

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0: 26-cv-03051-JRT-SGE

Jairo U.G.,

Petitioner,

v.

Markwayne Mullin, *et al.*,

Respondents.

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

Respondents respectfully submit this brief pursuant to the Court's June 23, 2026 order requiring the Respondents to address the basis for Petitioner's continued detention.

BACKGROUND

Petitioner is a citizen and native of Mexico, who makes no claim to U.S. citizenship or current lawful immigration status. Northwood Decl. Ex. A. He was provided a Notice to Appear when he entered the country in 2021. *Id.* His initial removal proceedings were dismissed based on prosecutorial discretion in 2023. Northwood Decl. ¶ 6.

Petitioner was arrested on November 21, 2022 for DWI. Northwood Decl. ¶ 6. He ultimately pleaded to Underage Drinking and Driving. Northwood Decl. ¶ 8. On February 12, 2026 he was arrested again for DWI. Northwood Decl. ¶ 9. After a failure to appear, a warrant was issued for his arrest on May 21, 2026. Ganzhorn Decl. A ("Warrant Return of Service.").

ICE/ERO issued a detainer and an I-200 warrant on May 21, 2026. Northwood Decl.

¶ 11. He was issued a new Notice to Appear on June 11, 2026. Northwood Decl. ¶ 14.

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’s pre-removal detention does not violate procedural due process

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

A. Petitioner does not assert a cognizable general 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 risk 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 trumps the application of the legislature’s statutory scheme—in other words, by positing a substantive due process right.

2. The Supreme Court’s holding in *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), is definitive on this point. The statute in that case required sex offenders to register with the state so their information could be published on a 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 an “applicant for admission” who is not “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(a)(1), (b)(2)(A). There is no dispute that Petitioner falls within the terms of the statute as interpreted by *Avila*. Therefore, as in *Connecticut Department of Public Safety*, any claim that Petitioner is entitled to a bond hearing “‘must ultimately be analyzed’ in terms of substantive, not procedural, due process.” 538 U.S. at 7-8; *see Flores*, 507 U.S. at 308 (holding that a challenge to a regulation on the ground that it failed to require a determination of a detainee’s “interests” was “just [a] ‘substantive due process’ argument recast in ‘procedural due process’ terms”); *Michael H. v. Gerald D.*, 491 U.S. 110, 119, 121 (1989) (plurality opinion) (treating a request for an “evidentiary hearing” on an issue that the statutory scheme deemed “*irrelevant*” as a “substantive due process” claim).

It follows that Petitioner’s desire to use *Mathews* to evaluate his claims is in error. *Mathews* articulates a three-part balancing test for analyzing certain procedural due process claims. *Nelson v. Colorado*, 581 U.S. 128, 134 (2017). But that test has no application in the realm of substantive due process. Again, *Mathews* takes the “nature of the relevant inquiry” as given, 424 U.S. at 343, and asks only whether the “procedures” for conducting that factual inquiry are adequate, *id.* at 335. Here, in stark contrast, Petitioners contend that the Constitution requires a different factual inquiry altogether—*i.e.*, one that evaluates factors that Congress chose not to make relevant to the detention issue.

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 shows 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 to any “reasonableness” limitation required by 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 a “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), 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 such detention 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 Eighth Circuit 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 *Banyee* involved 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 due process question 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 relief under *Mathews v Eldridge*

So much for a general procedural due process argument. Petitioner’s specific due process claim under *Mathews v. Eldridge* is similarly incognizable. 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 she 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. Eldrige*.” *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 is currently in removal proceedings, where he will be given 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.").

II. Petitioner's arrest complied with § 1357 and raises no Fourth Amendment concerns

Petitioner raises a Fourth Amendment claim. Petitioner's framing of the issue is correct. Because an I-200 can be issued only after a Notice to Appear has been filed (see 8 C.F.R. § 236.1(b)), Petitioner's arrest must be judged by the standards of 8 U.S.C. § 1357 and 8 C.F.R. § 287.3.

Petitioner's arrest clearly meets those standards. Immigration officers are authorized "to interrogate any alien or person believed to be an alien as to his right to be or to remain

in the United States[.]” 8 U.S.C. § 1357(a)(1)(2006). These initial encounters must be supported by reasonable articulable suspicion. *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 881-82 (1975)(applying the standards of *Terry v. Ohio*, 392 U.S. 1 (1968) to the warrantless seizure of aliens). An immigration agent is empowered “to arrest [without a warrant] any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest[.]” § 1357(a)(2). “Reason to believe” in that statute is synonymous with probable cause that the Fourth Amendment demands for a valid arrest. *U.S. v. Sanchez-Velasco*, 956 F.3d 576, 581 (8th Cir. 2020); *U.S. v. Diaz-Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010). Agents also have the right to make arrests for any offense against the United States committed in the officer’s presence. 8 U.S.C. § 1357(a)(5). Such an arrest must also be supported by probable cause.

