UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-2360-MJD-LIB

JORGE F.G.,

Petitioner,

v.

DAVID EASTERWOOD, *et al.*,

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

RESPONSE TO PETITION

Petitioner wants a second bite at the habeas apple. He already filed a petition challenging his immigration detention, and that petition was denied February 3, 2026. *See Jorge Luis Fernandez Gomez v. Pamela Bondi, Attorney General et al.*, No. 26-cv-00747-DMT-SGE (D. Minn. filed Feb. 3, 2026) (hereinafter "*Gomez I*"); Doc. No. 1, Petition (hereinafter "Pet.") ¶ 20 (Petitioner noting the previous application). Petitioner is back once more, apparently determined to keep filing habeas petitions until he draws a favorable judge.

This case should be summarily dismissed. Petitioner is stuck with the Court's prior conclusion that he is lawfully detained under 8 U.S.C. § 1225(b)(2). *See Gomez I*, Doc. No. 7 (hereinafter "Gomez I Order"). Federal judges are not "required to entertain an application for a writ of habeas corpus if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application.'" 28 U.S.C. § 2244(a). Furthermore, a second application must be preceded by the appropriate court of appeals authorizing this Court to consider the application. 28 U.S.C. § 2244(b)(1)(3)(A). There is no indication that procedure has been completed. Therefore, this petition should be denied.[1]

If nothing else, this case should be reassigned to Judge Traynor because Petitioner is seeking reconsideration of the first order denying him habeas relief. Petitioner does not assert that he was barred from raising his current claims in the first action. *See* Pet. ¶ 21 (Petitioner stating the second petition is brought to "ensure the Court considers…" factual predicates that could have been discovered previously through the exercise of due diligence – namely, Petitioner's active grant of deferred action[2], his lack of a criminal record[3], the absence of any lawful arrest authority[4], and the government's failure to establish any basis for his continued detention or removal.[5]")

If this Court rewards Petitioner's judge-shopping and decides his second petition on the merits without reassigning it, then habeas relief is not appropriate. Petitioner's detention arises under § 1225(b)—a statute that requires detention during removal

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[1] The petition at issue in this case does not reference 28 U.S.C. § 2244. *See* Pet. Undersigned counsel brought it to the attention of Petitioner's counsel on April 29, 2026, who promptly confirmed they were generally aware of the statute.

[2] This point was addressed and dismissed by the Court as an argument of no substance. *See* Gomez I Order, ¶ 14 (citing 8 C.F.R. § 274a.12(c)(14) stating that "'Deferred action' is 'simply an act of administrative convenience to the government that gives some cases lower priority' for removal").

[3] This information was available at the time of the first petition.

[4] The Court found Petitioner was lawfully detained under 8 U.S.C. § 1225(b)(2); and that ruling was prior to binding relevant precedent in *Avila v. Bondi*, ---F.4th--- (8th Cir. Mar. 25, 2026). Gomez I Order.

[5] The Court ruled the Government established a lawful basis for Petitioner's continued detention; and, there is nothing novel brought forth in this second petition. *Compare* Gomez I Order *with* Pet.

proceedings. His Due Process challenge is foreclosed by Supreme Court and Eighth Circuit precedent, and his arguments about warrantless arrest fail because federal officers in fact had a warrant for his arrest. Ex. A, I-200 Warrant (hereinafter "Warrant").

The Eighth Circuit Court of Appeals recently held that aliens, like Petitioner, who entered the United States illegally and who are not "clearly and beyond a doubt entitled to be admitted," "shall be detained" under 8 U.S.C. § 1225(b)(2)(A), until the conclusion of their removal proceedings. *Avila v. Bondi*, ---F.4th--- (8th Cir. Mar. 25, 2026).

BACKGROUND

The Federal Respondents recite the basic facts of Petitioner's detention as recounted in the Court's order in *Gomez I*, incorporating by reference the evidentiary submissions in that case:

> Petitioner is a citizen of Mexico but has lived in the United States since 1999 and resides in St. Paul, Minnesota. DHS detained the Petitioner pursuant to 8 U.S.C. § 1225(b)(2)(A) and is currently being held at a facility within the State of Minnesota. Petitioner has a pending U-visa application and valid work authorization.

