UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

MAYANKKUMAR RATILAL PATEL,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No. 1:26-CV-00079-MTS**
	)	
WARDEN, STE. GENEVIEVE COUNTY DETENTION CENTER	)	
	)	
Respondent.	)	

GOVERNMENT'S RESPONSE TO PETITION FOR RELIEF PURSUANT TO 28 U.S.C. § 2243

COMES NOW Respondent "Warden, Ste. Genevieve County Detention Center,"[1] in his official capacity, by and through his attorneys, Thomas C. Albus, United States Attorney for the Eastern District of Missouri, and Shane K. Blank, Assistant United States Attorney for said district, and for his Response in accordance with 28 U.S.C. § 2243, states as follows:

I. BACKGROUND

Petitioner is neither a citizen nor a national of the United States, but is rather a citizen of India. Pet., ¶ 1. Petitioner entered the United States without inspection in 2020 and has lived in the United States ever since. Pet., ¶¶ 7-9. Petitioner was recently detained by Immigration and Customs

[1] Petitioner argues he is held under the control of "Ste. Genevieve County Detention Center." Pet., ¶ 2. As such, he must name the local warden as required by U.S. Supreme Court precedent. See Rumsfeld v. Padilla, 542 U.S. 426, 436 (2004) ("[L]ongstanding practice confirms that in *habeas* challenges to present physical confinement—core challenges—the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." (cleaned up)). At first blush, this may strike Petitioner as particularly pedantic; nevertheless, 28 U.S.C. § 2242 must be satisfied. See 28 U.S.C. § 2242 (petitioner "shall … name the person who has custody over him"). One can debate whether "Warden of St. Genevieve Detention Center" accomplishes the job of naming "the person" who has custody; in any case, the correct Respondent is Gary Stolzer.

Because of intergovernmental service agreements, the undersigned AUSA represents Gary Stolzer solely regarding this current immigration *habeas* matter involving a person detained at his jail facility.

Enforcement (ICE) and is now in custody at the Ste. Genevieve County Detention Center awaiting completion of removal proceedings. Pet., ¶ 2. Respondent is a state official having control over Petitioner's custody through operational agreements with U.S. Immigration and Customs Enforcement (ICE). Petitioner seeks immediate release. Pet., ¶ 69.[2]

Petitioner effectively makes two arguments for release under the Fifth Amendment's Due Process Clause and regulatory framework of a U-Visa applicant/holder. Pet., ¶¶ 26-66. But, ultimately, this case presents the familiar *Hurtado* question—one this Court, the Eighth Circuit, and the Fifth Circuit have already resolved repeatedly and uniformly in the Government's favor. See Avila v. Bondi, 170 F.4th 1128, 1134 (8th Cir. Mar. 25, 2026) (agreeing with the Fifth Circuit that "applicant for admission" and "seeking admission" share the same ordinary meaning, and thus holding that § 1225(b)(2)(A) covers all uninspected aliens who have lived in the United States—even for years—without seeking lawful status); Buenrostro-Mendez v. Bondi, 166 F.4th 494, 501-05 (5th Cir. 2026) (the "ordinary" and "proper" reading of Section 1225(b)(2)(A) is that it applies to all "applicants for admission" who are "seeking admission," which itself embraces all who are "present without admission"); Guillen v. Johnson, 2026 WL 601881 (E.D. Mo. Mar. 4, 2026) (Stevens, J.); Pineda v. Noem, 2026 WL 496680 (E.D. Mo. Feb. 23, 2026) (Stevens, J.); Zhuang v. Bondi, 2026 WL 352872 (E.D. Mo. Feb. 9, 2026) (Stevens, J.); Bushuev v. Imm. & Customs Enforcement, 2026 WL 352873 (E.D. Mo. Feb. 9, 2026) (Lanahan, J.); Ramirez v. Noem, 2026

[2] To the extent Petitioner seeks a bond hearing, such bond hearing is a purely procedural step and, thus, any resulting determination would be insulated from judicial review by 8 U.S.C. § 1226(e). See, e.g., Barrajas v. Noem, 2025 WL 2717650 at *5 (S.D. Iowa Sept. 23, 2025) (holding that the court would only consider whether a bond hearing should be ordered at all, but would not "assume the role of immigration judge by deciding bond or detention"); accord Tello v. Barr, 2025 WL 2280544 at *3 (N.D. Cal. Jul. 29, 2025); Lindsay v. Garland, 2024 WL 2967271 at *3 (S.D. Ga. Apr. 30, 2024); Kumar v. ICE Field Office Director, 2022 WL 1721020 at *5 (W.D. Wash. May 2, 2022); cf. Mocevic v. Mukasey, 529 F.3d 814, 817 (8th Cir. 2008) (alien's challenge to IJ's conclusion that he did not meet his burden of proof for asylum was an unreviewable challenge to the IJ's discretion, even if cloaked as a question of law).

