UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Josue M.P.,

Petitioner,

v.

David EASTERWOOD, Field Office Director of Enforcement and Removal Operations, St. Paul Field Office, Immigration and Customs Enforcement; **Markwayne MULLIN**, in his official capacity as Secretary of the U.S. Department of Homeland Security; **David J. VENTURELLA**, in his official capacity as acting director of U.S. Immigration and Customs Enforcement; **Todd BLANCHE**, in his official capacity as acting Attorney General of the United States; **Joel Brott**, Sherburne County Sheriff.

Respondents.

Case No. 26-cv-4016-NEB-JFD

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

I. INTRODUCTION

Respondents mischaracterize this case as an effort to obtain judicial adjudication of a U-visa petition. It is not. Petitioner seeks relief from present civil immigration custody because that custody prevented him from completing USCIS required biometrics for his pending Form I-918 petition and because the resulting deprivation has already become concrete: USCIS issued a denial for failure to provide required fingerprints before ICE delivered Petitioner's fingerprints to USCIS. On September 8, 2026, Petitioner received two decisions from USCIS, one denying his U-Visa on the merits and the other denying his U-Visa for failure to provide fingerprints. On September 17, 2026, nearly 30 days of receiving Petitioner's request for assistance in complying with USCIS's biometrics request, ICE delivered the fingerprints to USCIS.

Petitioner does not ask this Court to grant a U visa, decide the merits of Form I-918, or compel USCIS to exercise discretion in his favor. He seeks habeas relief from custody that has interfered with his ability to complete a mandatory step in a victim-based immigration process. The Court has jurisdiction to consider whether Petitioner is in custody in violation of the Constitution or laws of the United States and to fashion appropriate relief under 28 U.S.C. § 2241(c)(3).

The Government's successive-petition argument fails because this case rests on new events that postdate *Josue M.P. v. Easterwood*, No. 26-cv-3063 (NEB/JFD)—The July 20, 2026, biometrics appointment, the ensuing requests for ICE assistance, the September 8, 2026, USCIS decisions, and ICE's September 17,2026, delivery of fingerprints. These facts were unavailable in the prior action. Petitioner therefore respectfully requests that the Court deny Respondents' request for dismissal and grant immediate release.

II. ARGUMENT

A. This Petition Presents a New Custody Based Claim; It is Not Barred as Successive.

Respondents cite 28 U.S.C. § 2244(a)-(b)(1) as a threshold bar. That argument does not fit this § 2241 immigration detention case. First, § 2244(b) governs a "second or successive habeas corpus application under section 2254." Petitioner is not in state-court custody and does not bring a § 2254 petition. Section 2244 (a), in turn, addresses a person detained "pursuant to a judgment of a court of the United States." Petitioner challenges civil immigration detention, not detention pursuant to a federal criminal judgement. 28 U.S.C. § 2244.

Second, the present claim is factually and legally distinct from the claims adjudicated in *Josue M.P. I.* The relevant injuries had not yet occurred when the earlier action was litigated. Respondents identify the July 20 biometrics

appointment, counsel's subsequent requests for assistance, USCIS's September 8 denials, and ICE's September 17 transmission of fingerprints. On August 20, 2026, a month after the scheduled appointment, Petitioner's counsel sent an e-mail to ICE/ERO requesting assistance in completing biometrics for Petitioner's USCIS matter. On September 1, 2026, Petitioner's counsel sent a second e-mail requesting ICE/ERO to facilitate biometrics for Petitioner's USCIS matter. These postdate the earlier habeas litigation and form the factual predicate of this petition.

At minimum, equitable abuse-of-the-writ principles do not authorize dismissal where a later immigration habeas petition is limited to a discrete custody-based due-process theory that was not resolved on the merits in the prior case. *See Hirey v. Mullin*, No. C26-4045-LTS-MAR (N.D. Iowa July 15, 2026). The Court should decide the present claim on its own record.

B. Habeas is Proper because Petitioner Challenges Present Custody and Seeks Release.

The controlling question is the substance of Petitioner's claim and requested relief. Petitioner challenges the lawfulness of continued custody as applied to him and seeks release. That is habeas relief—not a request that the Court adjudicate an immigration benefit.

Respondents rely on *Spencer v. Haynes*, 774 F.3d 467 (8th Cir. 2014) and *Kruger v. Erickson*, 77 F.3d 1071 (8th Cir. 1996). Those cases concern

conditions-of-confinement claims where the requested remedy did not attack custody or seek earlier release. Petitioner, by contrast, alleges that the fact of his continuing detention caused and continues to cause the deprivation at issue. He does not seek damages or a generalized order governing detention conditions.

