

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Jesus Eliseo FLORES DURAN,

Petitioner,

v.

Markwayne MULLIN, Secretary, U.S.
Department of Homeland Security,

Todd BLANCHE, Acting Attorney General,
United States Department of Justice,

Todd M. LYONS, Acting Director of
Immigration and Customs Enforcement, and

David EASTERWOOD, Acting Director, St.
Paul Field Office Immigration and Customs
Enforcement,

Ryan SHEA, Sheriff of Freeborn County,
Minnesota,

Respondents.

Case No.

0:26-cv-2486 (PJS-DTS)

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

*Expedited Handling
Requested*

INTRODUCTION

Petitioner Jesus Eliseo Flores Duran is a 22-year-old citizen of El Salvador who fled abandonment and neglect in his home country when he was 14 years old. Following his arrival in the United States, he was processed as an unaccompanied minor (UAC) and was released into the custody of an aunt who was living in Minnesota. Jesus has since

built a new life for himself in the United States, attending high school and then working since 2020.

Jesus now benefits from several forms of protection from deportation. In addition to his UAC status, he was granted Special Immigration Juvenile status (SIJC) in 2021, and he is also member of a class in the *J.O.P.* case consisting of young people who arrived as UACs and who cannot be removed until their pending asylum applications are adjudicated by USCIS. These procedural protections give rise to certain due process rights, including the right not to be re-detained without pre-deprivation process where changed circumstances must be proven. That did not happen here, prior to Petitioner's re-detention by ICE in April 2026.

Federal Respondents (Respondents) argue that Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and that under that statute Petitioner was not entitled a pre-deprivation hearing. This argument is factually incorrect and based on a misapplication of the law. It should therefore be rejected, and the Petition should be granted.

RESPONSE TO RESPONDENTS' STATEMENT OF FACTS

In their brief, Respondents state that they "[d]o not dispute the salient facts alleged in the Petition." Doc 5 at 2. That said, Respondents' brief includes a number of factual assertions that are both at odds with the Petition and incorrect. At a minimum, the record relating to three factual matters should be corrected.

1. Petitioner has a pending asylum application.

In their brief, Respondents acknowledge Petitioner's asylum application pending with USCIS but claim it was dismissed by an Immigration Judge in 2024. Doc at 2. Petitioner's asylum application was not dismissed, by an Immigration Judge or any other authority. Indeed, the claim of dismissal is refuted later in the Response, where Respondents state that ICE made a request on May 8, 2026, to expedite Petitioner's asylum application—a request that would only be made if Petitioner had a pending asylum application. *Id.* Petitioner has no knowledge of any expedited handling request having been made, but the key fact is that Petitioner has a valid, pending asylum application, which Respondents apparently concede.

2. Petitioner possesses deferred action status.

Respondents state in their brief that Petitioner does not have deferred action status. Doc 5 at 4. The I-797 Notice of Action attached hereto as Exhibit A documents Petitioner's deferred action status.

3. Petitioner's arrest was not made pursuant to a warrant.

With their Response, Respondents provide a description and documentation relating to Petitioner's arrest. Regarding the circumstances of the arrest, they assert that “upon [Petitioner's] release from Dakota County jail, [he] was served with a Warrant of Arrest and placed under arrest.” Doc 5 at 2. This description of Petitioner's arrest is contrary to the documentary evidence provided by Respondents. That evidence includes a

Warrant for Arrest of Alien that states on its face that it was served on Petitioner at the Freeborn County jail, i.e, after his arrest and transfer to Freeborn County by ICE. Doc. 6-1.

ARGUMENT

I. Petitioner retains his status as an Unaccompanied Alien Child (UAC) and as such is protected from deportation.

Respondents do not dispute that Petitioner met the definition of a UAC and was processed as such upon his arrival in the U.S., and they also do not dispute that a UAC is protected from deportation under the Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”). *See* 8 U.S.C. § 1232. Instead, Respondents argue that Petitioner automatically lost UAC status when he turned 18. That argument fails, for at least two reasons.

First, it is wrong on the law. One need only read the two cases cited by Respondents to conclude that a person does not age-out of UAC status upon reaching the age of majority. While it is true that certain changes in circumstance permit termination of UAC status, simply turning 18 is not one of them.