Gomez I Order ¶ 2 (record citations omitted).

Additionally, Federal Respondents note that Petitioner was provided deferred action from USCIS on May 14, 2024.[6] Pet. ¶ 14; Gomez Order ¶ 14 (noting Petitioner's deferred action status as an irrelevant basis for release). A warrant for Petitioner's arrest was issued on January 27, 2026. Warrant. An I-213 was drafted on January 28, 2026, which indicated

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[6] Deferred action is "an exercise of prosecutorial discretion that defers the removal of the [noncitizen] based on the [noncitizen's] case being made a lower priority for removal" but "does not confer any immigration status upon a[] [noncitizen]." U-Visa Interim Rule at 53015 n.3.

that ICE arrested Petitioner on January 27, 2026, and ICE knew Petitioner was not lawfully present in the U.S. Ex. B, I-213 (hereinafter "I-213"). A Notice to Appear was served on Petitioner on January 28, 2026; which advised Petitioner why he was detained, and which Petitioner refused to sign. Ex. C, NTA (hereinafter "NTA"). An Immigration Judge (hereinafter "IJ") denied Petitioner's request for a bond hearing on April 2, 2026, and the IJ stated the IJ did not have jurisdiction to consider the bond hearing, citing *Avila*. Ex. D, IJ Order (hereinafter "IJ Order"). The undersigned was advised by ICE that Petitioner is detained in Minnesota.

ARGUMENT

If the Court does not summarily dismiss this case, then it should be reassigned to Judge Traynor because it is related to the first habeas action. Failing reassignment, the Court should deny this petition on the merits.

Reassignment

The District of Minnesota has a standing Order for Assignment of Cases. *See* https://www.mnd.uscourts.gov/sites/mnd/files/Order-for-Assignment-of-Cases.pdf. Under Paragraph 4(a) of that order, new civil cases are deemed "related" to prior cases (even closed cases), if:

- They share common issues of law or fact, common parties or other common factors;
- A decision or opinion in one of the cases will effectively resolve substantially all of the issues in the other case; or
- The interests of justice or judicial economy would be best served if the two actions were handled by a single judge, even though the resolution of one case might not effectively resolve all of the issues in the other case.

It falls to the Clerk's Office to identify related or potentially related cases in the first instance. But under Paragraph 4(b), when any judge learns "that a related case has been assigned to another judge, the judge who first becomes aware of such related cases must call that matter to the attention of the other judge, and the two judges must then review the respective files and determine whether they are in fact related cases."

This Court regularly enforces the rules regarding reassignment of related cases. *See, e.g.*, *Elbert v. United States Dep't of Agric.*, 2025 U.S. Dist. LEXIS 152905, at *12 n.4 (D. Minn. Aug. 8, 2025) ("The Court presumes that if a new APA claim is filed in the District of Minnesota, Plaintiffs will note in their pleadings that it is a related case to this one, which typically assures the case will be assigned (or reassigned) to this Court."); *Munt v. Roy*, 2019 U.S. Dist. LEXIS 4791, at *10-11 (D. Minn. Jan. 10, 2019) (noting inherent authority to reassign and explaining reassignment process). There is no reason to depart from that practice here. Both habeas actions raise common issues of law and fact, both actions involve the same parties, the decision in the first action should resolve this action, and the interests of justice support having the same judge who already reviewed Petitioner's detention handle this action. Thus, the Federal Respondents respectfully request that the Court classify this case as "related" to *Gomez I* and reassign it to Judge Traynor for further proceedings.

Preclusion

If the Court is inclined to keep the case or consider it unrelated to *Gomez I*, then Petitioner's pursuit of habeas relief nevertheless fails.

