IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Petra Rosas Huerta,

Petitioner,

v. Case No. 0:26-cv-03077(NEB/JFD)

Schilling; et al.,

Respondents.

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

On July 1, 2026, Federal Respondents in the instant case filed a response in opposition to Petitioner's Writ of Habeas Corpus. Respondents argue that under *Avila v. Bondi,* No. 25-3248 (8th Cir. Mar. 25, 2026), this Court is required to deny Petitioner's habeas petition. Dkt. 8. While *Avila* limits statutory arguments regarding detention under 8 U.S.C. § 1225 and § 1226, the decision leaves the door open for due process claims. *See Chourio Herrera v. Bondi,* 26-cv-01895-JMG-DLM (D. Minn. March 25, 2026) (acknowledging precedent in the Eighth Circuit but finding offensive due process violations and granting the immediate release of Petitioner). Ms. Rosas Huerta's due process rights have been violated, and her habeas petition should be granted.

Respondents argue that this case is straightforward and fully controlled by *Avila v. Bondi,* 170 F.4th 1128 (8th Cir. 2026). But Respondents overstate both the reach of *Avila* and the relief foreclosed by it. The petition raises two distinct questions: first, whether Petitioner, who was arrested in the interior of the United States after years of physical presence here, including many years as a DACA recipient, is lawfully classified for detention purposes under 8 U.S.C. § 1225 rather than 8 U.S.C. § 1226; and second, whether due process permits her continued civil detention without any individualized custody hearing. Respondents do not persuasively resolve either question on this record.

I. The Petition is properly verified.

Federal Respondents argue that because the Petition was not signed by Petitioner, it should be denied. Under 28 U.S.C. § 2242, an "application 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*." (emphasis added). A person acting on behalf of a habeas petition might sign and verify the petition because of the petitioner's "inaccessibility, mental incompetence, or other disability." *Whitmore v. Arkansas*, 495 U.S. 149, 163 (1990). One Court in the early 1900s stated that it was a "frequent practice" to present habeas petitions "in deportation cases signed and verified by others than the person detained" because "often for lack of time, . . . it [is] impossible to present a petition signed and verified by the person detained." *United States ex rel. Funaro v. Watchorn*, 164 F. 152, 153 (S.D.N.Y. 1908).

Federal Respondents alleged this same perceived issue in *Vu V. L. v. Mullin*, and the Court found that especially in cases where the Petitioner is held in ICE custody. "As

courts in this District have observed over the last several months, ICE has been less than diligent in communicating with detainees and their counsel regarding a detainee's circumstances of detention and has 'transferred detainees frequently, quickly, without notice, and often with no way for attorneys to know where or for how long their clients will be at a given facility.'" No. 26-cv-2947 (LMP/JFD), 2026 U.S. Dist. LEXIS 145553, at *7 (D. Minn. July 1, 2026). The Court noted that "these circumstances-notably, created by the Government-no doubt present the sort of 'inaccessibility' and 'lack of time' that justifies an attorney to act on a petitioner's behalf in signing and verifying a habeas petition." *Id.* (citing *Whitmore*, 495 U.S. at 163).

Likewise in Petitioner's case, Ms. Rosas Huerta is detained in Crow Wing County Jail. It was Petitioner's and Petitioner's Counsel's goal to file the habeas petition as soon as possible to avoid transfer outside of Minnesota. Due to time constraints and limited access to Petitioner, counsel signed the verification of the habeas petition, as is permitted by statute. Petitioner understands the concerns the government raises regarding the potential for misrepresentations when the Petitioner does not verify the petition. Petitioner and her counsel apologize for the error in stating that Ms. Rosas Huertas has valid DACA through July 2027, stated in paragraph 27 and 65 of her Petition. However, Petitioner and Counsel also contend that it was made clear in various sections of the Petition that her DACA expired in December 2025 and she timely filed her renewal, which remains pending. *See* Dkt. 1 at ¶¶ 3, 24, 30, 32, 33, 71, 76, 85, 91. Petitioner has also provided this Court with evidence of her pending renewal, and her previous grant of her work authorization under the DACA category.