In *R.A.R.R. v. Almodovar*, cited by Respondents, ICE detained a 19-year old who had entered the country and been processed as a UAC and then released to a sponsor. Just as Respondents do here, the government in that case argued that once a UAC turned 18, he was no longer entitled to the protections of the TVPRA. *R.A.R.R. v. Almodovar*, No. 25-CV-6597, 2026 WL 323040, at *7 (E.D.N.Y. Feb. 6, 2026). The court rejected that

argument and explained that regardless of his age the petitioner in that case was entitled to “the least restrictive setting that is in the best interest of the child,” taking into consideration “danger to self, danger to the community, and risk of flight.” *Id.* at *5 (citing 8 U.S.C. § 1232(c)(2)(A)). And given that UACs have already been determined to be eligible for release into the community, the court made clear that any re-detention of a UAC, even after reaching majority age, would require a determination of changed circumstances:

Respondents have made no showing of changed circumstances, and their basis for detaining Petitioner now is merely his alleged “removability.” Absent a showing that the deprivation of Petitioner’s liberty is warranted due to danger to the community or risk of flight—i.e., circumstances materially different from those that supported Petitioner’s prior release into the community to live with his sponsor—Petitioner’s re-detention violated his procedural due process rights.

R.A.R.R., at *8. In short, *R.A.R.R.* supports granting the Petition, not denying it.

In *Lopez v. Sessions*, also cited by Respondents, the court reached the same conclusion as the court did in *R.A.R.R.* The petitioner in that case had arrived in the U.S. as a UAC, had been processed through the Office of Refugee Resettlement, and had ultimately been released to his mother. After the petitioner turned 18, ICE invited him for an interview, at which he was arrested and placed in the local county jail pending removal. The court determined that reaching the age of majority was not relevant to the petitioner’s UAC status and concluded that “Respondents’ decision to re-detain Lopez, which transferred him from HHS to DHS custody without consideration of the least restrictive setting, violates the TVPRA as amended.” *Lopez v. Sessions*, No. 18-cv-4189,

2018 WL 2932726, at *8 (S.D.N.Y. June 12, 2018). “Petitioner, who turned eighteen while on physical release but in legal custody of the HHS, pursuant to a Sponsorship Agreement, was deserving of such protection.” *Id.* See also *Garcia Ramirez v. U.S. Immigr. & Customs Enf’t*, 812 F. Supp. 3d 86, 98 (D.D.C. 2025) (agreeing that “Defendants’ practice of re-arresting and detaining age-outs after their initial release—without any material change in circumstances— ... violates Section 1232(c)(2)(B)”).

Second, as Respondents apparently acknowledge, *see* Doc 5 at 3-4, Petitioner’s membership in the *J.O.P.* class and his pending adjustment application would entitle him to UAC protections even if he had lost UAC status upon turning 18.

Petitioner is protected from deportation by his UAC status regardless of the fact that he is now an adult.

II. Petitioner is protected from deportation as a Special Juvenile Immigrant.

Respondents do not dispute that Petitioner applied for and was granted Special Juvenile Immigrant status (SIJS) or that a person with SIJS is afforded numerous immigration benefits including protection from deportation. Instead, Respondents argue that “an SIJ beneficiary’s classification may be revoked under the circumstances identified in 8 C.F.R. § 204.11(j)(1), or otherwise revoked by USCIS for ‘good and sufficient cause’ pursuant to 8 C.F.R. § 205.2.” Doc 5 at 4. That may be an accurate statement of the law, but it is irrelevant here because there is no evidence or even any suggestion that Petitioner’s SIJS classification has been revoked, which would have required notice and a hearing:

Given the host of important benefits that SIJS confers on beneficiaries, in order for the government to revoke this special status, Special Immigrant Juveniles are entitled to due process, by statute and regulation. 8 U.S.C. § 1155; 8 C.F.R. § 205.2(a). USCIS may revoke SIJS only on a showing of ‘good and sufficient cause.’ 8 U.S.C. § 1155; 8 C.F.R. § 205.2(a). Except in rare circumstances, revocation may proceed ‘only on notice to the petitioner,’ who ‘must be given the opportunity to offer evidence in support of the petition ... and in opposition to the grounds alleged for revocation....’ 8 C.F.R. §§ 205.2(b), 204.11(j). USCIS must provide a written explanation for any revocation of SIJS. *Id.* § 205.2(c).

Walter A. v. Easterwood, No. 26-CV-1393, 2026 WL 836428, at *4 (D. Minn. Mar. 26, 2026). There was no revocation of Petitioner’s SIJS status and Petitioner has no knowledge of any process initiated to attempt to revoke that status. It remains in place and protects Petitioner from deportation.