As an initial matter, *Gomez I* is preclusive with regard to most of the issues raised in this petition. The fact that *Gomez I* ended in a dismissal without prejudice does not matter. *See Pohlmann v. Bil-Jax, Inc.*, 176 F.3d 1110, 1112 (8th Cir. 1999) ("[D]dismissal of a case without prejudice does not result in *claim* preclusion (to use more venerable terminology, it creates no res judicata bar). But an *issue* actually decided in a non-merits dismissal is given preclusive effect in a subsequent action between the same parties (in the older terminology, the first adjudication creates a collateral estoppel)" (original emphasis)); *Menze v. County of Otter Tail*, 2025 U.S. Dist. LEXIS 163288, at *11 (D. Minn. Aug. 22, 2025) ([I]t is not necessary that a judgment be decided on the merits or a case dismissed with prejudice; if an issue is actually decided in a non-merits dismissal, it is given preclusive effect in a subsequent action between the same parties." (cleaned up)). This Court already held that Petitioner is subject to mandatory detention under § 1225(b)(2). Gomez I Order ¶ 10. The Court already rejected a claim directly alleging that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, or the Administrative Procedure Act (hereinafter "APA"), or that Petitioner's deferred action status is relevant. Gomez I Order ¶¶ 14, 20-21. Petitioner did not appeal or seek reconsideration. Those conclusions dispose of Petitioner's Due Process claim in this case, and the evidence accompanying this response disposes of his warrantless arrest claims.

Introduction to Due Process Claim

Assuming this Court does not dismiss the petition, reassign the case, or preclude the arguments already addressed in *Gomez I*, Federal Respondents will address the merits of the due process claim followed by the claim regarding warrantless arrest.

Petitioner filed this action on April 24, 2026, seeking relief under 28 U.S.C. § 2241. The gist of Petitioner's argument is that his continued detention violates the Fourth and Fifth Amendment of the U.S. Constitution. Petitioner argues the Due Process of the Fifth Amendment is violated because of indefinite detention, on account of Petitioner's deferred action status and pending U-visa. Pet. ¶¶ 40-65, 79-86. Petitioner argues the Fourth Amendment was violated because he was arrested without a warrant, and the procedures for a warrantless arrest were not followed. Pet. ¶¶ 17, 72-78.[7]

The Immigration and Nationality Act, as amended, provides that all aliens who are present within the United States and not admitted—deemed by statute to be "applicants for admission"—"shall be detained" pending their removal proceedings if they cannot show they are "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(a)(1), (b)(2)(A).

The Eighth Circuit in *Avila* held that aliens, like Petitioner[s], who are "applicant[s] for admission" under 8 U.S.C. §1225(a)(1) are subject to mandatory detention under §1225(b)(2)(A). *Avila*, Slip op. 1-12.

Despite *Avila*, Petitioner pivoted to a new theory—*procedural* due process for individuals who are indisputably detained under § 1225(b)(2)(A). This fallback theory is foreclosed by *Avila*. Post- *Avila*, Petitioner falls within the terms of § 1225(b)(2)(A); and is an "applicant for admission" who failed to show that he was "clearly and beyond a doubt

[7] The remaining claims of Petitioner, (e.g. alleged violations of the APA, INA, 8 U.S.C. § 1357, etc) are premised on similar arguments – specifically, based on a premise of a warrantless arrest or a due process violation for failing to account for Petitioner's deferred action status or pending U-visa.

entitled to be admitted." No additional process is needed to resolve an uncontested issue of fact. As the Supreme Court held, "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." *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 9 (2003). In the end, the only process due for those who have never "been admitted into the country pursuant to law" is whatever process is "expressly conferred by Congress." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138 (2020).

Petitioner is Subject to Mandatory Detention

Petitioner seeks an order from this Court directing the Department of Homeland Security to immediately release Petitioner from immigration detention. The Court should deny the petition. The primary issue raised by Petitioner, namely that his detention pursuant to 8 U.S.C. § 1225 is unlawful, was rejected by the Eighth Circuit. *Avila v. Bondi*, ---F.4th--- (8th Cir. Mar. 25, 2026).