Probable cause is an objective standard. *District of Columbia v. Wesby*, 583 U.S. 48, 54 n.2 (2018). Probable cause for arrest “is not a high bar.” *Id.* at 57, quoting *Kaley v. U.S.*, 571 U.S. 320, 338 (2014). “When the constitutional validity of an arrest is challenged, it is the function of a court to determine whether the facts available to the officers at the moment of the arrest would ‘warrant a man of reasonable caution in the belief’ that an offense has been committed.” *Beck v. Ohio*, 379 U.S. 89, 91 (1964). “In dealing with probable cause ...as the very name implies, we deal with probabilities; they are factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *Brinegar v. U.S.*, 338 U.S. 160, 175 (1949).

Here, immigration officers issued a detainer and attempted to issue an I-200 warrant.

The officers had clear probable cause that he was in the country unlawfully. Northwood Decl. Exs. A & B.

Probable cause that Petitioner was a flight risk is even clearer. Petition was held in jail, and obviously was going to leave the jail when he could. Petitioner was in jail because he had failed to appear at his criminal proceedings. *See* Warrant Return of Service. This provided more than probable cause to believe he was likely to escape from the scene, and having escaped, that he was likely to continue evading detention.

Additionally, Respondents' post-arrest conduct satisfied regulation. "Unless voluntary departure has been granted...a determination will be made within 48 hours of the arrest...whether the alien will be continued in custody or released on bond or recognizance and whether a notice to appear and warrant of arrest...will be issued." 8 C.F.R. § 287.3(d). Officers made this determination on May 21, 2026. Northwood Decl. ¶ 13. This was well within the 48-hour window required by § 287.3(d). Respondents followed all proper procedures to arrest Petitioner and keep him in custody.

Even assuming, *arguendo*, that some defect existed for Petitioner's arrest, it would not grant Petitioner the relief he seeks. In criminal law, warrantless arrests are never a basis for release. "[W]hile the Court has expressed a preference for the use of arrest warrants when feasible, it has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant." *Gerstein v. Pugh*, 420 U.S. 103, 113 (1975)(citations removed). If warrantless arrests cannot justify release in criminal cases, where constitutional protections are at their highest, release cannot be a proper remedy in immigration cases, where "Congress regularly makes rules that would be unacceptable if

applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79–80 (1976).

This point is driven home by the fact that in criminal cases, not even an *unlawful* arrest will result in automatic release of a defendant. “An illegal arrest, without more, has never been viewed as a bar to subsequent prosecution, nor as a defense to a valid conviction.” *United States v. Crews*, 445 U.S. 463, 474 (1980). Instead, exclusion of evidence is the proper remedy for unlawful arrest in criminal cases. *Weeks v. U.S.*, 232 U.S. 383 (1914); *Wong Sun v. U.S.*, 371 U.S. 471 (1963). “Our numerous precedents ordering the exclusion of such illegally obtained evidence assume implicitly that the remedy does not extend to barring the prosecution altogether. So drastic a step might advance marginally some of the ends served by exclusionary rules, but it would also increase to an intolerable degree interference with the public interest in having the guilty brought to book.” *United States v. Blue*, 384 U.S. 251, 255 (1966).

In any event, the exclusionary rule is not an appropriate remedy in most immigration cases. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039–42 (1984). “Important as it is to protect the Fourth Amendment rights of all persons, there is no convincing indication that application of the exclusionary rule in civil deportation proceedings will contribute materially to that end. On the other side of the scale, the social costs of applying the exclusionary rule in deportation proceedings are both unusual and significant.” *Id.* at 1046.

A plurality of the justices in *Lopez-Mendoza* left open the possibility that exclusion might be a remedy for “egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained.” *Id.* at 1039; *Puc-Ruiz v. Holder*, 629 F.3d 771, 778 (8th Cir. 2010). The

Eighth Circuit has not decided the issue, but has raised doubts “that even an egregious violation by a state officer would justify suppression of evidence in a federal immigration proceeding.” *Lopez-Gabriel v. Holder*, 653 F.3d 683, 686 (8th Cir. 2011)(noting the court in *Puc-Ruiz*, 771 F.3d at 778, deemed it unnecessary to decide the issue); *Garcia-Torres v. Holder*, 660 F.3d 333, 336 (8th Cir. 2011).

If suppression of evidence is not an appropriate remedy for a Fourth Amendment violation, it follows, *a fortiori*, that release from custody cannot be either. To hold otherwise is to suggest aliens ordered removed have Fourth Amendment rights above and beyond those of American citizens. But this cannot hold in the immigration contest, where “Congress regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79–80 (1976).

In sum, even if Petitioner’s Fourth Amendment claims had merit, he would be owed no relief in habeas, because there is no remedy in the Fourth Amendment that would justify his release.