WL 251725 (E.D. Mo. Jan. 30, 2026) (Stevens, J.); Cutiopala v. Noem, 2026 WL 113567 (E.D. Mo. Jan. 15, 2026) (Lanahan, J.); Suarez v. Noem, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025) (Divine, J.); Olalde v. Noem, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (Divine, J.); see also Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025) (holding that immigration judges lack jurisdiction to entertain bond requests from aliens who entered without inspection as statutorily mandated by Section 1225(b)(2)(A)). Under this consistent and growing body of authority, Petitioner's *habeas* Petition must be denied.

II. LEGAL STANDARDS

"It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings." Reno v. Flores, 507 U.S. 292, 306 (1993). "Though a procedure for obtaining warrants to arrest named individuals is available, the deportation process ordinarily begins with a warrantless arrest by an INS officer who has reason to believe that the arrestee is in the United States in violation of any immigration law or regulation and is likely to escape before a warrant can be obtained." Id. at 307 (internal citations and quotations omitted).

Nonetheless, arrests and detentions must comply with the law. Under 28 U.S.C. § 2241(c), a district court may issue a writ of *habeas* corpus for individuals held "in violation of the Constitution or laws or treaties of the United States." Id. § 2241(c)(3). The application must "allege the facts concerning ... detention," Id. § 2242, and any unchallenged allegations in the government's response "shall be accepted as true." Id. § 2248. The court may consider oral testimony, depositions, affidavits, and documentary evidence. See Id. §§ 2246, 2247. Upon receipt of the application, the court is required to "summarily hear and determine the facts, and dispose of the matter as law and justice require." Id. § 2243.

In the immigration context, the apprehension and detention of aliens undergoing removal proceedings is governed by Sections 235 and 236 of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1225, 1226. Section 1225(b)(2)(A) mandates detentions for aliens who are seeking admission but are not entitled to it. Section 1226(c) mandates detention only for certain aliens based on specified criminal offenses.

Notably, Judicial review of decisions made during the removal process is limited by statute. Specifically, Section 1226(e) states that a "discretionary judgment regarding the application of this section shall not be subject to review." This limitation pertains solely to "discretionary" determinations regarding how Section 1226 is applied in individual cases. Nielsen v. Preap, 586 U.S. 392, 401 (2019). However, Section 1226(e) does not preclude *habeas* jurisdiction over constitutional issues or legal questions. Singh v. Holder, 638 F.3d 1196, 1202 (9th Cir. 2011); see also Demore v. Kim, 538 U.S. 510, 517 (2003) ("Section 1226(e) contains no explicit provision barring *habeas* review, and ... does not bar respondent's constitutional challenge to the legislation authorizing his detention without bail.").

III. ANALYSIS

As the Government reads the Petition, the dispute reduces to three questions: (1) whether, as a statutory matter, Petitioner—who entered without admission—is eligible for a bond hearing or release under 8 U.S.C. § 1225(b)(2)(A); (2) whether the Fifth Amendment's Due Process Clause has any bearing on the outcome of this case; and (3) whether Petitioner's placement on the U-Visa waitlist has any bearing on the outcome of this case.[3]

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[3] The Petition says nothing about administrative exhaustion. To the extent it might apply, there is little reason to linger on that issue; this Court has already recognized that exhaustion is excusable—and, indeed, unnecessary—where the dispute presents a purely legal question requiring no further factual or procedural development. See Cutiopala v. Noem, 2026 WL 113567 at *1 (E.D. Mo. Jan. 15, 2026) (Lanahan, J.) (addressing the issue of Section 1225(b)(2)(A)'s applicability without requiring exhaustion).

A. This Court, the Eighth Circuit Court of Appeals, and the Fifth Circuit Court of Appeals Have Concluded 8 U.S.C. § 1225(b)(2)(A) Requires Mandatory Detention in Cases Such as This.

