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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHAO YE, [redacted]

Petitioner,

v.

WARDEN, CALIFORNIA CITY, *et al.*,

Respondents.

No. 1:26-cv-05291-DJC-SCR

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

## INTRODUCTION

Petitioner is a citizen and national of China who entered the United States unlawfully. He was encountered at the border in December 2024, has never entered the United States, and has remained in immigration detention as he pursues an administrative appeal of his removal order to the Board of Immigration Appeals. Petitioner asserts that his "prolonged" detention without a bond hearing violates the Due Process Clause. That assertion lacks merit, and thus Petitioner's habeas petition should be denied.

## FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of China who was encountered by a Border Patrol Agent on or about December 2, 2024, near Dulzura, California. It was determined that Petitioner

unlawfully entered the United States near Tecate, California from Mexico. Petitioner was turned over to the San Diego Central Processing Center for processing and served with a Notice and Order of Expedited Removal (I-860) and a Notice to Alien Ordered Removed/Departure Verification (I-296). Exhibit 1 (I-213). Petitioner has remained continuously in immigration custody for approximately nineteen (19) months. ECF 1 pg. 9, ¶ 26.

Petitioner subsequently expressed a fear of returning to China. After an asylum officer found that Petitioner had "demonstrated a credible fear of persecution or torture," DHS put Petitioner into regular removal proceedings, charging that he was "an alien present in the United States who has not been admitted or paroled." Exhibit 2 (Notice to Appear).

Petitioner applied for various forms of relief from removal. ECF 1 pg. 16, ¶ 57, 59 (Petitioner amended his claims for relief on June 25, 2025 and October 22, 2025).[1] On or about March 19, 2026, an Immigration Judge denied Petitioner's applications for relief. Exhibit 3 (removal order). Petitioner timely filed an appeal of that decision. The appeal has been briefed and is now pending before the Board of Immigration Appeals ("BIA"). ECF 1 pg. 16, ¶ 60; *see* EOIR Automated Case Information available at https://acis.eoir.justice.gov/en/caseInformation (enter A No. 241-304-275 and China).

## ARGUMENT

Petitioner's due process claim fails as a matter of law on undisputed facts.

### I. Section 1225(b)(1) mandates Petitioner's detention without a bond hearing.

The detention authority in this case is 8 U.S.C. § 1225(b)(1)(B)(ii), which provides that if an asylum officer "determines at the time of the interview that an alien has a credible fear of persecution . . . , the alien **shall be detained** for further consideration of the application for

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[1] These amendments likely prolonged Petitioner's removal proceedings and in turn his detention. Respondents do not believe any balancing or multi-factor test is appropriate for the reasons discussed in this opposition brief, but to the extent the Court employs any such test, this delay should tip the scales in favor of the reasonableness of Petitioner's continued detention. Here, there is no claim that the government has delayed Petitioner's removal proceedings.

asylum" (emphasis added). Thus, Petitioner's APA claims fail because his continued detention while he challenges his removal order is explicitly mandated by law.

**II. The Due Process Clause does not override the statute.**

For several independent reasons, due process does not mandate otherwise.

**A. Petitioner has no procedural rights beyond those granted by the INA.**

Petitioner's due process claim for rights not afforded by the governing statute is foreclosed by *DHS v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020). In that case, the Supreme Court ruled that "an alien who tries to enter the country illegally is treated as an 'applicant for admission,' § 1225(a)(1)," and that such an alien "has only those rights regarding admission that Congress has provided by statute." *Id.* at 140. Crucially, "the Due Process Clause provides nothing more." *Id.* In so holding, the Court reiterated the "important rule" that "as to '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.' " *Id.* at 138 (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)); *see also, e.g., Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." (internal quotation marks omitted)). Indeed,"[f]or over a century, whenever Congress has granted the Executive authority to detain aliens pending removal proceedings, the Supreme Court has repeatedly upheld such detention as consistent with the Constitution. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1217 (9th Cir. 2022) (Bumatay, J. concurring).[2]

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[2] "Due process, the Court said, 'does not require [the government] to employ the least burdensome means to accomplish its goal,' . . . so courts must usually defer to Congress's view of what is necessary to effect removals." *Id.* at 1218 (quotations omitted). "Consistent with due process, Congress may grant the Executive the authority to detain aliens during removal proceedings—with or without bond hearings. And so long as the government follows reasonable, individualized determinations to ensure that the alien is properly in removal proceedings, due process does not require more bond hearings even after a prolonged period." *Id.*

