There is no parent or legal guardian present in the United States; or no parent or legal guardian in the United States is available to provide care and physical custody. 8 CFR § 236.3. Custody decisions of unaccompanied children

are not governed by the regular detention statutes of § 1225, § 1226, or § 1231. Rather, detention of UACs is governed by 8 U.S.C. § 1232(c)(2)(A), which requires that UACs be placed “in the least restrictive setting that is in the best interest of the child.” *Id.* In coming to this determination, the Secretary “may consider danger to self, danger to the community, and risk of flight.” *Id.*⁸ Accordingly, Petitioner was initially detained only to be released to a family member under 8 U.S.C. § 1232(c)(2)(A).

But Petitioner is no longer a UAC. Petitioner was released from ORR custody in 2023 (ECF No. 1 ¶ 7) and turned 18 on March 1 of this year.⁹ He can no longer avail himself of the special protection to UACs, which apply only to aliens still in DHS custody. 8 U.S.C. § 1232(c)(2)(B). Petitioner is now subject to detention just like any other arriving alien who cannot prove he is clearly and beyond a doubt entitled to admission—that is, according to § 1225(b)(2). The custody decisions made under 8 U.S.C. § 1232 apply only to UACs, and afford Petitioner no additional rights against an otherwise lawful detention. *Cf. R.A.R.R. v. Almodovar*, __ F. Supp. 3d. __ (2026 WL 323040)(E.D.N.Y. Feb. 6, 2026)(alien who turned 18 was still subject to § 1232 where ORR retained legal custody).

Petitioner makes no argument why § 1232 would apply to him now that he is no longer an unaccompanied child, or why Respondents would be estopped from detaining him because he was previously released as a UAC. Section 1232 treats only the detention

⁸ Petitioner misstates the law in his petition. ECF No. 1, ¶ 83. He states that before ORR can place an unaccompanied child it *must* “consider danger to self, danger to the community, and risk of flight.” *Id.* The statute’s use of “may” makes it clear that this is discretionary.

⁹ Petitioner was born on Leap Day, 2008.

of unaccompanied minors; it confers no procedural rights on anyone who is not a UAC. Nor does it create any substantive rights. For unadmitted aliens, “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.

V. Petitioner was arrested with a warrant, and § 1357 does not apply

Petitioner claims that his detention is unlawful because he was arrested without a warrant, and Respondents failed to follow the procedures of 8 U.S.C. § 1357(a)(2). ECF No. 1 ¶ 116. But Petitioner was arrested after the issuance of a detainer and a warrant. *See* Ganzhorn Decl. Exs. C & D. As such, his arrest did not violate the Fourth Amendment. And because ICE had a warrant to arrest Petitioner, there was no need to follow the warrantless arrest procedures set out in § 1357.

VI. Petitioner’s final argument is a placeholder

Petitioner makes a final claim that *Avila* was wrongly decided. He makes it only to preserve for possible appeal. ECF No. 1, ¶ 128. Respondents rely on the Eight Circuit decision.

EVIDENTIARY HEARING

Respondents believe the Court can resolve the Petition without an evidentiary hearing. The material facts necessary to decide this case are established by the Petition, the declaration submitted with Respondents’ response, and the attached immigration records. The remaining issues are legal ones.

CONCLUSION

All habeas relief must be denied.

Dated: June 18, 2026

DANIEL N. ROSEN
United States Attorney

s/ Derek Ganzhorn

BY DEREK GANZHORN
Special Asst. United States Attorney
Attorney ID Number 397468
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 431-5463
derek.w.ganzhorn@ice.dhs.gov