This habeas Petition should not be denied "simply because it lacks [Petitioner's] John Hancock." *Vu V. L.* at *8; *See Quinn v. Dooley*, 2003 DSD 14, 272 F. Supp. 2d 839, 845 (D.S.D. 2003) (explaining that a court, "if it sees fit, may disregard" defects in the verification of a habeas petition). Prior to filing the Petition, counsel undertook reasonable steps to verify the factual allegations contained therein. Counsel was retained on June 24, 2026 and obtained Petitioner's complete immigration file from prior counsel, including Petitioner's previous DACA applications and supporting documentation. Counsel reviewed USCIS notices, prior filings, and the administrative record available at the time. Counsel also communicated with Petitioner's family to the extent possible. Counsel verified the Petition in good faith while acting on Petitioner's behalf, as expressly authorized by 28 U.S.C. § 2242. Even if the Court were to conclude that the verification was somehow deficient, dismissal would not be the appropriate remedy. Because any defect is procedural rather than jurisdictional and readily curable, the proper course would be to permit Petitioner to submit a signed verification or to amend the Petition rather than deny review of substantial constitutional claims on a technicality.

II. Respondents do not show that Petitioner's detention is properly governed by 8 U.S.C. § 1225.

The Government's position depends on treating Petitioner as an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). But the response largely assumes that conclusion rather than demonstrating why it follows here.

The petition alleges that Petitioner has lived in the United States for over two decades and was arrested in the interior of the country in June 2026, after which she was

taken into ICE custody and placed into removal proceedings. On those alleged facts, Petitioner's detention does not resemble the ordinary border-detention context historically associated with § 1225. As the petition explains, the INA establishes distinct detention frameworks, and detention of noncitizens arrested and held during ongoing removal proceedings inside the United States has generally been governed by § 1226.

Respondents answer this by invoking *Avila* and by stating that DHS initiated removal proceedings under § 1225(b). But the Government's charging choice does not itself resolve the legal question. The issue before this Court is not merely how DHS labeled Petitioner's detention, but whether that classification is lawful. A detention scheme cannot become correct solely because the agency has chosen to apply it. Notably, in the DHS warrant filed by Respondents, Form I-200, the document clearly states that the authority for the detention is pursuant to INA § 236, 8 U.S.C. § 1226. Dkt. 8-5. In another case decided by Judge Tunheim, the Court decided that the detention was unlawful because Respondents represented to the Petitioner that "he was not subject to mandatory detention under § 1225(b)(2) because they invoked the discretionary detention provisions of 8 U.S.C. § 1226 in the Form I-200 administrative warrant." Because Federal Respondents represented to Petitioner that his arrest was based on § 1226(a), "the Court [] [held] Respondent to those representations." *Hector J.A.S. v. Shea*, No. 26-2242 (JRT/DLM), 2026 LX 281670, *4 (D. Minn. May 6, 2026). In the present case, Respondents made this same representation to Petitioner that her arrest and detention were invoked under 8 U.S.C. § 1226.

Petitioner therefore maintains that Respondents have not established, on the present record, that § 1225 categorically governs her detention rather than § 1226.

III. Respondents read *Avila* too broadly.

Respondents repeatedly contend that *Avila* disposes of every claim in the petition. That goes too far. To be sure, *Avila* is serious authority and Petitioner does not minimize it. However, binding precedent must be applied with attention to the issues actually presented and the facts actually before the Court. Respondents cite *Avila* as though it automatically bars any challenge by any noncitizen who entered without inspection and was later detained by ICE. The response does not engage whether Petitioner's specific custody posture, duration of presence in the United States, or procedural setting leave room for habeas review of the legal basis for detention.

At minimum, *Avila* does not erase the Court's role in determining whether the Government is detaining this particular petitioner under the correct statutory authority. Nor does it eliminate habeas review of whether the Constitution permits continued detention with no individualized hearing at all. Even if *Avila* rejects part of Petitioner's statutory theory, Respondents still must show that no relief remains available on the record here. They have not done so.

In fact, the Fifth Circuit recently held that the burden is on the executive branch to provide bond hearings through its own procedures, and these procedures "cannot include ignoring the Constitution." *Sosnava Rodriguez v. Ortega*, No. 26-50183 (5th Cir. 2026) at 4. The Court states that "the Government's focus on what a statute does not provide ignores that any 'right to due process is conferred, not by legislative grace, but by

constitutional guarantee." *Id.* (quoting *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985)). Finding that the Fifth Amendment protects individuals like Petitioner from "unreasoned, indefinite detention," the Court made clear that noncitizens have procedural due process rights that must be upheld regardless of what statute they are detained under. *Sosnava Rodriguez* at 31.