First, *Avila* held that "the ordinary meanings of the phrases 'applicant for admission' and 'seeking admission' are the same." Slip Op. 5-6. In so holding, the Eighth Circuit explained that the text and statutory context of §1225(b)(2)(A) foreclose interpreting "seeking admission" to refer to a "present tense, affirmative action." *Id.* at 6-8. In addition, the Eighth Circuit correctly held that the Government's interpretation does not render any portion of §1225(b)(2)(A) surplusage. Slip Op. 7. Second, *Avila* held that the Government's interpretation is consistent with the "statutory purpose of §1225" of "placing all aliens 'on equal footing'" in immigration proceedings. Slip Op. 8-9. By contrast, Avila's interpretation—like Petitioners' here—"contradicts the statute's goal." *Id.* at 9. Third, *Avila* rejected Avila's reliance on language in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) which "was offered only as general background information" and "does not preclude other statutory provisions—such as §1225(b)(2)(A)—from also applying" to aliens inside the country. Slip Op. 9. Fourth, *Avila* correctly held that prior administrations' decisions to "not exercise their full authority under §1225" does not justify departing from the statute's text, because "'authority granted by Congress cannot evaporate through lack of administrative exercise.'" Slip Op. 10. Finally, *Avila* held that the Government's reading of §1225(b)(2)(A) does not render §1226(c) superfluous. Slip Op. 10-11. Although §1225(b)(2)(A) and §1226(c) may overlap, the Eighth Circuit correctly held that such overlap does not give "license to rewrite or eviscerate" clear statutory text. *Id.* at 11.

District courts around the country also agree. *See Naikpay v. Sukkar*, No. 2:25-CV-1167-KCD-DNF, 2026 WL 44820 (M.D. Fla. Jan. 7, 2026) (Dudek, J.) (holding that alien released on humanitarian parole and later re-apprehended remained an applicant for admission under § 1225); *Masis Lucero v. Field Off. Dir. of Enf't & Removal Operations*, No. 1:25-CV-823, 2025 WL 3718730 (S.D. Ohio Dec. 23, 2025) (Cole, J.) (holding that § 1225 applies to noncitizens present in the US but never admitted and requires detention through the end of removal proceedings); *P.B. v. Bergami*, No. 3:25-CV-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025) (O'Connor, J.) (holding that Petitioner, still awaiting her asylum hearing, is an application for admission that is seeking admission subject to mandatory detention under § 1225); *Rivera Hernandez v. Noem*, No. 9:25-CV-00326, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) (Truncale, J.) (holding that § 1225, as the more specific statute, governs Petitioner's detention, which does not violate due process as it has not been shown to be indefinite); *Paredes Padilla v. Galovich*, No. 25-CV-865-JDP, 2025 WL 3640960 (W.D. Wis. Dec. 16, 2025) (Peterson, J.) (holding that Petitioner, as an applicant for admission, is not entitled to a bond hearing under § 1225 despite an improper release on bond when he was transferred from expedited removal into asylum proceedings); *Liang v. Almodovar*, No. 1:25-CV-09322-MKV, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) (Vyskocil, J.) (holding that because no immigration officer has decided that Petitioner is clearly and beyond a doubt entitled to be admitted, he is subject to mandatory detention under § 1225); *Duenas Garcia v. Immigr. & Customs Enf't Dep't of Homeland Sec.*, No. 2:25-CV-1004-KCD-NPM, 2025 WL 3277163 (M.D. Fla. Nov. 25, 2025) (Dudek, J.) (holding that release on recognizance following apprehension at the border does not alter Petitioner's legal classification as an applicant for admission); *Alonzo v. Noem*, No. 1:25-CV-01519 WBS SCR, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025) (Shubb, J.) (holding that "applicant for admission" is a legal designation for purposes of the removal scheme that covers aliens present in the country but not yet admitted); *Rojas v. Olson*, No. 25-CV-1437-BHL, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.) (holding that Petitioner is an applicant for admission despite his prior bond and that his detention does not violate Due Process because it is limited to the conclusion of his removal proceedings).

