

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

DAWIT ABRAHAM MEKONNEN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 1:26-CV-00122-AGF
	)	
GARY STOLZER, Warden of Ste.	)	
Genevieve County Detention Center,	)	
	)	
Respondent.	)	

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

COMES NOW Respondent Gary Stolzer, Warden of 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 Brief 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 Eritrea. See Pet., ¶ 6. Petitioner entered the United States without inspection in 2018. Ibid. Petitioner contends his wife, a naturalized citizen, is “the abuser whose conduct gives rise to [his] VAWA self-petition.” He further contends that “the marriage that should have protected him was, itself, the source of [his] harm,” as his wife “hit him, controlled his money, and repeatedly

¹ Petitioner argues he is held under the control of “Ste. Genevieve County Detention Center.” Pet., ¶ 1. 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)). 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.

threatened to report him to immigration and withdraw of the I-130 Petition she had filed for him if he did not comply with her demands.” *Id.* at ¶ 2. “When the marriage ended, she followed through. She refused to continue his immigration case and left him without a path.” *Ibid.* Therefore, “he filed a pending VAWA I-360 self-petition.” *Id.* at ¶ 3.² Following a “routine traffic stop,” Petitioner “told the officer the truth about his immigration status” and “has been in a detention cell ever since.” *Id.* at ¶ 2. Petitioner was, in fact, detained by Immigration and Customs Enforcement (ICE) and is now in custody at the Ste. Genevieve County Detention Center awaiting completion of removal proceedings. Respondent is a state official who, alongside ICE, has control over Petitioner’s custody. Petitioner seeks immediate release or a bond hearing. *Pet.*, Relief Requested.³

The Petition—being one couched in *habeas corpus* relief—seeks to challenge the manner, location, and/or duration of detention. Ultimately, that claim presents the familiar *Hurtado* question—one the Eighth Circuit, the Fifth Circuit, and this Court have already resolved repeatedly

² An I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*, is known colloquially as a “VAWA Petition” and implicates the protections of 8 U.S.C. § 1367, which among other things prohibits federal authorities from disclosing certain VAWA-related records. Specifically, Section 1367(a)(2) bars the undersigned AUSA and relevant agency defendants from disclosing “to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief under ... section 101(a) of the Immigration and Nationality Act *or* section 240A(b)(2) of such Act.” (emphasis added). A VAWA Petition falls under Section 240A(b)(2), codified at 8 U.S.C. § 1229b(b)(2); *see also* 8 U.S.C. § 1154(a)(1)(A)(iii)(I). Section 1367(b) permits disclosure of protected information “in connection with judicial review of a determination,” provided it is carried out “in a manner that protects the confidentiality of such information.” 8 U.S.C. § 1367(b)(3). Thus, under these combined mandates, courts routinely find that Section 1367 imposes the duty to seal any record pertaining to a VAWA Petition. *See, e.g., Oluwaseun v. Mayorkas*, 2025 WL 1698728 at *4 (N.D. Tex. May 22, 2025); *Patel v. Jaddou*, 92 F.4th 639, 641-42 (6th Cir. 2024) (scaling the record satisfies Section 1367(b)(3), notwithstanding the fact that Federal Civil Procedure Rule 5.2 limits access to immigration cases generally). At this juncture, Respondent does not seek to include any VAWA-related documentation and, instead, simply reiterates those allegations made in the Petition itself.

³ 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. Mukasev*, 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).

in the Government’s favor. See Avila v. Bondi, 170 F.4th 1128, 1134 (8th Cir. 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”).⁴ Under this consistent and growing body of authority, Petitioner’s *habeas* Petition must be denied.