District of Minnesota authority recognizes that § 2241 jurisdiction remains available where a petitioner challenges allegedly unlawful immigration confinement rather than seeking review of a removal order or an agency's discretionary merits determination. *Mohammed H. v. Trump*, 781 F. Supp. 3d 886 (D. Minn. 2025); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957 (D. Minn. 2025). That is precisely the limited claim here.

C. Detention Interfered with a Mandatory U-visa Requirement and Caused Concrete Deprivation.

USCIS regulations require all Form I-918 petitioners to submit to biometric capture. USCIS—not ICE—has sole jurisdiction over U-visa petitions. 8 C.F.R. § 214.14. The Government does not dispute that Petitioner was in ICE custody when he was required to appear for the scheduled biometrics appointment, or that USCIS denied the matter for failure to provide fingerprints before ICE later sent fingerprints to USCIS. Petitioner remains in ICE custody at the Sherburne County Jail in Minnesota, until the completion of his removal proceedings.

That timing matters. ICE did not submit Petitioner's fingerprints to USCIS until after Petitioner filed this habeas action on September 15, 2026, and only after the Court ordered Respondents to answer the Petition. Pet., ECF No. 1; Order, ECF No. 4. ICE did not mail Petitioner's fingerprints to USCIS until September 17, 2026—after this action was filed and after the Court ordered a response. Resp. 2, ECF No. 12 (citing Decl. of Deportation Officer Xiong Lee ¶ 7). The sequence supports the inference that litigation, rather than routine agency coordination, prompted ICE's eventual action. A post-denial transmission of fingerprints does not itself vacate the biometrics-based denial, reopen the USCIS matter, or restore the missed appointment. Respondents' assertion that ICE acted within 30 days does not answer whether the response came too late to prevent the very harm alleged. The timing also bears on the adequacy of future relief. USCIS may require additional submissions, evidence, notices, appointments, or other time-sensitive steps as it considers Petitioner's administrative appeal, any motion to reopen or reconsider, or a renewed application. Petitioner should not be required to rely on an informal and discretionary ICE process that was invoked only after habeas relief was sought and only after the biometrics-based denial had issued. Continued detention therefore creates a material risk that ICE's delayed assistance will again prevent Petitioner from complying with USCIS requirements.

Petitioner must now pursue administrative remedies as to both USCIS decisions, including an appeal of the merits denial and a motion to reopen as to the biometrics-based denial. *See* U-Visa Merits Denial, Petitioner's Ex. H; Biometrics Denial, Petitioner's Ex. I. In connection with Form I-290B, USCIS may require Petitioner to "appear for an interview or provide biometrics ... at any time." U.S. Citizenship & Immigration Servs., *Instructions for Form I-290B, Notice of Appeal or Motion*, at 2 (May 31, 2024), https://www.uscis.gov/sites/default/files/document/forms/i-290binstr.pdf. Nothing in Respondents' submission identifies a binding procedure, deadline, or responsible official that would ensure timely ICE assistance with any future USCIS interview, biometrics request, or other required step. On this record, requiring Petitioner to depend again on ICE's discretionary, delayed assistance creates a substantial risk of another irreversible loss of immigration relief. Further, requiring Petitioner to simply submit a new Form I-918, rather than allowing him a meaningful opportunity to pursue administrative relief from the denials of his existing petition would compound that prejudice.[1]

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[1] Congress limits U-1 nonimmigrant visas or status grants to 10,000 principal petitioners each fiscal year. *See* 8 U.S.C. § 1184(p)(2)(A). USCIS regulations provide that petitioners who are otherwise eligible but cannot receive U-1 status solely because of the cap are placed on a waiting list, with priority determined by the date the petition was filed. 8 C.F.R. § 214.14(d)(2). Petitioner filed his Form I-918 in 2019. *See* Form I-918 receipt notice, Petitioner's Ex. A. A replacement Form I-918 would be a new benefit request subject to USCIS's filing-date rules. *See U.S. Citizenship & Immigration Servs.*, USCIS Policy Manual, vol. 1, pt. B, ch. 6, § D, *Filing Date*, https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-6 (last visited Sept.

The closely analogous decision in *Gonzalez v. Wesling*, No. 26-cv-231-JJM-AEM (D.R.I. June 19, 2026), recognized a detainee's due-process interest in pursuing a U-visa application without undue Government interference where ICE detention prevented completion of required biometrics. *Gonzalez* is persuasive, not binding, and its facts involved an arrest at the biometrics appointment. But its core reasoning applies here: immigration custody may not be used in a manner that defeats a detainee's meaningful opportunity to comply with an agency-mandated process for a pending victim-based petition.