Like other applicants for admission to the U.S. whose legal status is governed by 8 U.S.C. § 1225, Petitioner is subject to mandatory detention until the end of his removal proceedings. Those removal proceedings are not indefinite.

Due Process Claims

a. Petitioner Claims a Substantive Due Process Violation

There is no dispute that Petitioner falls within the scope of § 1225(b)(2)(A). Petitioner is an alien who is "present in the United States" and "ha[d] not been admitted," and so Petitioner is an applicant for admission. 8 U.S.C. § 1225(a)(1). Petitioner has not established that Petitioner is "clearly and beyond a doubt entitled to be admitted." *Id.* § 1225(b)(2)(A). Therefore, as the Eighth Circuit held in *Avila,* Petitioner is subject to mandatory detention under § 1225(b)(2)(A).

Recognizing the claim is foreclosed, Petitioner now raises procedural due process. The Constitution prohibits the federal government and States from "depriv[ing]" a "person" of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. The Supreme Court has recognized two types of due-process claims. *See Dep't of State v. Muñoz*, 602 U.S. 899, 910 (2024). 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 v. Eldridge*, 424 U.S. 319, 335 (1976). For example, the statute in *Mathews* made the availability of disability benefits turn on whether a person is "completely disabled" within the meaning of the statute. *Id.* at 323, 336. The procedural due process claim did not challenge the statute's substantive criteria for who may receive benefits, but the adequacy of the procedures available to test whether a person fits within the criteria. *Id.* at 325-26. 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).

Petitioner has not challenged the adequacy of the procedures for determining whether Petitioner is an "applicant for admission," a matter determined in immigration proceedings, and that subjects Petitioner to mandatory detention under § 1225(b)(2)(A). Instead Petitioner argues that the determination that Petitioner is an applicant for admission and "not clearly and beyond a doubt entitled to be admitted," 8 U.S.C. § 1225(b)(2)(A), is a constitutionally insufficient basis on which to justify the deprivation of liberty. Petitioner's due process argument is one that is substantive, not procedural, in nature.

In essence, Petitioner is requesting the Court to find that due process requires additional procedures in the form of finding that Petitioner's deferred action status, or pending U-visa, or that Petitioner's criminal history are relevant to the removal proceedings. Pet. ¶¶ 21, 56-65, 79-86, 122-154. Those factors are irrelevant under the statute. Because § 1225(b)(2)(A) requires mandatory detention and does not require such determinations, Petitioner's claim is in reality a substantive-due-process challenge, not a procedural one.

Congress decided as a substantive policy matter to impose mandatory detention on all applicants for admission, such as Petitioner. Due process does not require procedures to adjudicate immaterial facts. What Petitioner is asking this Court to do is override Congress's substantive judgment that all applicants for admission must be detained regardless of: Petitioner's criminal history; whether or not a U-visa is pending; or Petitioner's deferred action status. Procedural due process can do no such thing.

The Supreme Court's decision in *Connecticut Dep't of Pub. Safety*, 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. 538 U.S. at 4-5. John Doe, who had previously been convicted of a sex offense, claimed that the statute violated his procedural-due-process rights by requiring him to register without a "hearing to determine whether" he was "currently dangerous." *Id.* at 4 (citation omitted).

The Court rejected Doe's claim. It explained that "due process does not require the opportunity to prove a fact that is not material to the State's statutory scheme," and "the fact that [Doe] seeks to prove—that he is not currently dangerous—[wa]s of no consequence under" the relevant statute, which required him to register based on his prior conviction alone. *Id.* at 7. So "[u]nless [Doe] c[ould] show that that substantive rule of law [wa]s defective (by conflicting with the Constitution), any hearing on current dangerousness [would be] a bootless exercise." *Id.* at 8. Any claim that Doe was 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.

The rule of *Connecticut Dep't of Pub. Safety* is 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. This Court applied that rule in *Duarte v. City of Lewisville, Texas*, 858 F.3d 348 (5th Cir. 2017), in a similar context. *See id.* ("procedural due process does not entitle the Duarte Family to a hearing to 'establish a fact that is not material' under the Ordinance" (quoting *Connecticut Dep't of Pub. Safety*, 538 U.S. at 7)).

