UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0: 26-cv-03077 (NEB/JFD)

Petra R. H.,

Petitioner,

v.

Markwayne Mullin, *et al.*,

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Federal Respondents respectfully submit this brief in opposition to Petition and in response to the Court's Order to Show Cause.[1] Federal Respondents posit that Petitioner is lawfully detained and that continued detention does not violate the Fourth or Fifth Amendment. The Petition should therefore be denied.

BACKGROUND

Petitioner is a native and citizen of Mexico, who entered unlawfully the United States at an unknown time or place and was not then admitted or paroled after inspection by an Immigration Officer. *Declaration of Kenneth W. Olson*, Ex. A. Petitioner is now 42 years old. *Id.*, Ex. B. On September 25, 2012, Petitioner received Deferred Action for

[1] Undersigned acknowledges this Petition is being filed after the deadline, albeit with an extension request filed. Undersigned had some, but not all necessary documents until yesterday afternoon. It is unfortunate Petitioner's Counsel refused to respond to undersigned's emails or telephone calls, made in good faith, and instead insinuates bad faith of undersigned. To the extent Petitioner's Counsel is seeking permission to file a reply, there is no objection from Federal Respondents.

Childhood Arrivals (DACA), which Petitioner previously renewed, but expired on December 19, 2025. *Id.*

On June 18, 2026, Petitioner was arrested by Northfield Police Department for domestic assault and failure to carry proof of insurance. *Id.* These charges remain pending.[2] On June 19, 2026, Department of Homeland Security (DHS) Immigration and Enforcement (ICE) officers reviewed a biometric match to Petitioner's booking record, eventually determining that Petitioner was unlawfully present in the United States. *Id.*

On June 19, 2026, an ICE/Enforcement and Removal Operations (ERO) Deportation Officer lodged a Form I-247G Detainer with an unsigned Form I-200 Warrant for Arrest of Alien, issued by an ICE/ERO Supervisor Deportation and Detention Officer. *Id.*, Exs. C, D. On June 22, DHS initiated removal proceedings against Petitioner by filing and serving a Notice to Appear. *Id.*, Ex. A. Then, ICE/ERO served the Form I-200 Warrant for Arrest of Alien on Petitioner and took her into custody pending her removal proceedings. Petitioner remains detained in Minnesota. *Id.* ¶14. Petitioner has not filed any applications for relief from removal. *Id.*, ¶15.

Federal Respondents respectfully submit the above as the undisputed facts necessary to determine this case. Federal Respondents deny all other allegations, including those pertaining to Petitioner's time in the United States, especially here where no affidavit or verification was provided to support what otherwise amount to generalized statements with no bearing on the outcome of this habeas petition.

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[2] *See* MCRO records for case number 66-cr-26-1423.

ARGUMENT

As a threshold matter, the Petition fails to meet the heightened habeas pleading requirement and must be dismissed. Alternatively, 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 under8 U.S.C. § 1225(b)(2)(A). *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 her 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. The Petition must be dismissed as lacking verification.

Prior to addressing these claims below, Federal Respondents note that Petitioner's Counsel has filed an improper petition for habeas relief. Under 28 U.S.C. § 2242, an "[a]pplication for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf." For a habeas petition to comply with Section 2242, it must therefore be signed and verified by the individual in custody or someone acting on their behalf. *See Dixon v. Clark*, 714 F.Supp.2d 1029 (C.D. Cali. 2010) (dismissing habeas petition where "petitioner did not sign or verify the pending petition"); *see also In re Brabson*, 167 F.Supp. 619, 620, n. 2 (S.D. NY 1958) (noting that a federal district court would be "justified in disregarding petitioner's unverified allegations" (citing 28 U.S.C.A. 2242; *Kemmerer v. Benson*, 165 F.2d 702 (6th Cir. 1948), *cert. denied*, 334 U.S. 849 (1948)). And a "person generally lacks standing to

prosecute a federal habeas corpus petition on behalf of another person unless he or she can show a reasonable excuse as to why the detainee did not sign and verify the petition, and a sufficient relationship and interest linking the would-be next friend to the detainee. *Smith v. Armontrout*, 812 F.2d 1050, 1053 (8th Cir. 1987).