By way of background, in late 2025 the Board of Immigration Appeals (BIA) held that immigration judges lack authority to grant bond hearings to aliens who entered the country without inspection because such individuals remain "applicants for admission" as defined by Section 1225(a)(1) and, therefore, must be detained during removal proceedings as required by Section 1225(b)(2)(A). See Matter of Hurtado, 29 I&N Dec. 216, 216-17 (BIA 2025). The central question in *Hurtado* was whether an uninspected alien who has lived in the United States for months or even years without lawful status can, at some point, cease to be an "applicant for admission" such that § 1225(b)(2) would no longer apply. In protecting the sovereign boundaries of the United States, the BIA rejected this idea.[4]

Hurtado prompted much litigation around the country. But this Court does not write upon a blank slate; rather, this Court (repeatedly and uniformly), the Eighth Circuit, and the Fifth Circuit have upheld the core premise of *Hurtado* and concluded that Section 1225(b)(2)(A) governs cases of this kind. See Avila v. Bondi, 170 F.4th 1128, 1134 (8th Cir. Mar. 25, 2026) (agreeing with the Fifth Circuit that "applicant for admission" and "seeking admission" share the same ordinary meaning, and thus holding that § 1225(b)(2)(A) covers all uninspected aliens who have lived in

[4] As the BIA reasoned, "[t]he respondent also contends, however, that because he has been residing in the interior of the United States for almost 3 years (since his November 2022 entry without inspection), he cannot be considered as 'seeking admission' as the phrase is used in [Section 1225(b)(2)]. The respondent's argument is not supported by the plain language of the INA, and actually creates a legal conundrum. If he is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status? The respondent provides no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for a bond hearing under section 236(a) of the INA." Hurtado, 29 I&N Dec. at 221.

the United States—even for years—without seeking lawful status); Buenrostro-Mendez v. Bondi, 166 F.4th 494, 501-05 (5th Cir. 2026) (the "ordinary" and "proper" reading of Section 1225(b)(2)(A) is that it applies to all "applicants for admission" who are "seeking admission," which itself embraces all who are "present without admission"); Guillen v. Johnson, 2026 WL 601881 (E.D. Mo. Mar. 4, 2026) (Stevens, J.); Pineda v. Noem, 2026 WL 496680 (E.D. Mo. Feb. 23, 2026) (Stevens, J.); Zhuang v. Bondi, 2026 WL 352872 (E.D. Mo. Feb. 9, 2026) (Stevens, J.); Bushuev v. Imm. & Customs Enforcement, 2026 WL 352873 (E.D. Mo. Feb. 9, 2026) (Lanahan, J.); Ramirez v. Noem, 2026 WL 251725 (E.D. Mo. Jan. 30, 2026) (Stevens, J.); Cutiopala v. Noem, 2026 WL 113567 (E.D. Mo. Jan. 15, 2026) (Lanahan, J.); Suarez v. Noem, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025) (Divine, J.); Olalde v. Noem, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (Divine, J.).[5]

[5] And although the Petition cites contrary authority, the district court landscape is far from monolithic. A broader survey of decisions reveals that many courts outside this District have endorsed the view that Section 1225(b)(2)(A) applies in circumstances like these, underscoring that Petitioner's position is hardly the consensus it is portrayed to be. See, e.g., Chavez v. Noem, 801 F.Supp.3d 1133, 1140-41 (S.D. Cal. Sept. 24, 2025) (taking a textualist approach, the district court determined that Section 1225(a)(1) applied to "all immigrants who have not been lawfully admitted" and are thus "placed on equal footing in removal proceedings" as understood by Congressional enactment of the IIRIRA); Vargas Lopez v. Trump, 802 F.Supp.3d 1132, 1139-40 (D. Neb. Sept. 30, 2025) (determining that Section 1226 did not apply to petitioner, but instead Section 1225, where Section 1226 is implicated only by an alien "arrested on a warrant issued by the Attorney General," which did not apply in the case; petitioner produced no warrant as proof of Section 1226's application, and therefore the framework of Section 1225 was applicable); accord Guevara v. Easterwood, 2026 WL 278924 at (D. Minn. Feb 3, 2026); Singh v. Chestnut, 2026 WL280210 (E.D. Cal. Feb. 3, 2026); Guillermo v. Bondi, 2026 WL 272403 (D. Minn. Feb. 2, 2026); Acosta v. Arteta, 2026 WL 263470 (S.D.N.Y. Feb. 2, 2026); Higareda-Cano v. Noem, 2026 WL 274495 (N.D. Tex. Jan. 30, 2026); Ramirez v. Holt, 2026 WL 226964 (E.D. Ky. Jan. 28, 2026); Lopez v. Director of Enforcement and Removal Operations, 2026 WL 261938 (M.D. Fla. Jan. 26, 2026); Martinez v. Villegas, 2026 WL 114418 (N.D. Tex. Jan. 15, 2026); Valencia v. Chestnut, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); Alonzo v Noem, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025); Silva Oliveira v. Patterson, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); Barrios Sandoval v. Acuna, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); Sandoval v. Acuna, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); Rojas v. Olson, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); Garibay-Robledo v. Noem, 2025 WL 2638672 (N.D. Tex. Oct. 24, 2025); Pena v. Hyde, 2025 WL 2108913 (D. Mass. July 28, 2025); Pipa-Aquise v. Bondi, 2025 WL 2490657 (E.D. Va. Aug. 5, 2025).