Accordingly, Petitioner has no procedural due process right to be released on account of deferred action status, his criminal history, or a pending U-visa. These individualized findings are irrelevant to § 1225(b)(2), which subjects Petitioner to mandatory detention based on Petitioner's uncontested status as an "applicant for admission" who has not shown he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(a)(1), (b)(2)(A).

Petitioner falls within the terms of the statute as interpreted by *Avila.* Therefore, as in *Connecticut Dep't of Pub. Safety*, any claim that Petitioner is entitled to additional procedures "'must ultimately be analyzed' in terms of substantive, not procedural, due process." 538 U.S. at 7-8; *see Flores*, 507 U.S. at 308 (holding that a challenge to a regulation on the ground that it failed to require a determination of a detainee's "interests" was "just [a] 'substantive due process' argument recast in 'procedural due process' terms"); *Michael H. v. Gerald D.*, 491 U.S. 110, 119, 121 (1989) (plurality opinion) (treating a request for an "evidentiary hearing" on an issue that the statutory scheme deemed "irrelevant" as a "substantive due process" claim).

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. After all, *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. Because that is a substantive, rather than procedural, due-process challenge to the statute, any reliance on *Mathews* is misplaced. As the Eighth Circuit held, since the Supreme Court "opted for a bright-line rule" that the "government can detain an alien for as long as deportation proceedings are still 'pending,'" there is no need to perform a Mathews-type due process balancing inquiry in this case as suggested by Petitioner. *Banyee v. Garland*, 115 F.4th 928, 933 (8th Cir. 2024).

b. Petitioner's Substantive Due Process is not violated

The Supreme Court held that rational-basis review is the appropriate standard for analyzing substantive-due-process claims. *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997). Under that standard, detention under § 1225(b)(2) is constitutionally permissible as long as it is "rationally related to legitimate government interests." *Id.*

Section 1225 clears the rational basis bar. In *Demore*, the Supreme Court considered a "substantive due process" challenge to detention under § 1226(c). *Demore v. Kim*, 538 U.S. 510, 515 (2003). Hyung Joon Kim "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 Court rejected that claim. The Court explained 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 held that the aliens substantive due process "claim must fail." *Id.* at 531.

In reaching its holding, *Demore* distinguished its prior decision in *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), 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. First, the aliens challenging their detention in *Zadvydas* were aliens for whom removal was "no longer practically attainable." *Id.* at 690. Under the circumstances, the Court explained, "the detention ... did not serve its purported immigration purpose." *Id.* at 690. By contrast, § 1226(c) applies to aliens "pending their removal proceedings," and so "necessarily serves the purpose of preventing" those aliens "from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed." *Demore*, 538 U.S. at 528. As *Demore* noted, Congress "had before it evidence suggesting that permitting discretionary release of aliens pending their removal hearings" would result in "large numbers" of aliens "skipping their hearings and remaining at large in the United States unlawfully." *Id.* at 528.

In the same vein, *Demore* emphasized that "the period of detention at issue in *Zadvydas* was 'indefinite' and 'potentially permanent,'" whereas detention under § 1226(c) pending removal proceedings "is of a much shorter duration" and "ha[s] a definite termination point." *Demore*, 538 U.S. at 530.

The same reasons for upholding mandatory detention under § 1226(c) apply to § 1225(b)(2)(A). Petitioner does not allege that removal is "unattainable," so detention under § 1225(b)(2)(A) serves the same legitimate interest recognized by *Demore*—preventing" aliens "from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed." 538 U.S. at 528. As *Buenrostro-Mendez* recognized, "the Department of Justice Inspector General found in 1997 that 'when aliens are released from custody, nearly 90 percent abscond and are not removed from the United States," and "[t]hat situation exists today at a much larger scale." *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 508 (5th Cir. 2026) (quoting 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)).