Perhaps recognizing this authoritative body of law, Petitioner raises myriad other issues:

- Preservation of the “statutory argument” decided by *Avila* for “potential Supreme Court consideration—a point that merely needs acknowledged, procedurally, but that this Court is nonetheless bound to follow until such time *certiorari* is granted on this issue, see *infra* pp. 6-7;
- Violation of the Fifth Amendment’s Due Process Clause (Substantive)—but there is no substantive constitutional interest at play here, see *infra* pp. 8-12;
- Violation of the Fifth Amendment’s Due Process Clause (Procedural)—but the Eighth Circuit and this Court have already found that detention during removal

⁴ Accord Moran v. Warden, 2026 WL 1693766 (E.D. Mo. Jun. 11, 2026) (Stevens, J.); Sanwan v. Warden, 2026 WL 1469187 (E.D. Mo. May 26, 2026) (Lanahan, J.); Camba v. Warden, 2026 WL 1351226 (E.D. Mo. May 14, 2026) (Schelp, J.); Lugo-Solet v. Mullin, 2026 WL 1162233 (E.D. Mo. Apr 29, 2026) (Bluestone, J.); 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.); 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)).

proceedings is appropriate, see infra pp. 8-12; and

- An argument that a VAWA self-petitioner is not someone “seeking admission,” and thus Section 1225(b)(2)(A) does not apply—but, by filing an I-360, Petitioner is necessary “seeking admission” and, until the I-360 is granted, Petitioner is indeed subject to detention under both Sections 1225 and 1226, see infra pp. 12-15.

In short, this case, despite a flurry of arguments, presents the well-trodden issues already faced by this Court and the Eighth Circuit in *Avila*. Detention is mandatory under Section 1225(b)(2)(A) and, thus, ICE acted appropriately when detaining Petitioner, without bond, through the conclusion of removal proceedings.

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 distills into four discrete issues: (1) does the mandatory detention scheme of 8 U.S.C. § 1225(b)(2)(A) apply to this case; and (2) does the Fifth Amendment’s *substantive* Due Process Clause protections have any bearing on this case; (3) does the Fifth Amendment’s *procedural* Due Process Clause protections have any bearing on this case; and (4) does Petitioner’s VAWA self-petitioner status otherwise alter the outcome? ⁵

⁵ The Petition acknowledges administrative exhaustion did not occur. Pet., ¶ 45. 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 This Case.

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 Section 1225(b)(2) would no longer apply. In protecting the sovereign boundaries of the United States, the BIA rejected this idea.⁶

Hurtado prompted much litigation around the country. But this Court does not write upon a blank slate; rather, the Eighth Circuit, the Fifth Circuit, and this Court have repeatedly 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 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

⁶ 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.

to all “applicants for admission” who are “seeking admission,” which itself embraces all who are “present without admission”).⁷

Thus, there is no need to belabor the point. The takeaway is straightforward: any alien 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 scheme. 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”). Notwithstanding the VAWA self-petition, discussed *infra* at pp. 12-15, that mandatory detention framework applies to Petitioner, here, and therefore *habeas* relief must be denied.

B. Petitioner’s Fifth Amendment Due Process Claims—either Procedural or Substantive—Cannot Upend the Eighth Circuit’s Decision in *Avila* Regarding Section 1225(b)(2)(A)’s Applicability.

⁷ See, supra, FN 4. And despite the contrary caselaw this Court will inevitably find, 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); Vargas Lopez v. Trump, 802 F.Supp.3d 1132, 1139-40 (D. Neb. Sept. 30, 2025); 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).

Petitioner also asserts opaque constitutional claims invoking the Fifth Amendment's Due Process Clause—both substantive and procedural. Those claims largely collapse into one as, indeed, the U.S. Supreme Court has largely only ever endorsed the idea of *procedural* due process protections when it comes to aliens facing removal; so, they'll be addressed as one issue here.