Thus, there is no need to belabor the point. The takeaway is straightforward: any non-citizen present in the United States who has not been "admitted"—that is, who has not lawfully entered into the United States "after inspection and authorization by an immigration officer"—is, by definition, an "applicant for admission" who is "seeking admission," and therefore falls squarely within Section 1225(b)(2)(A)'s mandatory-detention regime. See Avila, 170 F.4th at 1133-1136; accord Buenrostro-Mendez, 166 F.4th at 501-05; see also 8 U.S.C. § 1225(a)(1) (specifying that an "applicant for admission" is anyone who "has not been admitted or who arrives in the United States"); 8 U.S.C. § 1101(a)(13)(A) (the term "admission" and "admitted" mean "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer"); 8 U.S.C. § 1225(b)(2)(A) (an "applicant for admission" who is "seeking admission ... shall be detained"). That mandatory-detention framework applies to Petitioner, here, and therefore *habeas* relief must be denied.

B. Petitioner's Fifth Amendment Due Process Claim Cannot Upend the Eighth Circuit's Decision in *Avila* Regarding Section 1225(b)(2)(A)'s Applicability.

Petitioner advances a bare constitutional claim—an as-applied challenge under the Fifth Amendment's Due Process Clause. This pivot is unsurprising in the wake of the Eighth Circuit's directly-on-point decision in *Avila*, which foreclosed his statutory theory through a straightforward interpretation of Section 1225(b)(2)(A). Instead, Petitioner appears to be signaling reliance on Judge Erickson's dissent, which noted that "[a]fter the Fifth Circuit's decision in *Buenrostro-Mendez*, multiple district courts in the Fifth Circuit have granted similar *habeas* petitions on due process grounds." Avila, -- F.4th --, 2026 WL 819258 at *8, n.8 (Erickson, J. dissenting).

Of course, the Fifth Amendment has much less to say in the context of an uninspected alien. It is true, the Due Process Clause protects any "person" from the unlawful deprivation of life, liberty, or property, and thus extends to non-citizens. Zadvydas v. Davis, 533 U.S. 678, 693 (2001) (reiterating that "once an alien enters the country," he is entitled to due process in his removal proceedings because "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent"). However, substantive due process is rarely implicated, as the Supreme Court's *Glucksberg* test requires that a claimed right be "deeply rooted in this Nation's history and tradition," and the relevant history and tradition—when it comes to aliens—has long recognized the Government's nearly absolute sovereign authority to control its borders. See Dep't of State v. Munoz, 602 U.S. 899, 911 (2024) (holding that a U.S. citizen spouse lacked a substantive due process right to reside with her non-citizen husband because such a right is not "deeply rooted" in the nation's history and tradition); see also Washington v. Glucksberg, 521 U.S. 702, 721 (1997). As the Supreme Court has repeatedly emphasized, immigration law is distinctive: Congress possesses an expansive substantive power, and courts generally expect only that "the Executive branch [to] respect the *procedural* safeguards of due process." Galvan v. Press, 347 U.S. 522, 531 (1954) (emphasis added).

The breadth of Congress's power over immigration stems from the nature of the subject itself. Because it is "inherent in sovereignty" to "maintain normal international relations" and to "defend the country against foreign encroachments and dangers," the substantive power over immigration rests "exclusively [in] the political branches of government." Kleindienst v. Mandel, 408 U.S. 753, 766 (1972). Indeed, "control over matters of immigration," being "a sovereign prerogative" sits "largely within the control of the executive and the legislature." Landon v. Plasencia, 459 U.S. 21, 34 (1982). Constitutional constraints in this realm are, therefore, narrow. They reach only "enactments that shock the sense of fair play, which is the essence of due process," Galvan, 347 U.S. at 530, not any broader right for an alien "to remain against the national will," nor any limitation on Congress's authority to "to remove aliens, to subject them to supervision with conditions when released from detention, or to incarcerate them where appropriate." Zadvydas, 533 U.S. at 695. Thus, only extreme ***procedural*** circumstances—such as *permanent detention* where removal is not reasonably foreseeable, or removal proceedings conducted with virtually *no notice or opportunity to respond*—approach the constitutional line. See, e.g., Id. at 699 (raising constitutional concerns over effectively permanent detention where an alien could not be removed for the forseeable future); A.A.R.P. v. Trump, 605 U.S. 91, 94-96 (2025) (raising constitutional concerns where an alien was given only 24 hours' notice and no information about how to contest their removal). Beyond such outliers, the Due Process Clause has little to say.