Here, Petitioner's Counsel personally swore under penalty of perjury to the facts in the Petition and appears to have based such personal verification not on his own personal knowledge but merely on "the best of my knowledge." (ECF 1). Lacking from the verification statement is any reason why Petitioner was unable to review and verify the Petition, not to mention who Petitioner's Counsel spoke with, what efforts he made to visit his client to verify the Petition.

As has become common in immigration habeas practice before this Court, the failure to have Petitioner verify her own petition results in key material misrepresentation: that Petitioner still has a valid, unrevoked grant of DACA (ECF 1, ¶65). This material misrepresentation forms the basis for the relief sought in the Petition. Further, the Petition appears nothing more than a template brief with inapplicable arguments, and otherwise generalized aversions about immigration enforcement in general. The Petition utterly fails to meet the heightened pleading standard required of a habeas petition, especially where no allegations were made as to why Petitioner's Counsel could not obtain Petitioner's verification. *Compare to Warren v. Cardwell*, 621 F.2d 319 (9th Cir. 1980) (attorney allowed to file and verify petition for client prisoner where client could not sign because prison was not "locked down").

Denial of the present petition is warranted on these principles. Many of the allegations made in the Petition are not factual assertions, but mere speculation or broad general aversions of Counsel. Petitioner himself is required to state *verified facts* in his habeas petition, not to put forth unfounded "beliefs" in the hope that one might justify a legal basis for relief. This is unacceptable conduct from the party bearing the burden of proof. And it is especially egregious, coming in the form of a verified petition with material misrepresentations made by Counsel, an officer of the Court, that undercuts the relief sought. This court should therefore dismiss the Petition and specifically take note of Petitioner's Counsel's failure to meet the pleading requirement in habeas.

II. Alternatively, Petitioner was properly arrested under a warrant.

First, Petitioner's do not dispute that Petitioner is detained under Section 1225. (ECF 1, ¶53). Petitioner, having entered unlawfully and encountered without valid admission or status, squarely falls within the confines of Section 1225 and is therefore subject to mandatory detention, without a bond hearing. *See Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026).

Second Petitioner was arrested under a warrant of arrest, properly issued and served. As explained in the accompanying declaration and supported by the documentary evidence, DHS followed applicable regulations to effectuate Petitioner arrest in compliance with Due Process. Removal proceedings were initiated against Petitioner on June 22, 2026. After removal proceedings were initiated, and following Petitioner's arrest for Domestic Assault, an I-247 Immigration Detainer was lodged with the unserved arrest warrant, for Petitioner's arrest on June 19, 2026, based on the pendency of removal proceedings. *See City of El*

Cenizo v. Texas, 890 F.3d 164, 174 (5th Cir. 2018); *see also* U.S. Immigr. & Customs Enf't, Pol'y No. 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers (Mar. 24, 2017); *Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 799 (9th Cir. 2020) (noting that "a signed administrative arrest warrant issued pursuant to 8 U.S.C. §§ 1226 or 1231(a) . . . must now accompany a detainer"). Then, ICE/ERO served Petitioner with the Notice to Appear and Warrant for Arrest of Alien, and took her into custody.

The detainer was properly issued by an ICE/ERO Deportation Officer. 8 CFR § 287.7(b)(3). The arrest warrant was properly issued by an ICE/ERO Supervisory Detention and Deportation Officer, 8 CFR § 287.5(e)(2)(xxxi), and properly served by an ICE/ERO Deportation officer, 8 CFR § 287.5(e)(3)(iv). And the sequencing of paperwork properly occurred prior to Petitioner's detention: lodging of the detainer and unsigned arrest warrant to issuance and service of the NTA to service of the now-signed arrest warrant. *See Richard Alexander C. C. v. Easterwood,* 26-cv-02137 (D. Minn. May 4, 2026) (denying habeas where proper sequence occurred prior to arrest). Petitioner's Due Process therefore fails on the facts and any relief claimed herein is based on nothing more than speculation. *See, e.g., Tanneh W. S. v. Blanche*, 26-cv-02775 (LMP/EMB) (D. Minn. June 23, 2026) (denying habeas where warrant process properly executed and noting that petitioner's "speculation that the officers are not qualified to issue and serve warrants--without any evidence demonstrating that this is the case—neither meets that burden nor justifies limited discovery" (citing *Streambend Props. II, LLC v. Ivy Tower Minneapolis, LLC*, 701 F. App'x 544, 545 (8th Cir. 2017) (holding that limited discovery is not warranted when a

party does not "offer anything more than speculation about what is expected to discover"))).