III. Petitioner’s claims under the APA are meritless

As noted above, Respondents followed all relevant statutes and regulations in arresting Petitioner and keeping him in detention. This destroys any claim Petitioner has under the APA, 5 U.S.C. § 706(2)(A).

Even were it otherwise, Petitioner would have no claim here. He is trying to shoehorn APA-style review into a habeas action. But an APA claim falls far outside the relief available under a habeas petition, and relief must be denied.

“[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 485 (1973). Petitions may question the legality of both the fact and duration of their custody. *Id.* at 487. But “[w]here petitioner seeks a writ of habeas corpus and fails to attack the validity of her sentence or the length of her state custody, the district court lacks the power or subject matter jurisdiction to issue a writ.” *Kruger v. Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996). Where habeas relief is available, remedy under the APA is foreclosed. “Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.” 5 U.S.C.A. § 704 (1966); *see also Trump v. J. G. G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring) (“given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another ‘adequate remedy in a court,’ I agree with the Court that habeas corpus, not the APA, is the proper vehicle here”).

Other factors weigh against backdoor APA claims in habeas petitions. “[H]abeas corpus is, at its core, an equitable remedy.” *Schlup v. Delo*, 513 U.S. 298, 319 (1995). Habeas remedies, especially in prisoner cases, are oriented towards specific circumstances and particular kinds of relief. See BLACK’S LAW DICTIONARY 560 (7th ed. 1999) (“The recourse to principles of justice to correct or supplement the law as applied to particular circumstances.”) Given this, procedures in habeas cases differ greatly from procedures in the law.

Suits under the Administrative Procedures Act are much different. Whether an agency has acted within the scope of its authority requires a delineation of the scope of the

agency's authority and discretion, and whether the agency adhered to procedural requirements requires a plenary review of the administrative record and consideration of applicable law. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 415-20 (1971) interpreting 5 U.S.C. § 706(2); *see also Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560 (10th Cir. 1994). As such, APA suits begin by preparing an administrative record of final agency action upon which parties could present cross-motions for summary judgment. For good reason, habeas proceedings almost never commence this way. Petitioner is free to file a new civil action to pursue APA claims if he wants, but his APA Claim is not properly before this Court in a petition for a writ of habeas corpus.

IV. Petitioner has no claim in *Accardi*

Respondents properly followed all legal requirements to put Petitioner under arrest. As such, Petitioner has no basis for a claim in *Accardi*. However, even if Petitioner were to raise issue, he is not owed a habeas remedy as a result.

Petitioner's last claim lies in an application of the "*Accardi* doctrine" requiring administrative agencies to observe their own regulations. *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). The *Accardi* doctrine does not lie in constitutional law or any principle of equity; rather, it is a "judicially evolved rule of administrative law." *Vitarelli v. Seaton*, 359 U.S. 535, 547 (1959) (Frankfurter, J., concurring in part, dissenting in part). Hence, the Court has confirmed, *Accardi* "enunciate[s] principles of federal administrative law rather than constitutional law[.]" *Board of Curators of the University of Missouri v. Horowitz*, 435 U.S. 78, 92 n. 8 (1978). As a principle in administrative law, it is grounded in procedural due process. *C.G.B. v. Wolf*, 464 F.Supp.3d 174, 226 (D.D.C.

2020). This must be the case, because “agency regulations do not create substantive due process rights.” *Id.*; *see also U.S. v. Caceres*, 440 U.S. 741, 754 (1979) (IRS’s failure to follow its own regulation on recording procedures did not require Fourth Amendment exclusion of evidence in criminal case.)

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

The Eighth Circuit has held the same. Hence, a regulatory violation will not serve to exclude evidence or invalidate deportation proceedings unless the “regulation in question serves a purpose of benefit to the alien and the violation prejudiced interests of the alien which were protected by the regulation.” *Puc-Ruiz v. Holder*, 629 F.3d 771, 780 (8th Cir. 2010) *applying In Matter of Garcia-Flores*, 17 I.&N. Dec. 325, 329 (BIA 1980)(adopting “prejudice” test put forth by the 9th Circuit in *Calderon-Medina*). Prejudice must be specifically demonstrated unless compliance with the regulation is mandated by the Constitution, in which case prejudice will be presumed. *Id.* But for a regulation that is

not constitutionally mandated, the burden lies on the petitioner to show the “regulatory violations potentially affected the outcome of his deportation proceeding.” *Id.*

Recent uses of the *Accardi* doctrine are a novelty. While *Accardi* has been around for decades, few habeas petitioners citing *Accardi* recognize any of the caselaw that has refined the “doctrine” since 1954. This haphazard application of *Accardi* raises grave concerns, especially in the realm of immigration law.¹ 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 v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”).

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,

¹ “The doctrine seems proof of the adage that hard cases make bad law.” *Accardi*, 347 U.S. at 268 (J. Jackson, dissenting).

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 25, 2026

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