In fact, binding Eighth Circuit precedent forecloses Petitioner's constitutional claim. In *Banyee v. Garland*, the Eighth Circuit held that even prolonged detention—more than a year—is constitutionally permissible so long as "deportation remains a possibility." 115 F.4th 928, 933 (8th Cir. 2024) ("Detention during deportation proceedings [i]s ... constitutionally valid."). Further, it rejected the sort of individualized balancing test urged by Petitioner. Id. at 933 ("Indeed, the lead dissent in *Demore* advocated for the type of 'individual determination' Banyee now seeks, presumably under a *Mathews*-type inquiry. The majority opted for a bright-line rule instead: the government can detain an alien for as long as deportation proceedings are still 'pending.'").

That is precisely the posture here: Petitioner remains in active removal proceedings, and removal is plainly possible—in fact, that is the goal; thus, *Banyee* applies. District courts across the country, when presented with similar circumstances, have reached the same conclusion and have rejected comparable constitutional challenges. See, e.g., Castillo v. Rhoney, 2026 WL 775995 at *12 (W.D.N.Y. Mar. 19, 2026) (rejecting *habeas* petition premised on constitutionally unlawful detention where "the fact is that an alien detained under Section 1225(b) has the keys in his pocket and can end his detention immediately by withdrawing his defense and returning to his native land"); Sharef-Mohamed v. Warden of Dakota County Jail, 2026 WL 752442 at *2 (D. Neb. Mar. 17, 2026) ("The Supreme Court has already performed the due process balancing test for immigration cases and found that detention is reasonable in the context of determination of whether an alien should be removed.").

This Court's own precedents have, likewise, rejected efforts to repackage statutory objections to Section 1225(b)(2)(A) as Due Process Clause claims. See Suarez, 2025 WL 3312168 at *2 (Divine, J.) ("Although Suarez also raises a due process argument, that argument simply repackages his statutory argument."); Bushuev, 2026 WL 352873 at *3 (Lanahan, J.) (rejecting due-process theories advanced in tandem with statutory objections to the proper application of Section 1225(b)(2)(A)); Zhuang, 2026 WL 352872 at *5 (Stevens, J.) (same); Guillen, 2026 WL 601881 at *2 (Stevens, J.) (same); Ramirez, 2026 WL 251725 at *4-5 (Stevens, J.) (same). This Court needs do little more, then, than apply its own caselaw.

Thus, Petitioner's Due Process Clause argument should be rejected, once again, as a thinly-veiled attempt to sidestep the Eighth Circuit's binding holdings in *Avila* and *Banyee*.

C. Petitioner's U-Visa "Bona Fide Determination" (BFD) Status Does Not Change the Outcome of This Case.

While the applicability of Section 1225(b)(2)(A) and the accompanying Due Process challenges are familiar terrain for this Court, the asserted consequence of Petitioner's placement on the U-Visa "Bona Fide Determination" (BFD) track and subsequent grant of "Deferred Action" is not. Pet., ¶¶ 14-15.[6] Petitioner says, rather confidently, that he is entitled to "remain in the United

[6] A refresher of the INA framework may be in order. The INA authorizes the issuance of visas to "immigrants" seeking permanent U.S. residence and "nonimmigrants" seeking temporary entry for specific purposes. See 8 U.S.C. § 1201(a)(1). The INA's definitional section, 8 U.S.C. § 1101(a)(15), lists dozens of categories for non-immigrant visas, which are colloquially referred to by their terminal clause number within Section 1101(a)(15); thus, a "P-Visa" for visiting athletes, artists, and entertainers can be found in Section 1101(a)(15)(P), whereas a "U-Visa" for victims of certain crimes can be found in Section 1101(a)(15)(U). Like

other visa classes, a U-Visa, as here, identifies entry conditions, but is otherwise "silent as to any controls to which these aliens will be subject after they arrive in this country." Washington All. of Tech. Workers v. United States Dep't of Homeland Sec., 50 F.4th 164, 169 (D.C. Cir. 2022). Post-arrival controls—that is to say the "time" and "conditions" of admission—is left to the ***discretionary authority*** of the Attorney General as prescribed by regulation. See 8 U.S.C. § 1184(a)(1) ("The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe[.]"). That authority has largely migrated across agencies. Following 9/11 and the enactment of the Homeland Security Act of 2002, most of the Attorney General's immigration authority shifted to the Department of Homeland Security (DHS) and its subagency, U.S. Citizenship and Immigration Services (USCIS). See Washington All. of Tech. Workers, 50 F.4th at 170, n.1 ("A note on nomenclature: Section 1184(a)(1), which was enacted when the Immigration and Naturalization Service was housed in the Department of Justice, refers to the Attorney General. That authority was transferred in 2002 to DHS so is currently exercised by the Secretary of Homeland Security."); see also 8 U.S.C. § 1103(a)(3) (permitting DHS, and by proxy USCIS, the discretion to "establish such regulations" as are "necessary for carrying out [their] authority").