Nor is detention under § 1225(b)(2)(A) "indefinite" or "permanent." *Demore*, 538 U.S. at 530. As with § 1226(c), detention under § 1225(b)(2)(A) lasts only for the duration of "a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A); *see Jennings*, 583 U.S. at 302-03. While the immigration proceedings remain pending, Petitioner's detention under § 1225(b)(2) bears a reasonable relation to the legitimate purposes that this Court identified in *Demore*.

District courts around the country have dismissed due process concerns in similar contexts. *See Rivera Hernandez*, 2025 WL 3754434 (Truncale, J.) (holding that § 1225, as the more specific statute, governs Petitioner's detention, which does not violate due process as it has not been shown to be indefinite); *Rojas*, 2025 WL 3033967 (Ludwig, J.) (holding that Petitioner is an applicant for admission despite his prior bond and that his detention does not violate Due Process because it is limited to the conclusion of his removal proceedings); *Calderon Lopez*, 2026 WL 44683 (Hendrix, J.) (holding that nothing in the INA or Due Process Clause contradicts mandatory detention of applications for admission without bond under § 1225); ; *Montoya*, 2025 WL 3733302 (Dishman, J) (holding that

Petitioner is unambiguously an applicant for admission and that detention without a bond hearing does not violate the Due Process Clause).

Petitioner in this case has not established that his detention during removal proceedings violates due process. Petitioner's claim that detention during removal proceedings will be unconstitutionally prolonged is speculative. In fact, Petitioner's detention has a definite end point – either release, or receiving a final removal order and said removal being effectuated. Petitioner's deferred action status has no bearing on the removal proceedings. *See* Gomez I Order ¶ 14; *see generally Domingo Mendoza Mendez v Ryan Shea et al.*, No. 25-cv-2830-LMP-ECW (D. Minn. Filed August 1, 2025) Doc. No. 24 (noting that a petitioner who has deferred action status is still subject to mandatory detention).

c. Petitioner's Procedural Due Process is not Violated

Even if Petitioner was asserting a proper procedural due process claim, that claim contradicts the Supreme Court's longstanding precedent regarding the due process rights of aliens who were never admitted to this country.

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 Ekiu v. United States*, 142 U.S. 651, 660 (1892)). This is true even of aliens "paroled elsewhere in the country for years pending removal" who have developed significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)).

They are "'treated' for due process purposes 'as if stopped at the border.'" *Id.* This includes those that successfully evade inspection at the border: "[A]n alien who tries to enter the country illegally is treated as an 'applicant for admission'"—*i.e.*, treated the same as if they lawfully presented themselves at a port of entry or were caught at the border. *Id.* at 140.

The Supreme Court has elsewhere made clear that *lawful admission*—not physical entry—is the touchstone for when aliens gain due process interests that could potentially require procedures beyond what Congress has provided (and thus all that the due process clause requires under the entry fiction doctrine). For example, in *Landon v. Plasencia*, 459 U.S. 21 (1982), the Court observed that only "*once an alien gains admission* to our country and begins to develop the ties that go with permanent residence [does] his constitutional status change[]." *Id.* at 32 (emphasis added). "Th[is] rule," the Court explained, "rests on [the] fundamental proposition" that "the power to admit or exclude aliens is a sovereign prerogative," and "the Constitution gives the political department of the government plenary authority to decide which aliens to admit." *Id.* at 32; *see also Nishimura Ekiu*, 142 U.S. at 659.

This understanding that additional procedures can only be required for those who have been lawfully *admitted* (and not even lawfully paroled) was confirmed years before in *Kaplan v. Tod*, 267 U.S. 228 (1925). There, the Supreme Court held that a child lawfully *paroled* into the care of relatives *for nearly nine years*—but never lawfully *admitted*—must be "regarded as stopped at the boundary line" and "had gained no foothold in the United States." *Id.* at 230-31. That was so even though the child had been living in the interior of the country with her naturalized-citizen father and thus was presumably forming connections to the United States. *Id.* at 229. Still, because she had never been lawfully admitted, the Due Process Clause did not require *any* additional procedures beyond what Congress provided. *Id.* at 229-30.