Courts in this District and elsewhere have purported to distinguish this authority on the basis that it "addresses due process rights regarding **admission** into the country — not detention." *E.g., R.C. v. Murray*, 2025 WL 3648143, at *3 (E.D. Cal. Dec. 16, 2025) (Sherriff, J.). Respectfully, that distinction does not hold. Petitioner is an "applicant for admission" under § 1225(a)(1), which provides that an "alien present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission." Indeed, *Thuraissigiam* explained that Congress "addressed" the problems of flight risk and the high costs of detention "by providing more expedited procedures for certain 'applicants for admission.'" 591 U.S. at 108. And despite its singular use of the phrase "regarding admission," *Thuraissigiam* also makes broad reference to the "due process rights" of aliens at the threshold of entry, without drawing forced distinctions between admission and other key aspects of the immigration process — such as detention — with which admission is typically intertwined. *Id.* at 139; *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure.").

In sum, as an applicant for admission, Petitioner is due the process that Congress has given in the INA. That process includes mandatory detention while petitioner exercises any statutory rights to apply for relief from removal.

**B. Alternatively, detention during *pending* proceedings is constitutionally valid.**

Even if *Thuraissigiam* does not apply to detention, the Eighth Circuit has cogently explained that nonetheless the "rule has been clear for decades: 'detention during deportation proceedings is constitutionally valid.'" *Banyee v. Garland*, 115 F.4th 928, 931 (8th Cir. 2024) (cleaned up; quoting *Demore v. Kim*, 538 U.S. 510, 523 (2003)). Because "Congress may make rules as to aliens that would be unacceptable if applied to citizens," the government "may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings." *Id.* (quoting *Demore*, 538 U.S. at 526); *contra, e.g., German Santos v. Warden, Pike County Correctional Facility*, 965 F.3d 203, 211 (3d Cir. 2020).

No Supreme Court authority "suggests that length determines legality. To the contrary, what matters is that detention pending deportation 'has a definite termination point' — deporting or releasing the alien — making it 'materially different' from the 'potentially permanent' confinement authorized by other statutes." *Banyee*, 115 F.4th at 932 (quoting *Demore*, 538 U.S. at 528–29). Indeed, *Zadvydas v. Davis*, 533 U.S. 678, 697 (2001), drew precisely this definite-versus-indefinite distinction, imposing constitutional limits (if at all) only on the latter kind of detention. Therefore, the Supreme Court "has suggested that keeping aliens locked up when deportation is only 'a remote possibility' would also pose a constitutional problem. But not, as in this case, when deportation is still on the table."[3] *Banyee*, 115 F.4th at 933 (quoting *Zadvydas*, 533 U.S. at 690).

As the Eighth Circuit further explained, governing Supreme Court authority "leave[s] no room for a multi-factor 'reasonableness' test" of the kind exemplified by *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), because "*Zadvydas* and *Demore* have already done whatever balancing is necessary." *Banyee*, 115 F.4th at 933. That authority opts "for a bright-line rule instead: the government can detain an alien for as long as deportation proceedings are still 'pending.' " *Id.* (quoting *Demore*, 538 U.S. at 527); *accord Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022) (acknowledging that "the Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*," but "assum[ing] without deciding that *Mathews* applies here"); *id.* at 1214 (Bumatay, J., concurring) (noting that in "resolving similar immigration-detention challenges, the Supreme Court has not relied on the *Mathews* framework").[4]

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[3] The Supreme Court in *Zadvydas* further found "that the words '"may be detained"' [in 8 U.S.C. § 1231(a)(6) are] consistent with requiring release from long-term detention." *Jennings v. Rodrgiuez*, 583 U.S. 281, 311 (2018). However, this finding rested on section 1231(a)(6)'s use of the word "may" which is permissive, which the Court contrasted with section 1225(b)(1)(B)(ii)'s use of the word "shall," which is a not permissive or discretionary. 583 U.S. at 310–11.

[4] The *Mathews* framework does not apply for yet another reason: Petitioner lacks what this Court has called "a liberty interest in his continued freedom." *C.R.J.M. v. Kennedy*, No. 2:26-cv-

(continued...)

As in *Banyee*, Petitioner's removal proceedings are still pending: "Recall that he is waiting for a decision on his appeal after the immigration judge" found him removable. 115 F.4th at 933. The crucial fact is that Petitioner is not being categorically detained against her will; rather, he is being detained only because and while he pursues the statutory rights that Congress has afforded him to challenge his otherwise certain removal on numerous grounds — i.e., asylum, withholding under § 1231(b)(3), withholding under CAT, and deferral under CAT. In other words, a detained alien like Petitioner " 'has the keys in his pocket' and can 'end his detention immediately' by 'withdrawing his defense and returning to his native land.' " *Banyee*, 115 F.4th at 933 (cleaned up; quoting *Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999)).