At issue, here, is a U-Visa and its discretionarily-implemented regulations. Notably, those regulations were mostly a byproduct of a distinctive Congressional constraint: the annual issuance of principal U-Visas is capped at 10,000. 8 U.S.C. § 1184(p)(2)(A). Indeed, due to overwhelming demand for U-Visas—far exceeding the statutory cap—USCIS adopted a series of regulations and policies to manage the influx and better control application flow.

Two distinct application tracks have emerged. The first, established through a June 14, 2021, update to the USCIS Policy Manual, is the "Bona Fide Determination Process" (BFD). Intended to accelerate access to one of the U-Visa's core benefits—work authorization—this policy-driven mechanism expedites employment authorization documentation (EAD) pursuant to 8 U.S.C. § 1184(p)(6) ("The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 1101(a)(15)(U) of this title."); see also USCIS POLICY MANUAL, Vol. 3, Part C, Ch. 5 [herein "POLICY MANUAL"] ("By statute, USCIS has discretion to provide employment authorization to aliens with pending, bona fide U nonimmigrant status petitions. Consequently, USCIS implemented the Bona Fide Determination (BFD) process."). This track—commonly referred to as BFD-EAD—exists solely as a creation of agency policy. See Barrios Garcia v. U.S. Dep't of Homeland Sec., 25 F.4th 430, 441 (6th Cir. 2022) ("A future administration could rescind the BFD process just as easily as this administration established it.").

The second track is regulatory in nature: the so-called Waiting List Determination (WLD). Under 8 C.F.R. § 214.14(d)(2), "***eligible petitioners*** ... must be place on a waiting list" who are blocked from receiving a U-Visa "solely [due] to the cap." (emphasis added) As the POLICY MANUAL clarifies, "officers initiate a waiting list adjudication for petitioners who do not receive employment authorization and deferred action based on the Bona Fide Determination (BFD) process." POLICY MANUAL, Vol. 3, Part C., Ch. 6. Thus, the BFD-EAD and WLD are disjunctive, alternative tracks. See Barrios Garcia, 25 F.4th at 443, 450 (explaining the U-Visa waitlist is a separate track from the BFD-EAD track). A flowchart illustrating both tracks is available on USCIS's website. See *https://www.uscis.gov/sites/default/files/document/policy-manual-resources/Appendix-BonaFideDeterminationProcessFlowchart.pdf* (last accessed April 20, 2026).

Most applicants arguably favor the BFD-EAD track, as it enables significantly faster access to work authorization. By contrast, Section 214.14(d)(2) permits waitlist placement only for petitioners "eligible" for a U-Visa, meaning a "***WLD requires USCIS to assess the full merits of an application.***" Reyes Olmos v. U.S. Citizenship & Immigr. Servs., 2025 WL 1582941 at *1 (D. Neb. May 15, 2025) (emphasis added) ("While the waiting list helped address the issue of otherwise eligible immigrants who were without protections or work authorization due solely to the U Visa statutory cap, it created its own backlog because a waiting list determination ("WLD") requires USCIS to assess the full merits of an application.").

States ***until a U visa becomes available to him in approximately 2043***." Pet., ¶ 17 (emphasis added). This is a novel argument, though not entirely uncharted. The Court has already been presented with analogous questions involving temporary, non-immigrant statuses, such as Venezuelan Temporary Protected Status (TPS), which remain pending as of the date of this briefing. See Guevara-Hernandez v. Bondi, No. 1:26-CV-00059-ZMB (E.D. Mo.) (Bluestone, J.) (addressing the applicability of Section 1225(b)(2)(A) under *Avila*, a Fifth Amendment Due Process challenge, a Suspension Clause challenge, and the effect, if any, of Petitioner's Venezuelan TPS designation).

At the outset, it must first be recognized that the grant of a U-Visa—even after the BFD / Deferred Action period concludes—act merely as a "nonimmigrant status without admission." Sanchez v. Mayorkas, 593 U.S. 409, 417-18 (2021) (explaining the purpose and effect of a U-Visa); see also U.S. Citizenship & Immigr. Servs., Policy Alert, ADMISSION FOR ADJUSTMENT OF STATUS UNDER INA 254(A), PA-2025-25 (Nov. 3, 2025) (*Sanchez* prompted USCIS to make the matter clear: a grant of a U-Visa is simply not an "admission."). Thus, "deferred action does not grant an alien an enforceable right to remain in the United Sates." Rivera Hernandez v. Noem, 2025 WL 3754434 at *3 (E.D. Tex. Dec. 19, 2025) (citing Texas v. United States, 809 F.3d 134, 165-66 (5th Cir. 2015)); see also Raghav v. Jaddou, 2025 WL 373638, at *2 (E.D. Cal. Feb. 3, 2025) ("Plaintiff obtaining a BFD in his favor would not prevent his removal"); 8 U.S.C. § 1227(d)(2) (listing "stay of removal" and "deferred action" as separate forms of relief).[7] And, by