In the wake of *Avila*'s on-point statutory analysis, this pivot to presumptively overriding constitutional questions is unsurprising. Indeed, Petitioner appears to be signaling reliance on Judge Erickson's dissent in *Avila*, 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*, 170 F.4th at 1140, n.8 (Erickson, J. dissenting).⁸

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) (citizen spouse lacked substantive due process right to reside with non-citizen

⁸ Just recently, Judge Bluestone's post-*Avila* decision in *Lugo-Solet v. Mullin*—that sided with the Government in finding no Fifth Amendment Due Process Clause violations—was appealed to the Eighth Circuit. That appeal will, thus, definitively resolve whether the Fifth Amendment to cases such as this. *See* 2026 WL 1162233 at *2 (E.D. Mo. Apr. 29, 2026) (Bluestone, J.) (denying *habeas* relief post-*Avila* where petitioner relied “entirely on his Fifth Amendment claim” and finding, under *Banyee*, no constitutional concern about the lack of a bond hearing so long as removal proceedings are ongoing).

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). To be sure, as the Supreme Court has long 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).

Notwithstanding, the Petition makes much of the fact that Petitioner and his daughter have “a fundamental liberty interest” in being together and not “permanently separated” because of removal proceedings against Petitioner. Pet., ¶ 31. Yet, in Munoz, the Supreme Court firmly dispelled any notion that familial relationships between citizens and non-citizens give rise to substantive due process rights in the context of immigration. See Munoz, 602 U.S. at 911 (distinguishing the right of marriage with the right “to have [a] noncitizen husband enter (and remain in) the United States” because of that marriage, and holding that plaintiff was “wise” not to “advance a substantive right to immigrate one’s spouse” because “such a claim would ordinarily trigger strict scrutiny ... in the field of immigration” that is an “area unsuited to rigorous judicial oversight”); accord Baaghil v. Miller, 1 F.4th 427, 433 (6th Cir. 2021) (“American residents—whether citizens or legal residents—do not have a constitutional right to require the National Government to admit noncitizen family members into the country.”). Simply put, Petitioner and his daughter do not enjoy a substantive due process interest to be together notwithstanding Petitioner’s status as a non-citizen alien who elected, prior to his daughter’s birth, to enter the United States illegally.

Indeed, 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). Said differently, “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 foreseeable 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 procedural due process claims. 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 squarely rejected the sort of individualized balancing test urged by Petitioner. Compare Pet., ¶ 33 (urging use of the “balancing test from *Mathews*”); with Banyee, 115 F.4th at 933 (“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. This Court has held as much in a post-*Avila* Due Process Clause challenge. See Lugo-Solet v. Mullin, 2026 WL 1162233 at *2 (E.D. Mo. Apr. 29, 2026) (Bluestone, J.) (denying *habeas* relief post-*Avila* where petitioner relied “entirely on his Fifth Amendment claim” and finding, under *Banyee*, no constitutional concern about the lack of a bond hearing so long as removal proceedings are ongoing); accord Moran v. Warden, 2026 WL 1693766 (E.D. Mo. Jun. 11, 2026) (Stevens, J.); Sanwan v. Warden, 2026 WL 1469187 (E.D. Mo. May 26, 2026) (Lanahan, J.). Presented with similar circumstances, district courts across the country have also reached the same conclusion in rejecting comparable constitutional challenges. See, e.g., Delgado-Paz v. Olson, 2026 WL 1122637 at *8 (S.D. Ind. Apr. 24, 2026) (rejecting *habeas* petition premised on Due Process Clause concerns, finding the Supreme Court had already rejected the notion that individualized bond determinations were necessary or that length of detention, alone, creates a constitutional concern) 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”); Sharcf-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 arguments should be rejected, once again, as a thinly-veiled attempt to sidestep the Eighth Circuit's binding holdings in *Avila* and *Banyee*.

C. The Filing by Petitioner of a VAWA Self-Petition Does Not Change Their Status as One "Seeking Admission," and Thus *Avila* and Section 1225(b)(2)(A) Still Applies. In fact, Without an Approved VAWA Self-Petition, the Mandatory Detention Framework of Section 1226(c) Also Applies.

With the Eighth Circuit having foreclosed both statutory and constitutional challenges, Petitioner turns last to an asserted "special" immigration status that he claims sidesteps *Avila*.