III. Petitioner cannot be deported because he is a member of the class in *J.O.P.*

Respondents do not dispute that a member of the class in *J.O.P. v. DHS*, No. 8:19-cv-01944 (D. Md.), enjoys certain protections, including protection from removal from the United States while awaiting an adjudication of a pending asylum application by USCIS. Respondents also concede that Petitioner has a pending asylum application and do not dispute that Petitioner satisfies the other criteria for *J.O.P.* class membership. Thus, it is uncontested that Petitioner is a *J.O.P.* class member and as such cannot be deported until USCIS — and not the Immigration Court — makes a final decision on his asylum application.

IV. Petitioner was arrested under 8 U.S.C. § 1226(a), not § 1225(b)(2).

Respondents disregard the protections from deportation enjoyed by Petitioner and assert that his detention without a pre-deprivation hearing is authorized by the governing statute. In making this argument, Respondents claim that Petitioner was arrested under § 1225(b)(2), which imposes mandatory detention. The facts as presented by Respondents do not support this argument.

As shown in the warrant that Respondents have entered into the record, Doc 6-1, ICE invoked the discretionary detention provisions of 8 U.S.C. § 1226 in the Form I-200 administrative warrant was served on Petitioner. The warrant was directed to: “Any immigration officer authorized pursuant to sections 236 [8 U.S.C. § 1226] and 287 [8 U.S.C. § 1357] of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations.” *Id.* Courts in this District have repeatedly held Respondents to those representations in the I-200 administrative warrant and evaluated the detention at issue in those cases under the discretionary detention framework set forth in § 1226, regardless of any subsequent assertion that the detention was pursuant to § 1225(b)(2). *See, e.g., Hector J.A.S. v. Shea*, No. 26-cv-2242 (D. Minn. May 06, 2026); *Jefferson G.H.L. v. Blanche*, No. 26-cv-2344, 2026 WL 1229623, at *2 (D. Minn. May 5, 2026); *Ruben D.A.G. v. Blanche*, No. 26-cv-2041, slip op. at 5 (D. Minn. Apr. 20, 2026) (disregarding a Form I-200 administrative warrant that “clearly was not served on Petitioner until he arrived at the Freeborn County Adult Detention Center” after being arrested at the Rice County Courthouse); *Souleimane*

C. v. Blanche, No. 26-cv-2215, 2026 WL 1180075, at *4 (D. Minn. Apr. 30, 2026); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 970 (D. Minn. 2025). *See also Anibal G.A.P. v. Bondi*, No. 26-cv-1879, 2026 WL 788815, at *3 (D. Minn. Mar. 20, 2026) (“Allowing Respondents to toggle between detention regimes in this way would collapse the statutory structure Congress enacted and render § 1226 largely superfluous.”).

Under § 1226(a), “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” In other words, to detain a noncitizen under § 1226(a), a warrant is required. *See Ahmed M. v. Bondi*, No. 25-cv-4711, 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026) (“Issuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a).” (citation omitted)). Because arrest pursuant to § 1226 requires a warrant and Petitioner’s arrest was not made pursuant to a warrant, it was unlawful.

But even if one were to consider Petitioner’s arrest under §1225(b)(2) and the Eighth Circuit’s recent *Avila* decision as Respondents urge, it is still fatally flawed. An arrest cannot be made pursuant to § 1225(b)(2) without first complying with 8 U.S.C. § 1357(a), which addresses federal immigration officials’ authority to make warrantless arrests. *See Jefferson G.H.L.*, at *5. Under § 1357(a)(2), an immigration officer may “arrest any alien in the United States” without a warrant “if he has reason to believe that the alien . . . is in the United States in violation of any such law or regulation **and** is likely to escape before a warrant can be obtained for his arrest.” 8 U.S.C. § 1357(a)(2) (emphasis in original). The Eighth Circuit has interpreted “the term ‘reason to believe’ in

§ 1357(a)(2) [to] mean[] constitutionally required probable cause.” *United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010). After a warrantless arrest is made, the noncitizen “shall be taken without unnecessary delay for examination before an officer of the Service . . . to examine aliens as to their right to enter or remain in the United States.” 8 U.S.C. § 1357(a)(2).