**C. Further in the alternative, generally applicable due process principles preclude relief here.**

Putting aside the Supreme Court's immigration-specific due process caselaw, that Court's general due process jurisprudence compels the conclusion that the Due Process Clause does not entitle Petitioner to a bond hearing.

Due process claims are of two types. A procedural due process claim takes as given the substantive determinations that would justify a deprivation of life, liberty, or property, but challenges the "adequacy of the[] procedures" for making those determinations. *Mathews*, 424 U.S. at 335. By contrast, a substantive due process claim challenges the substance of the determinations themselves, arguing that they are inadequate to justify the deprivation "at all, no matter what process is provided." *Reno v. Flores*, 507 U.S. 292, 302 (1993). The relevant "determinations" here are those imposed by § 1225(b)(1): if it is determined that an alien both

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00742-DJC-EFB, 2026 WL 809940, at *1 (E.D. Cal. Mar. 24, 2026). In particular, this Court has opined that "individuals released from ICE custody have a protected interest in remaining out of custody. Petitioner has remained in this country and out of custody for over a decade. Therefore, Petitioner has a clear liberty interest in his continued freedom, and the Court must determine what process is due." *Id.* (citations omitted). By contrast, in this case, Petitioner has **never** been "released from ICE custody," and so he has **never** "remained in this country and out of custody." Therefore, Petitioner has **no** "liberty interest in his continued freedom" as that term has been used by the Court.

(1) "is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title," § 1225(b)(1)(A)(i); and (2) "has a credible fear of persecution," § 1225(b)(1)(A)(i), then "the alien shall be detained for further consideration of the application for asylum."

*Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), illustrates the point. The statute in that case required sex offenders to register with the State so that 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, 8. The Supreme Court rejected Doe's claim, holding that "[p]laintiffs 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." *Id.* at 8; *see also id.* at 4 ("due process does not require the opportunity to prove a fact that is not material to the State's statutory scheme"). But what Doe sought precisely to establish — that he was "not currently dangerous" — was "of no consequence" under the statute, which required him to register based on his prior conviction alone. *Id.* at 7. The Court concluded that because "any hearing on current dangerousness" would be "a bootless exercise" under the statute's "substantive rule of law," Doe's procedural due process claim failed: any claim that he was entitled to such a hearing "must ultimately be analyzed in terms of substantive, not procedural, due process." *Id.* at 7–8.

Accordingly, Petitioner has no procedural due process right to a bond hearing on whether he is a flight risk or danger to the community. Individualized findings about flight risk and danger are simply irrelevant under § 1225(b). As in *Doe*, 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 8; *see also 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).

When properly analyzed in terms of substantive due process, Petitioner's claim fails. The substantive component of the Due Process Clause "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Department of State v. Munoz*, 602 U.S. 899, 910 (2024) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997)). But the Clause specially protects only "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Id.* (quoting *Glucksberg*, 521 U.S. at 721). The purported right to a bond hearing during the pendency of removal proceedings does not come close to qualifying as such a right: "prior 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.

Moreover, § 1225(b)(1) easily passes the rational basis test. In *Demore*, the Supreme Court considered a "substantive due process" challenge to detention under 8 U.S.C. § 1226(c). 538 U.S. at 515. Like Petitioner here, the petitioner in *Demore* "argued that his detention under § 1226(c) violated due process because the [government] had made no determination that he posed either a danger to society or a flight risk." *Id.* at 514. The Supreme Court rejected that claim, explaining that its cases had long "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process," because "deportation proceedings 'would be vain if those accused could not be held in custody pending the inquiry into their true character.' " *Id.* at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *see also id.* at 526 (reiterating the "Court's longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings"). Therefore, because "[d]etention during removal proceedings is a constitutionally permissible part of that process," the Court ruled that the alien's substantive due process "claim must fail." *Id.* at 531. In so ruling, *Demore* expressly distinguished the Court's prior decision in *Zadvydas*, 533

U.S. at 693, which addressed the constitutionality of indefinite detention after a final order of removal under a different provision of the INA. *Id.* at 682, 690, 692.

The same rational basis for upholding mandatory detention under § 1226(c) applies equally to § 1225(b)(1). Petitioner's properly characterized substantive due process claim fails.

* * *

In sum, the Due Process Clause does not override the detention of Petitioner mandated by 8 U.S.C. § 1225(b)(1).

**CONCLUSION**

For all the foregoing reasons, the petition for writ of habeas corpus should be denied.

Dated: July 16, 2026

Respectfully submitted,

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