III. Petitioner's Claims Each Fail.

Petitioner's first claim fails on the facts because she does not have DACA currently or at the time of her arrest, as such expired on December 19, 2025, and she has not received an extension of the same. *Olson Dec.*, Ex. B. Petitioner appears to acknowledge this in pleading that she has applied, but not received, an extended DACA grant. (ECF 1, ¶3); 8 CFR § 236.21(d) (stating that then-current grants of DACA "expire according to their existing terms."). And even if Petitioner did have valid, unexpired DACA, such would not prevent either removal proceedings, nor her detention. *See* 8 CFR § 236.21(c)(1) ("A grant of deferred action under this section does not preclude commencing removal proceedings at any time or prohibit DHS or any other Federal agency from initiating any criminal or other enforcement action at anytime."). No violation of Due Process has therefore occurred by initiating removal action against Petitioner and detaining her even if she had DACA.

Petitioner's second claim regards a violation of the Administrative Procedures Act. It is black-letter law that habeas petitioners are limited to challenging the fact or duration of their confinement, not the agency policies governing it. *Spencer v. Haynes*, 774 F.3d 467, 469-71 (8th Cir. 2014); *Kruger v. Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996). Thus, the Court cannot take up Petitioner's sweeping challenge to how federal agencies interpret and apply § 1225, how they adhere to BIA precedent, or how they make detention decisions as to other individuals. Petitioner is not the first habeas litigant to sneak civil claims into a habeas action. But this Court consistently rejects such tactics. Just a few months ago, a

report and recommendation in a different habeas case decried the practice as "Frankenstein pleading" that "unduly broadens the narrow scope of habeas corpus and combines proceedings with incompatible procedural rules." *Patel v. Noem*, 2025 WL 2823561, at *2 (D. Minn. Sept. 12, 2025), *adopted by* 2025 WL 2821375 (D. Minn. Oct. 3, 2025); *see also Canada v. Olmsted County Cmty. of Corrs*, 2022 WL 607482, at *8 (D. Minn. Mar. 2022) (citing District of Minnesota authority). Petitioner is free to file a new civil action to pursue APA claims, but they are not properly before the Court in a petition for a writ of habeas corpus.

Petitioner's third claim fails because she is not detained under Section 1226(a). Petitioner is therefore not entitled to a bond hearing under section 1226(a).

Petitioner's fourth claim fails on the facts and law. First, as stated, Petiitoner does not currently have a valid grant of DACA, as such expired. This grant of DACA was not terminated, and therefore does not require notice and an opportunity to be heard prior to ending. Further, while Petitioner is correct that even if she still had a valid grant of DACA that would classify her as "lawfully present" such "lawful presence" only applies for the purposes of applying for social security benefits. *See* 8 CFR § 236.21 (c)(3) ("DACA recipient considered "lawfully present" under the provisions of 8 CFR § 1.3(a)(4)(vi) (allowing certain unlawful immigrants to apply for social security benefits)). Petitioner's *Accardi* claim, even if applicable in immigration habeas, therefore fails.

Finally, Petitioner's claim under substantive due process fails, as Petitioner cites no caselaw, binding or otherwise, that mandates or even suggests that the *Matthews* factors

apply to immigration detention, especially here where Petitioner concedes mandatory detention applies.

First, it is Petitioner's sole burden to prove the requisite facts entitling relief. *Copenhaver*, 355 F.2d at 422. Here, besides nakedly stating Petitioner has valid DACA, the Petition fails to identify to provide proof that the same has not expired as shown by DHS.

Second, Petitioner's claim fails to sound properly under Fifth Amendment Due Process. 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 Dept. 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.*

A. Petitioner's Procedural Due Process Claim is Meritless.

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 her 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's 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 baseless believes necessary to justify her detention, even though those factors are irrelevant under § 1225(b)(2)(A).