The same result should follow here. Petitioner's entry and presence in the United States has been unlawful. The moment of entry into the United States constituted a criminal act under 8 U.S.C. § 1325(a). And Petitioner's presence from that moment forward stands in open defiance of federal immigration law.

As the Eighth Circuit recognized, by enacting § 1225(b)(2)(A), Congress sought to eliminate the preferential treatment of aliens who violate the country's immigration laws. *Avila* Slip op. 8. Under Petitioner's argument aliens who violate federal law would enjoy *greater* constitutional protections than those who comply with it. Nothing in law allows an alien to adversely possess additional due process rights by virtue of unlawfully entering the United States and successfully evading enforcement for some length of time—especially when the nine years of *lawful* presence in *Kaplan* did not suffice.

Petitioner's theory of procedural due process is incompatible with longstanding precedent. Petitioner is in full immigration proceedings, represented by counsel in those proceedings, and is receiving all the process due under the statute; that is "due process of law." *Thuraissigiam*, 591 U.S. at 138.

In summary, Petitioner's case is dictated by 8 U.S.C. § 1225. Petitioner's argument that his pending U-visa, deferred action status, or lack of criminal history violates procedural due process is without merit, because 8 U.S.C. § 1225 mandates detention until the removal proceedings are concluded. At this time, the removal proceedings are in progress. This Court should find that the removal proceedings are not final until the Petitioner is released or removed.

Warrantless Arrest Claim

Petitioner alleges his arrest was warrantless, and did not comply with the appropriate procedure. Pet. ¶¶ 17, 22-39, 72-78, 98-121. Respondents note that the arrest was not warrantless, as a warrant was issued on January 27, 2026. Warrant.

Assuming *arguendo* that the warrant was issued subsequent to the arrest in this case[8], the plain reading of 8 C.F.R. § 287.8(c)(i) states the warrant "shall be obtained", but does not specify that the warrant is issued before the arrest.

Furthermore, an officer may arrest any alien without warrant if the officer has reason to believe the alien is in the U.S. in violation of "any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens" and said alien is "likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2).

Here, there was reason to believe Petitioner was in violation of a relevant law or regulation because Petitioner, was in fact in violation of a relevant law. 8 U.S.C. § 1325 prohibits non-citizens to enter or attempt to enter the U.S. at any time or place other than designated ports of entry. Petitioner violated that law when he entered the U.S. without inspection. *Supra*; NTA (documentation served on Petitioner on January 28, 2026 indicating the Government was aware Petitioner "arrived at a time or place other than as designated by an Attorney General"). Furthermore, the warrant states that Petitioner

[8] Petitioner was arrested the same day the warrant was issued.

made statements to an immigration officer and/or there was other evidence indicated Petitioner either lacked immigration status or is removable from the U.S. under immigration law. Warrant.

There was reason to believe Petitioner would likely escape before a warrant could be obtained. Petitioner entered the country illegally, and was living in the U.S. since 1999 before applying for a U-visa on December 20, 2023. In other words, Petitioner evaded immigration officers for over twenty years. Thus, Petitioner demonstrated he could not be trusted to report back to an immigration official – *i.e.* that he would "likely escape."

Also, assuming the arrest is warrantless, the procedures in 8 C.F.R. § 287.3 were followed, as required. As required by § 287.3(a), Petitioner was examined on January 28, 2026. NTA. As required by § 287.3(b), the case was referred to an immigration judge. IJ Order. As required by § 287.3(c), Petitioner was notified of the reasons for his detention. NTA. As required by § 287.3(d), an Immigration Judge determined that there would be no change in custody status. IJ Order.

CONCLUSION

This case should be dismissed, or reassigned to the judge who decided and denied the first habeas action that Petitioner filed months ago. Assignment issue aside, the Court should deny this petition on the merits for the reasons discussed above.

[***signature page follows***]

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DANIEL N. ROSEN
United States Attorney

s/ Worthington Phillips
BY: WORTHINGTON S. PHILLIPS
Special Assistant United States Attorney
Attorney ID Number 5817754
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600
worthington.phillips@usdoj.gov