But numerous temporary or interim classifications exist for aliens "seeking admission," 8 U.S.C. § 1225(b)(2)(A), and none alter the mandatory detention framework. In this Court, for example, challenges have been made for "Unaccompanied Alien Children" (UAC) and attendant status as an Specific Immigrant Juvenile Status (SIJS), but even then they remain subject to removal and mandatory detention notwithstanding the possibility to pursue an adjustment of status to permanent resident (green card holder).⁹ Challenges have also been made regarding the consequences

⁹ See Cortez-Amador v. Attorney General, 66 F.4th 429, 431-433 (3d Cir. 2023) (explaining SIJS status and requirements generally and concluding SIJS status did not exempt plaintiff from removal proceedings as an inadmissible alien); accord Mendez Ramirez v. Decker, 612 F.Supp.3d 200, 206, 219 (S.D.N.Y. 2020) (UAC status dealt with "care and custody" requirements while held by ORR, but did not "alter their immigration status" in terms of removability nor mandatory detention scheme where ORR was no longer involved).

of a petitioner's placement on the U-Visa "Bona Fide Determination" (BFD) track and subsequent grant of "Deferred Action." Yet, again, the grant of a U-Visa—even after the BFD / Deferred Action period concludes—act merely as a "nonimmigrant status without admission" and, thus, does not affect removability nor one's status as "seeking admission" under Section 1225(b)(2)(A).¹⁰

Petitioner's status as a "VAWA self-petitioner" is no different. This is made most obvious by Section 1182, which governs inadmissible aliens. Section 1182(a) sets out various "classes of aliens" who are "ineligible for visas or admission" based on their conduct or condition—each subsection addressing a distinct ground: subsection (1) concerns health-related grounds; subsection (2) crime; subsection (3) national security; subsection (4) public charge; subsection (5) labor; subsection (6) illegal entrants; subsection (7) documentation requirements; subsections (8) and (9) permanently ineligible aliens and those previously removed; and subsection (10) miscellaneous grounds.

Critically, a VAWA self-petitioner falls within subsection (6), which covers "illegal entrants"—those who entered the United States "without being admitted or paroled." Section 1182(a)(6)(A)(ii) creates a narrow exception from inadmissibility for these aliens, but only if they substantiate their VAWA claim; being a self-petitioner, alone, is insufficient and only one of three requirements of the statute. Further, what Section 1182(a)(6)(A) **does not** do is deem such individuals "admitted or paroled." They necessarily are not; they are "illegal entrants" without "being admitted or paroled" as the statute declares. Rather, the statute gives them an opportunity to overcome this inadmissibility if, and only if, they "demonstrate" their abuse-related allegations—preventing the mere filing of a VAWA self-petition from acting as a bar to removal, which would only encourage strategic, unsubstantiated filings to frustrate removal efforts.

¹⁰ 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."); 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."); see also Rivera Hernandez v. Noem, 2025 WL 3754434 at *3 (E.D. Tex. Dec. 19, 2025) ("Deferred action does not grant an alien an enforceable right to remain in the United States." (citing Texas v. United States, 809 F.3d 134, 165-66 (5th Cir. 2015))); 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).

Thus, such aliens still fall squarely within 8 U.S.C. § 1225(a)(1): “an alien present in the United States who has not been admitted ... shall be deemed ... an applicant for admission.” And under *Avila*, they are necessarily “seeking admission”—indeed, the VAWA self-petition itself is the mechanism by which they seek it—and, therefore, remain subject to the mandatory-detention scheme of Section 1225(b)(2)(A). See Avila, 170 F.4th at 1134 (8th Cir. 2026).