Here, there is no evidence of and there was no consideration of whether Petitioner was likely to escape before a valid warrant could be obtained and properly executed. On the contrary, the record shows that at the time of his detention Petitioner was employed, was settled in Minnesota for nearly 8 years, and had a pending application to adjust to permanent resident status. “Anyone without a lawful presence does not immediately present a likelihood of escape merely by being a noncitizen.” *Ruben D.A.G.*, slip op. at 5. *See also Jefferson G.H.L.*, at *3 (“To hold that a noncitizen is likely to escape merely because they are removable would effectively collapse § 1357(a)(2)’s two distinct requirements into one. . . . If every noncitizen that is here illegally is presumed likely to escape authorities, then § 1357(a)(2)’s second, independent requirement is rendered superfluous.”)

Other than asserting that ICE had probable cause to detain Petitioner based on a charge of inadmissibility, Respondents have made no effort to justify Petitioner’s arrest under 8 U.S.C. § 1357(a). Because Respondents have not shown that Petitioner was likely to escape, they failed to comply with 8 U.S.C. § 1357—the requirement for arresting a noncitizen without a warrant. Petitioner’s arrest and detention would have also

been improper under 8 U.S.C. § 1225(b)(2), had that been the actual statutory basis for the arrest.

IV. Petitioner's detention violated his Due Process rights.

Petitioner's warrantless arrest alone requires his release, but Petitioner also established in the Petition that his detention violates his rights to both substantive and procedural due process. Respondents counter with the argument that § 1225(b)(2) provides all the process that is due, which is essentially none. According to Respondents, detention under § 1225(b)(2) is mandatory in all circumstances and satisfies substantive and procedural due process requirements as a matter of law.

The fundamental flaw in Respondents' argument is that Petitioner was not detained under § 1225(b)(2), as explained above. Petitioner was detained under § 1226(a), which required a warrant. Respondents' attempt to use § 1225(b)(2) to shield Petitioner's detention from all constitutional review should therefore be rejected.

A. Substantive due process.

Respondents argue that Petitioner's substantive due process claim is barred by *Demore v. Kim*, 538 U.S. 510 (2003). *Demore* is distinguishable from this case, however, because it involved the mandatory detention of a "limited class of deportable aliens—including those convicted of an aggravated felony"—subject to mandatory detention under the INA provision at issue in that case, 8 U.S.C. § 1226(c). *See id.* at 531–32 (Kennedy, J., concurring) (noting that even mandatory immigration detention may offend due process if removal proceedings become so unreasonably prolonged that detention no

longer “facilitate[s] deportation . . . [or] protect[s] against risk of flight or dangerousness”). The *Demore* petitioner had been convicted of at least one aggravated felony “following the full procedural protections our criminal justice system offers.” *Id.* at 513. He did not “dispute the validity of his prior convictions” or “the INS’[s] conclusion that he [was] subject to mandatory detention under § 1226(c)” and “conced[ed] that he was deportable.” *Id.* at 513–14. Put simply, what the *Demore* petitioner was challenging was the indefinite nature of his detention, not its legality at the outset.

None of these facts is present in this case. And most significantly, unlike the *Demore* petitioner, Petitioner here is **not** deportable, due to his UAC and SIJS statuses and his membership in the *J.O.P.* class. If a person cannot actually be removed, “preventing flight” is a “weak or nonexistent” justification for detention. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *cf. Phan v. Reno*, 56 F. Supp. 2d 1149, 1156 (W.D. Wash. 1999) (“Detention by the INS can be lawful only in aid of deportation.”). Detention for community safety, in turn, is only permissible “when limited to specially dangerous individuals and subject to strong procedural safeguards.” *Zadvydas*, 533 U.S. at 691.

Here, the government’s inability to lawfully remove Petitioner eliminates any justification of flight risk, which the government could not show in any event, given Petitioner’s lengthy residence in the United States, his deep ties to his community in Minnesota, and his pending application as an SIJS beneficiary to adjust to lawful

permanent resident status and then gain citizenship. *See Osorio-Martinez v. Attorney General*, 893 F.3d 153, 173-75 (3rd Cir. 2018).

Because the government is not detaining Petitioner to serve legitimate interests in protecting against danger or flight risk, his detention violates substantive due process under the Fifth Amendment, and this Court should order his immediate release on this basis.