D. The Record Requires an Individualized Due Process Analysis, not a Categorical Assignment of Fault to Petitioner.

Petitioner acknowledges that the present record reflects a July 4 notice of a July 20 appointment and identifies the first documented ICE request as August 20. The notice provides directions for rescheduling an appointment, stating "[y]ou must make your request before the date and time of the original appointment . . ." Petitioner does not contend that the Court should disregard this chronology. But that chronology is not dispositive. Petitioner was confined and could not personally report to a USCIS Application Support Center nor could he have personally requested a schedule of that appointment. The central question is whether, under the circumstances of civil detention, the procedures

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23, 2026) (explaining when USCIS considers a benefit request received and how USCIS determines the filing date). Thus, refiling risks replacing Petitioner's 2019 filing date with the date USCIS receives the new filing.

available to a detained U-visa applicant provided a meaningful opportunity to comply with the biometrics requirement and avoid the loss of his pending application. On this issue, Petitioner submits relevant emails from Counsel to ICE, prior to the denial, requesting their urgent assistance. *See* Counsel Emails to ICE, Petitioner's Ex. E; Petitioner's Ex. G. Petitioner also submits the applicable ICE policy for biometrics requests for detainees. *See* ICE Policy for Processing Detainees in ICE Custody Who Have a Pending Benefit; Petitioner's Ex. F.

Under *Mathews v. Eldridge*, the Court considers the private interest affected, the risk of erroneous deprivation through the procedures used and the value of additional safeguards, and the Government's interest and administrative burden. *Mathews v. Eldridge*, 424 U.S. 319 (1976). Petitioner's interest in liberty and in completing the process required to pursue the victim-based immigration benefit is substantial. The risk of erroneous deprivation is demonstrated by the biometrics-based denial issued before ICE's eventual transmission. And a tailored release order to permit Petitioner to complete required processes imposes a limited burden, particularly where Petitioner has provided a fixed address, has no violent criminal history, has complied with prior requirements, and has a clear and compelling incentive to remain

engaged in the process necessary to rectify the erroneous deprivation and pursue the immigration benefit for which he is eligible.

E. The Merits Denial and Administrative Appeal Process Do Not Eliminate this Court's Authority to Redress the Distinct Custody Injury.

Petitioner does not dispute that USCIS also issued a decision addressing the merits of the Form I-918 petition. Petitioner will timely file a Form I-290B appeal of that decision and will file a motion to reopen or reconsider the biometrics-based denial. The regulatory process confirms that a Form I-918 denial may be appealed to the Administrative Appeals Office ("AAO") and, if an appeal is taken, is not administratively final unless the AAO affirms. 8 C.F.R. § 214.14. The general AAO appeal rule provides for filing on Form I-290B within 30 days after service of the decision and permits the reviewing official to take favorable action. 8 C.F.R. § 103.3.

Petitioner will pursue those remedies. But that does not divest this Court of authority over the distinct constitutional challenge to present detention. The AAO cannot order Petitioner's release from ICE custody, adjudicate the constitutional legality of that custody, or undo the loss of liberty caused by continued detention. Exhaustion in § 2241 cases is prudential rather than jurisdictional and may be excused when the claim is a discrete legal or constitutional question, administrative review cannot furnish effective relief,

and delay risks irreparable injury. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957 (D. Minn. 2025).

Respondents' reliance on *United States v. Chappel*, 208 F.3d 1069 (8th Cir. 1999) is misplaced. Chappel addressed a federal prisoner's request for sentence credit that was first committed to the Bureau of Prisons; it did not concern a civil immigration detainee's Fifth Amendment challenge or an agency process that cannot provide custody relief.

F. Petitioner Seeks Narrow, Individualized Relief.

Petitioner does not ask this Court to resolve the scope of any nationwide class relief or to decide the validity of the order in *Immigration Center for Women & Children v. Noem*. The Court can grant complete relief based on Petitioner's individual custody-based claim.

Nor does Petitioner rest on length of detention alone. The claim is instead that custody, as applied here, caused a concrete deprivation of the ability to complete mandatory biometrics; that the deprivation has already produced an adverse USCIS decision; and that continued detention frustrates meaningful pursuit of the administrative remedy that Respondents themselves say Petitioner must use.

The appropriate remedy is immediate release. Petitioner will continue reporting to ICE at his fixed address and will appear for all future biometrics appointments, USCIS interviews, immigration hearings, and other required proceedings. These conditions protect the Government's legitimate interests while avoiding an unnecessary and continuing deprivation of liberty.

September 23, 2026

Respectfully Submitted,

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