Put differently, Congress decided as a substantive policy matter to impose mandatory detention on all applicants for admission, like Petitioner. Whether se 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.

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, previously 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, explaining 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. But 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 her 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 Reno v. Flores*, 507 U.S. 292, 308 (1993) (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 that the statutory scheme deemed "*irrelevant*" as a "substantive due process").

It follows that Petitioner's desire to use *Mathews* to evaluate her claims is therefore 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, Petitioner contends 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.

Likewise, caselaw leaves no place for an individualized "multi-factor reasonableness test" in judging whether a due process violation had occurred. *Banyee v. Garland*, 115 F.4th 928, 933 (8th Cir. 2024) *abrogating Muse v. Sessions*, 409 F. Supp. 3d 707, 715 (D. Minn. 2018) (applying multifactor individualized test in considering whether

alien's continued detention was reasonable in habeas case). Though the *Mathews* holding has been used to make individualized assessments relating to individual petitions, *see, e.g.*, *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1154 (D. Minn. 2025); *Selvin Adonay E.M. v. Noem*, -- F.Supp.3d --- (D. Minn. 2025), the holding itself does not deal with individualized assessments, but whether the administrative procedure of a given statutory scheme provides due process. The *Mathews* test would be an improper test, even if Petitioner's claims sounded in procedural due process.[3]

3. 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). Petitioner 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 she was entitled to a bond hearing to determine if her detention was justified. *Id.* at 281. She 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,

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

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 detention 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 Supreme 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.* at 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 Eighth Circuit made things even clearer in *Banyee:* "Due process imposes no time limit on detention pending deportation[.]"115 F.4th at 930 (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 in *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 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. 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 a trite statement, but one worth making in discussing *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 solvent meant to enervate plain statutory mandate, but an analytical tool for determining whether a statute comports with fundamental notions of fairness. *See United States v. Salerno*, 481 U.S. 739, 745 (1987) (describing "substantive" and "procedural" due process).

A successful due process challenge generally finds two results: By the court declaring a statute is facially unconstitutional, or that it is unconstitutional as applied to a party involved. *Salerno*, 481 U.S. at 745; *United States 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 generally discouraged as being overbroad. *Id.*, *citing Sabri v. United States*, 541 U.S. 600, 608-09 (2004). As-applied challenges are more fact-specific and apply only to the party before the court. *Minnesota Majority v. Mansky*, 708 F.3d 1051, 1059 (8th Cir. 2013). The difference between a factual and an as-applied challenge lies not in the fundamental constitutional questions, which remain the same in both cases, but to the remedy employed in giving these principles effect. *Stephens*, 594 U.S. 1039-40, *referring to Citizens United v. Fed. Election Comm'n,* 558 U.S. 310 (2010); *U.S. v. Cooper*, 127 F.4th 1092, 1098 (8th Cir. 2025).

Courts have recently begun using *Mathews* as a form of individualized assessment that governs whether a detainee is entitled to another individualized assessment, namely a bond hearing. It is peculiar that *Mathews* has become the fallback test for individualized, as-applied due process challenges to immigration detention, because *Mathews* from its inception was never conceived—and truthfully cannot function—as an individualized test. The very nature of the *Mathews* opinion makes it clear that it applies to statutory schemes, mostly in the form of facial challenges to said schemes. Eighth Circuit precedent makes this abundantly clear. *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 Comm's 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 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 lived too "remote" from the filing location. 51 F.3d 133, 134 (8th Cir. 1995). The court upheld the regulation, applying the *Mathews* factors to find that the ten-day period was sufficient to protect the statutorily created right to appeal, even to the class of "aliens living in remote locations who make reasonable efforts to comply with the regulation." *Id.* at 135. Because it was a procedural due process challenge, the court did not weigh upon any factors but those contemplated in the statutory scheme, namely whether the statute's rules of appeal provided meaningful ability to conduct that appeal. *Id., citing Evitts v. Lucey,* 469 U.S. 387, 393 (1985). The court followed similar procedure and came to similar conclusions in *Holder v. Gonzales*, finding that a strict 30-day limit for mailing an appeal did not violate due process as applied. 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 *sufficiency of the framework itself*, whether at a facial level or as applied.