B. Procedural due process.

In response to Petitioner's procedural due process claim, Respondents readily acknowledge that "some aliens who have established connections in this country may possess due process rights in removal proceedings." Doc at 7. Petitioner plainly has such "established connections in this county" that entitle him to due process rights in removal proceedings. He has resided in Minnesota for nearly nine years, after arriving alone at the age of 14, has nearly completed his high school education here, has been employed since 2020, and has a pending application to adjust status to Lawful Permanent Resident. He is plainly not an "alien at the threshold of initial entry" who cannot, according to Respondents, "claim any greater rights under the Due Process Clause." *Id.*

The parties are in agreement that the Supreme Court's three-part analysis from *Mathews v. Eldridge*, 424 U.S. 319 (1976), provides the test for Petitioner's procedural due process claim. Petitioner established in his petition that the first *Mathews* consideration — the private interest that will be affected by the official action — weighs very heavily in his favor. "Freedom from imprisonment—from government custody,

detention, or other forms of physical restraint— lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. 678, 690 (2001). Respondents’ only argument in response rests on their assertion that Petitioner’s detention is governed by, and his due process rights are limited by, statute. But as discussed above, the governing statute here — § 1225(a) — required a warrant for Petitioner’s arrest, and a warrantless detention carried out under that statute does not foreclose a due-process claim.

The second *Mathews* factor — the risk of erroneous deprivation of liberty — also strongly weighs in Petitioner’s favor. No determination has been made that he is a danger or a flight risk, and his detention, without prior notice and a meaningful opportunity to respond, makes the risk of erroneous deprivation of liberty not just high, but certain. Indeed, Respondents acknowledge that no inquiry into Petitioner’s danger or flight risk will be made. Respondents’ only consideration is whether Petitioner is “present without admission and is not clearly entitled to admission.” Doc 5 at 10.

The third *Mathews* factor — the Government’s interest — favors Petitioner as well. As Petitioner argued in his petition, there is no proper governmental interest in unlawfully detaining someone, and releasing him and requiring the government to provide a pre-deprivation hearing before re-detaining him stands to save the government money and effort wasted on erroneous detention. Moreover, unlawful detention and violation of noncitizens’ constitutional rights disserve the public interest.

In response, Respondents argue that one of the government's "strongest interest[s] in detaining someone pending their removal proceedings" is to "make sure that the person appears for immigration proceedings." Doc 5 at 10. Again, there is no evidence that Petitioner poses a flight risk. And to the extent any governmental entity has inquired into the risk of flight, the Dakota County District Court presiding over Petitioner's DWI charge had granted him condition release mere hours before he was detained by ICE.

The *Mathews* factors establish that Petitioner has a protected liberty interest in continued freedom, absent certain pre-deprivation process where changed circumstances are proven. His detention without pre-deprivation hearing violated his procedural due process rights and justifies his immediate release.

V. The appropriate remedy is immediate release.

If the Court grants the Petition, the appropriate remedy is immediate release, regardless of whether the decision is based on the lack of a warrant required under § 1225(a) or on Respondents' violation of Petitioner's right to due process. See *Jefferson G.H.L.*, 2026 WL 1229623, at *3 (release is proper remedy where ICE "failed to comply with immigration law when arresting and detaining Petitioner"); *Juan S.R. v. Bondi*, No. 25-cv-0005 (D. Minn. Jan. 12, 2026) (ordering immediate release where Respondents failed to present evidence of a warrant); *Lauro M. v. Bondi*, No. 26-cv-134, 2026 WL 115022, at *3 (D. Minn. Jan. 15, 2026) ("the appropriate remedy for detention that lacks a proper statutory basis under § 1226(a) is release"); *Darvin M. v. Bondi*, No. 26-CV-0437, 2026 WL 184843, at *6 (D. Minn. Jan. 24, 2026) ("Respondents'

Constitutional violations, as well as their statutory violations, in detaining Petitioner support Petitioner's immediate release"); *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13–14 (W.D. Tex. Oct. 2, 2025) (finding that "immediate release appropriately remedies Respondents' violation of [Petitioner's] due process rights through her continued detention."); *Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 319–20 (E.D.N.Y. 2025) (explaining, after finding a due process violation, that release is the proper remedy rather than a bond hearing because "a post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out.").

CONCLUSION

For all of the foregoing reasons, the Petition should be granted and Petitioner should be ordered immediately released.

Respectfully submitted,

Dated: May 10, 2026.

SIEGEL BRILL, P.A.

/s/ Mark Thieroff

Mark Thieroff (MN Lic. No. 322404)
100 Washington Avenue S., Suite 1300
Minneapolis, MN 55401
markthieroff@siegelbrill.com
(612) 337-6100

**ATTORNEYS FOR PETITIONER
JESUS ELISEO FLORES DURAN**