[7] Moreover, if Petitioner's argument was true and Deferred Action prevented his removal while his U-Visa application is pending, then certain regulations would be rendered meaningless. Specifically, 8 C.F.R. § 214.14(c)(1)(ii) provides: "[t]he filing of a petition for U-1 nonimmigrant status has no effect on ICE's authority to execute a final order, although the alien may file a request for a stay of removal pursuant to 8 C.F.R. 241.6(a) and 8 C.F.R. 1241.6(a)." The reference to the possibility of a stay of removal indicates enforcement action—such as detention and execution of a final removal order—are expected absent a stay. If Deferred Action achieved the same result as a stay of removal, this regulation would need not address stays at all. And to further this point, the regulations even allow an alien to be outside of the United States when a U-Visa is adjudicated. See 8 C.F.R. 214.14(c)(5)(i)(B). Thus, an alien with a pending U-Visa that is removed can still pursue a U-Visa.

proxy, Petitioner remains an "applicant for admission" under Section 1225(a)(1) and, thereby, is subject to the mandatory detention provisions of Section 1225(b)(2)(A) when removal proceedings are initiated. *Avila* would, thus, be fully applicable. See Avila, 170 F.4th at 1134.

But, properly framed, Petitioner is not suggesting his U-Visa BFD / Deferred Action status renders Section 1225(b)(2)(A) inapplicable; rather, Petitioner is outright suggesting he is simply *not subject to removal proceedings at all*, and thus detention is consequently unnecessary notwithstanding Section 1225(b)(2)(A). Indeed, Petitioner ultimately leans on caselaw implying a dubious, reliance-type interest in Deferred Action itself—an interest that supposedly bars DHS from initiating removal efforts altogether. See, e.g., F.R.P. v. Wamsley, 2025 WL 3037858 (D. Or. Oct. 30, 2025) (compiling cases holding that Deferred Action means plaintiff could not be removed). These cases overlook that Deferred Action signifies only a *reduced priority* for removal, not *immunity* from it. To treat it as a judicially conferred shield against removal entirely is to strip the agency's regulatory grace of meaning and bind its discretion about case prioritization into strangling knots. See Generally Arpaio v. Obama, 797 F.3d 11, 17 (D.C. Cir. 2015) (recognizing "deferred action remains discretionary and reversible, and confers no substantive right, immigration status or pathway to citizenship."); 8 C.F.R. § 274a(c)(14) (describing deferred action as "an act of administrative convenience to the government that gives some cases lower priority" for purposes of employment eligibility).

More importantly, none of the cases Petitioner cites grapple with the Eighth Circuit's controlling analysis in Silva v. United States, 866 F.3d 938 (8th Cir. 2017); see also Nativi-Gomez v. Ashcroft, 344 F.3d 805, 808 (8th Cir. 2003) (there is no liberty interest in a discretionary decision, such as to provide Deferred Action, where such relief is merely "a power to dispense mercy" and "a matter of administrative grace" that is, thus, highly speculative). This Court, bound by Eighth Circuit precedent, must do so.

Silva's holding is unequivocal: "so long as the claim ***arises from*** a decision or action"—for whatever reason—"by the Secretary of the Department of Homeland Security to ***commence proceedings***, ***adjudicate cases***, or ***execute removal orders*** against any alien," it is jurisdictionally barred from review under 8 U.S.C. § 1252(g). Id. at 940 (emphasis added). There, Section 1252(g) was said to apply even when DHS mistakenly executed a removal order despite an otherwise applicable regulatory stay pending administrative appeal. Id. The parallel to Deferred Action is unavoidable; Deferred Action resulting from BFD status, like the regulatory stay in *Silva*, is a creature purely of agency grace—policy-based, discretionary, and revocable—and, thus, cannot be used to frustrate the commencement and adjudication of removal proceedings. See Barrios Garcia v. U.S. Dep't of Homeland Sec., 25 F.4th 430 (6th Cir. 2022) ("USCIS clearly wields sole and unadulterated discretion to set forth, abide by, and eliminate the BFD process."). Indeed, Petitioner cannot plausibly argue that his *habeas* claims do not "arise from" DHS's decision to commence proceedings against him, adjudicate his case, and execute his removal (if ordered by the immigration court). Once the independent legal questions concerning the applicability of Section 1225(b)(2)(A) and the Due Process Clause are set aside—as addressed above in the Government's favor—his remaining status-based claims against removal altogether (and thus mandatory detention as a consequence) plainly fall within ambit of Section 1252(g)'s jurisdictional bar. See Silva, 866 F.3d at 941 (contrasting a "purely legal question" that is subject to judicial review from "discretionary decisions or actions" that are not).