IV. Petitioner's due process claim is not merely a challenge to Congress's policy preferences.

Respondents attempt to recast Petitioner's due process claim as a pure substantive attack on Congress's decision to mandate detention for certain noncitizens. That characterization is incomplete.

Petitioner is not simply arguing that Congress made a bad policy choice. She argues that she is being deprived of physical liberty through civil detention without any meaningful opportunity to test whether her confinement is legally authorized and constitutionally necessary. The petition seeks a bond hearing because that is the procedural mechanism through which an immigration judge can determine whether continued detention is justified.

Respondents say flight risk and dangerousness are irrelevant under their reading of § 1225. But that simply restates their statutory premise. It does not answer the constitutional problem. If the Government may jail a person throughout removal proceedings without any individualized hearing, based only on a contested legal classification and without any inquiry into whether detention remains necessary, then the risk of erroneous and unnecessary deprivation of liberty is substantial.

Petitioner's claim therefore has a genuine procedural dimension: whether some meaningful custody process is constitutionally required before the Government may continue civil detention under these circumstances.

V. The Government's cited cases do not eliminate habeas review here.

Respondents rely on *Demore v. Kim*, *Department of Homeland Security v. Thuraissigiam*, *Landon v. Plasencia*, *Banyee v. Garland*, and *Connecticut Department of Public Safety*. None requires denial of the petition on this record.

First, the Government cites *Demore* and *Banyee* for the proposition that detention during removal proceedings can be constitutionally valid. But that general proposition does not answer the more specific question here: whether this Petitioner's detention is being carried out under the correct statute and with constitutionally sufficient process. *Banyee* "addresses the constitutionality of the length of the detention under Section 1226(c). It does not foreclose interest balancing to the decision to detain any noncitizens." *Felipe S.P. v. Blanche*, No. 26-CV-2212 (NEB/DJF), 2026 U.S. Dist. LEXIS 146671, at *17 (D. Minn. July 2, 2026).

Second, Respondents' reliance on *Thuraissigiam* and *Landon* overstates the effect of the "entry fiction." Petitioner is not seeking admission at a port of entry, nor is she challenging the Government's broad power over admission in the abstract. She is physically present in the United States with established connections in this country and challenging ongoing civil detention imposed after an interior arrest. Habeas review remains available to test the legality of that detention.

Third, the Government's use of *Connecticut Department of Public Safety* is inapt. Petitioner is not asking for a hearing on facts wholly irrelevant to the statutory scheme. She is contesting the very statutory basis for the detention regime being imposed on her and seeking process directed to the deprivation of her liberty. That is not a "bootless exercise"; it is the essence of habeas review.

VI. Respondents do not address the petition's core concern that current agency practice has collapsed the distinction between §§ 1225 and 1226.

The petition alleges that DHS and EOIR have adopted a new practice of treating noncitizens arrested inside the United States as mandatory detainees under § 1225 based solely on prior entry without inspection. The petition cites that practice as a break from the longstanding understanding that interior detention pending removal proceedings ordinarily proceeds under § 1226.

Respondents do not seriously engage that concern. Instead, they say that *Avila* now resolves the matter. But that response leaves unanswered the fundamental statutory issue raised by the petition: whether the Government may effectively erase the traditional distinction between border applicants for admission and persons arrested in the interior during removal proceedings.

That question is too important to be dismissed by assertion alone, particularly where the consequence is automatic civil detention without bond.

VII. At minimum, outright denial is not warranted on the present record.

Even if the Court concludes that some portion of Petitioner's original statutory theory is in tension with *Avila*, Respondents still have not shown that immediate denial of the petition is warranted.

The record, as presented in the briefing, leaves unresolved matters bearing on the legality and constitutional sufficiency of Petitioner's detention, including the precise basis on which DHS classified her under § 1225, the status and expected duration of removal proceedings, the scope of any available relief from removal, and whether continued detention without a custody hearing comports with due process in these circumstances. If factual clarification is necessary, the appropriate course is supplementation of the record or further proceedings, not a summary rejection of the petition.

CONCLUSION

For these reasons, the Court should reject Respondents' request to deny the petition outright. The Court should grant the writ, declare that Petitioner's detention has been unlawfully classified, and order that he receive the custody process available under 8 U.S.C. § 1226. At minimum, the Court should order a prompt individualized bond hearing before a neutral adjudicator at which the Government bears the burden of justifying continued detention.

Date: July 7, 2026

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 7, 2026, I filed the foregoing reply brief electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

Respectfully submitted, Dated: July 7, 2026

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