Petitioner cannot abuse *Mathews* by turning it into an individualized form of relief, a kind of proto-bond-hearing bond hearing. Petitioner is simply asserting in the broadest of terms that he has due process rights, and this somehow requires he have a bond hearing against the express will of Congress. Should the court employ *Mathews* the way Petitioner suggests, it will not actually be applying the *Mathews* factors at all; but rather it will simply create a new substantive due process right out of thin air, and on a basis significantly less rigorous than that required by *Washington v. Glucksberg*. 521 U.S. 702, 720-21 (1997).

2. *Mathews* does not entitle Petitioner to bond hearing or release.

Even presuming *Mathews* supplies an avenue for relief, Petitioner is not entitled to a bond hearing, whether under § 1226(a) or any other framework. Put simply, once DHS establishes 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 or release. Make no doubt: Courts have previously read into detention statutes constitutional saving graces to avoid striking them down for due process violation. Courts 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*, 533 U.S. at 706 ("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. at 297. 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 to this point disappeared with *Avila*. If § 1225(b)(2) really does run afoul of due process, whether by the *Mathews* factors or otherwise, the canon of constitutional avoidance cannot be used to "save" it by requiring a bond hearing or release. A statute that unambiguously requires detention without bond cannot be read to now require bond without running against the basic logic of statutory interpretation, and flying in the face of Congress's clearly asserted will.

If due process renders the clear meaning of the statute unenforceable, it is a de facto declaration that the statute is unconstitutional, either on its face or as-applied. And that is what Petitioner is doing—he simply wants § 1225(b)(2) to require a bond hearing. But to say that a statute mandating detention without a bond hearing *requires* a bond hearing is just to say that the statute is not enforceable.

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 her removal proceedings does not implicate any fundamental rights. 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. "[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.'" *Glucksberg*, 521 U.S. at 720-21. While the Fifth Amendment prohibits the government from depriving an alien of her liberty without due process of law, "that right affords no protection against the deprivation of liberty interests that are not constitutionally cognizable." *Sanchez-Velasco v. Holder*, 593 F.3d 733, 737 (8th Cir. 2010) citing *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972); *Movers Warehouse, Inc. v. City of Little Canada*, 71 F.3d 716, 718 (8th Cir. 1995). Ultimately, Petitioner's due process rights extend to the procedures authorized by Congress through the INA.

Nor is there any substantial risk Petitioner will be erroneously deprived of any rights. Petitioner's removal proceedings are continuing apace, where she has and will continue to be a given reasonable opportunity to make a case why the Immigration Judge should grant relief from removal. The existence of removal hearings removes any substantial risk that an alien will be erroneously deprived of her 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, nor has Petitioner argued to the contrary.

In contrast, Federal 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 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*, 163 U.S. at 235 ("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."). As of late 2024, there were 3.7 million cases pending in immigration court.[4] The number is certainly higher today. Further burdening the system with unnecessary bond

[4] M.E. Hammond, *Immigration Court Statistics: Case Outcomes, Backlog, and Impact on Firms* (May 6, 2026), https://www.docketwise.com/blog/immigration-court-statistics/

hearings is manifestly against "sovereign prerogative." Petitioner's claim therefore fails under *Mathews* even if such is applicable to those detained under 1225(b)(2). *See, e.g., Eliseo C. v. Blanche*, 26-cv-02282 (ECT/SGE) (D. Minn. June 29, 2026) (concluding that mandatory detention under section 1225 does not violate Due Process and serves a proper purpose – to effectuate removal proceedings).

IV. EVIDENTIARY HEARING

Federal 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 and can be decided as such.

To the extent the Court is inclined to hold an evidentiary hearing, Federal Respondents would seek to understand why the Petition is premised on a material misrepresentation personally verified by Petitioner's Counsel, who as an officer of the Court, has duty of due diligence.

CONCLUSION

Petitioner's habeas petition was improperly filed; alternatively, Petitioner is lawfully detained, and each challenge fails. The Petition must therefore be denied.

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