To be sure, this Court would not be alone in determining that Section 1252(g) bars Plaintiff's Deferred Action arguments. In *Velasco Gomez v. Scott*, for example, the Western

District of Washington concluded that "claims arising directly from the agency's allegedly unconstitutional decision and action to detain the plaintiff and execute his valid removal order despite plaintiff's Deferred Action status" fell "within the statutory jurisdictional bar" of Section 1252(g). 2025 WL 1726465 at *5 (W.D. Wash. Jun. 20, 2025) (cleaned up); accord Miranda-Lopez v. ICE Orlando Filed Officer Director, 2026 WL 587997 at *1 (11th Cir. Mar. 3, 2026) (Section 1252(g) applies to action in habeas asserting the government "accelerated" removal despite U-Visa Deferred Action status where petitioner was attempting to "challenge the decision to execute a removal order"); Rivera-Amador v. Rhoden, 2025 WL 3687452 at *3 (M.D. Fla. Dec. 19, 2025) (Section 1252(g) barred jurisdiction over challenge to petitioner's ongoing detention where the claim "stemmed from ICE's decision or action to execute a removal order" despite petitioner being the "beneficiary of a deferred action status"); Patel v. Noem, 2025 WL 2823561 at *2 (D. Minn. Sept. 12, 2025) (Section 1252(g), as guided by the Eighth Circuit's analysis in *Silva*, applied to plaintiff's claim that he was unlawfully detained and subjected to removal while on Deferred Action status; the court noted plaintiff's arguments were "purely a semantic one"); see also Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 487 (1999) (concluding that alien's challenge to government's decision to commence removal proceedings, and thus by extension when to execute removal orders, falls "squarely" within the ambit of Section 1252(g)); Rauda v. Jennings, 55 F.4th 773, 778 (9th Cir. 2022) ("No matter how [Petitioner] frames it, his challenge is to the Attorney General's exercise of [her] discretion to execute [Petitioner's] removal order, which we have no jurisdiction to review.").

Finally, Plaintiff's Deferred Action argument is effectively an end-run around another jurisdiction-stripping statute. Section 1252(a)(5) provides that the "sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). The core of Plaintiff's Deferred Action argument is that it would essentially invalidate a removal order that *could* issue *in the future*; be that as it may, this is an argument only the Eighth Circuit Court of Appeals could consider—and *only at the right time*, when Plaintiff presents that potential removal order as the basis for a live controversy for purposes of subject-matter jurisdiction. Until then, all that stands is his argument that the government shouldn't be allowed to "commence proceedings" against him—a claim that falls headlong into Section 1252(g)'s jurisdiction-stripping provision. See Pet., ¶ 29 (alleging Petitioner" cannot be removed" because of his Deferred Action status).

IV. CONCLUSION

Under a clear mandate from the Eighth Circuit Court of Appeals, the Fifth Circuit Court of Appeals, and in view of this Court's own precedent, this Court must—once again—deny *habeas* relief in this case. Avila v. Bondi, 170 F.4th 1128, 1134 (8th Cir. Mar. 25, 2026); Buenrostro-Mendez v. Bondi, 166 F.4th 494, 501-05 (5th Cir. 2026); Guillen v. Johnson, 2026 WL 601881 (E.D. Mo. Mar. 4, 2026) (Stevens, J.); Pineda v. Noem, 2026 WL 496680 (E.D. Mo. Feb. 23, 2026) (Stevens, J.); Zhuang v. Bondi, 2026 WL 352872 (E.D. Mo. Feb. 9, 2026) (Stevens, J.); Bushuev v. Imm. & Customs Enforcement, 2026 WL 352873 (E.D. Mo. Feb. 9, 2026) (Lanahan, J.); Ramirez v. Noem, 2026 WL 251725 (E.D. Mo. Jan. 30, 2026) (Stevens, J.); Cutiopala v. Noem, 2026 WL 113567 (E.D. Mo. Jan. 15, 2026) (Lanahan, J.); Suarez v. Noem, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025) (Divine, J.); Olalde v. Noem, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (Divine, J.).

WHEREFORE, the Government asks this Court to ***deny*** the Petition for *habeas* relief.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was served on Tuesday, April 28, 2026, on all counsel of record via this Court's electronic case filing system.

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