There is one caveat, but it must be carefully distinguished. Like Section 1225(b)(2)(A), Section 1226(c)(1) also governs mandatory custody, but it applies only to “criminal aliens,” which include—somewhat redundantly—illegal entrants who are “inadmissible under [Section 1182(a)(6)(A)].” 8 U.S.C. § 1226(c)(1)(E)(i). This redundancy reflects Congress’s strong disfavor toward unlawful entry into the United States.¹¹ But, as noted, Section 1182(a)(6)(A)(ii) removes the inadmissibility prong of Section 1182(a)(6)(A)(i), and thus the application of Section 1226(c)(1)—and, by extension, arguably Section 1225(b)(2)(A) as the more general mandatory-detention provision governing “applicants for admission”—for some VAWA self-petitioners. Who qualifies? The are three requirements:

Clause (i) shall not apply to an alien who demonstrates that—

(I) the *alien is a VAWA self-petitioner*;

(II) (a) the *alien has been battered or subjected to extreme cruelty* by a *spouse or parent*, or by a *member of the spouse's or parent's family* residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and

(III) there was a *substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States*.

8 U.S.C. § 1182(a)(6)(A)(ii)(I)-(III).

¹¹ Section 1226(c)(1) presumes most aliens who enter the United States illegally will be “inadmissible” under the INA. Because inadmissibility is the default consequence of an unlawful entry, Congress required that these individuals—when placed into removal proceedings—be mandatorily detained under Section 1226(c)(1), subject only to narrow statutory exceptions. But Congress also enacted Section 1225(b)(2)(A) as a broader, front-end detention authority. That provision applies to any “applicant for admission” who has not been formally admitted, regardless of how or where they entered. In other words, Section 1225(b)(2)(A) functions as a general catch-all detention mandate.

Thus, merely being a VAWA self-petitioner is insufficient to trigger the protection of Section 1182(a)(6)(A)(ii). Until all three elements are “demonstrated,” Section 1226(c)(1)(E)(i) continues to require mandatory detention of a “criminal alien” who is also an illegal entrant—such as Petitioner—operating alongside the mandatory-detention framework of Section 1225(b)(2)(A) for aliens who remain “applicants for admission” and are “seeking admission.” The Eighth Circuit expressly noted and approved this overlap in *Avila*.¹² Said differently, Section 1182(a)(6)(A)(ii) overrides inadmissibility only when a VAWA self-petition is fully substantiated and approved—not upon the mere filing of a petition alone. And thus, at the current posture of this case, both Section 1226(c) and Section 1225(b)(2)(A) require Petitioner’s mandatory detention as an illegal entrant and as an unadmitted alien still seeking admission. Section 1255(a) confirms this structure: a VAWA self-petitioner may adjust to permanent-resident status only with an “approved petition.” 8 U.S.C. § 1255(a). Until that point, the alien—an “illegal entrant”—is simply a hopeful applicant “seeking admission” through the filing of the I-360 itself.

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 again deny *habeas* relief in this case. *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026).¹³

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

¹² Section 1226(c)(1)(E)(i) is part of the Laken Riley Act, which added an exclusion to bond eligibility found in Section 1226(a) for inadmissible aliens that entered without inspection. The Eighth Circuit has recognized the overlap between Section 1226(c) and Section 1225(b)(2)(A), but concluded “to the extent that the Laken Riley Act overlaps with Section 1225, redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text ... any overlap between Section 1225(b)(2)(A) and the Laken Riley Act is just that—overlap.” *Avila*, 170 F.4th at 1137.

¹³ See, *supra*, FN 4.

Respectfully Submitted,

THOMAS C. ALBUS
United States Attorney

/s/ Shane K. Blank

SHANE K. BLANK, #65787MO
Assistant United States Attorney
111 South Tenth Street, Room 20.333
Saint Louis, MO 63102
(314) 539-2200
shane.blank@usdoj.gov

CERTIFICATE OF SERVICE

A copy of the foregoing was served on Friday, June 12, 2026, on all counsel of record via this Court's electronic case filing system.

/s/ Shane K. Blank

SHANE K. BLANK, #65787MO
Assistant United States Attorney