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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

FEDERICO REYES VASQUEZ,

Petitioner,

vs.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security, et al.,

Respondents.

**RESPONSE TO FIRST MOTION TO
AMEND COMPLAINT AND
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER**

Case No. 2:25-cv-01146-JNP

Chief Judge Jill N. Parrish

Pursuant to the Court's February 6, 2026, Order Setting Briefing Schedule,¹
Respondents respond to the First Motion to Amend Complaint² and Emergency Motion
for Temporary Restraining Order.³ The Court should deny the Motion to Amend, and

¹ ECF No. 48.

² ECF No. 43, "Motion to Amend."

³ ECF No. 45, "Motion for TRO."

deny in part the Motion for TRO, for the reasons outlined herein. Specifically, Respondents incorporate all arguments and legal authorities contained in its Response to Order to Show Cause,⁴ Response to Order to Show Cause,⁵ Response to Motion for Sanctions and Memorandum in Support,⁶ Response to Motion Signing of I-918,⁷ Amended Response to Motion for Sanctions,⁸ Motion to Dismiss Writ of Habeas Corpus,⁹ Notice of Supplement to Motion to Dismiss,¹⁰ Response to Emergency Motion to Enforce Court Orders,¹¹ and its Emergency Response to Motion for Temporary Restraining Order.¹²

Further, the substantive claims in Petitioner's Petition,¹³ Motion for Sanctions,¹⁴ Amended Complaint,¹⁵ Emergency Motion to Enforce Court Orders,¹⁶ First Motion to

⁴ ECF No. 10.

⁵ ECF No. 21.

⁶ ECF No. 27.

⁷ ECF No. 33.

⁸ ECF No. 29.

⁹ ECF No. 31.

¹⁰ ECF No. 34.

¹¹ ECF No. 41.

¹² ECF No. 45.

¹³ ECF No. 2.

¹⁴ ECF No. 8.

¹⁵ ECF No. 11.

¹⁶ ECF No. 36.

Amend Complaint,¹⁷ and Emergency Motion for TRO¹⁸ should each be dismissed respectively. Respondents ask that the Emergency Motion for TRO be denied in part to allow Petitioner to remain detained within the United States at a facility as close as possible to the District of Utah that will permit transit to the U.S. Courthouse in Salt Lake City while Petitioner's habeas Petition is litigated.

FACT AND PROCEDURAL BACKGROUND

On or about January 1, 1999, Petitioner illegally entered the United States without inspection.¹⁹ On February 11, 2003, immigration officials issued a Form I-862 (Notice to Appear) charging Petitioner as being inadmissible under section 212(a)(6)(A)(i) of the Immigration and Nationality Act as amended, as an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than as designated by the Attorney General.²⁰ This document alleged that Petitioner was not a citizen or national of the United States, was a native and citizen of Mexico, that he entered the United States at or near Douglas, Arizona on or about January 1, 1999, and that at that time he was not inspected and admitted by an immigration officer.²¹ On March 12, 2003, Petitioner admitted all the allegations before the

¹⁷ ECF No. 43.

¹⁸ ECF No. 45.

¹⁹ Form I-862, (Exhibit A).

²⁰ Id.

²¹ Id.

Immigration Court in Las Vegas, Nevada and the Immigration Judge ordered Petitioner removed from the United States.²² Petitioner chose to waive his right to appeal at that hearing, which rendered the immigration judge's order final.²³ The immigration judge's order was personally served on Petitioner.²⁴ The next day, March 13, 2003, Petitioner was served with a form I-294 (Warning to Alien Ordered Removed or Deported) which clearly indicated that Petitioner was prohibited from entering, attempting to enter, or being in the United States for a period of 10 years from the date of his departure from the United States because: he was found to be inadmissible under section 212 of the Act, he was ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act, and because those immigration proceedings were initiated because Petitioner was present in the United States without admission or parole.²⁵ On March 13, 2003, Petitioner was removed from the United States pursuant to the order of removal.²⁶

Approximately two months later, on May 3, 2003, Petitioner attested to entering the United States illegally in the vicinity surrounding Nogales, Arizona.²⁷ At the time of

²² Immigration Judge Order, Exhibit B.

²³ Id.

²⁴ Id.

²⁵ Form I-294, Exhibit C.

²⁶ Form I-205 dated March 13, 2003, Exhibit D.

²⁷ Affidavit dated December 20 2004, Exhibit E.

his apprehension by immigration officials on December 20, 2004, Petitioner admitted that he is a citizen of Mexico, that he had been previously removed from the United States, that he had not applied for permission to reenter the United States prior to doing so, and that he did not have any fear of returning to Mexico.²⁸ Petitioner was served with a Form I-871 (Notice of Intent/Decision to Reinstate Prior Order).²⁹ Petitioner acknowledged receipt of the notice and signed indicating he did not wish to make a statement contesting the determination that he was subject to reinstatement of removal under 8 U.S.C. § 1231(a)(5).³⁰ Petitioner was removed from the United States to Mexico for a second time on January 27, 2005.³¹

After his second removal, Petitioner entered the United States illegally and without permission on a third time. Petitioner was apprehended by immigration officials on December 19, 2025, in Orem, Utah. Petitioner was served with a Form I-871 (Notice of Intent/Decision to Reinstate Prior Order).³² Petitioner acknowledged receipt of the notice and signed indicating he did not wish to make a statement contesting the

²⁸ Id.

²⁹ Form I-871 dated December 20, 2004, Exhibit F.

³⁰ Id.

³¹ Form I-205 dated January 27, 2005, Exhibit G.

³² Form I-871 dated December 19, 2025, Exhibit H.

determination that he was subject to reinstatement of removal under 8 U.S.C.

§ 1231(a)(5).³³

On December 19, 2025, Petitioner filed a Verified Petition for Habeas Corpus challenging his detention arguing he has a right to a bond hearing because his detention under 8 U.S.C. § 1225 was improper.³⁴ In the afternoon of December 22, 2025, this Court issued an Order to Show Cause (OSC) ordering Respondents to respond to the Petition, prohibiting Petitioner's removal from the United States, and prohibiting his transfer outside of Utah.³⁵ The OSC also directed Petitioner to serve a copy of the Order by December 23, 2025, at 5:00 p.m.³⁶ The Court also entered an OSC as to why the petition should not be granted.³⁷

Petitioner was removed to Mexico pursuant to the reinstatement of his original removal on December 23, 2025, as Immigration and Customs Enforcement was not aware of the Court's order before it transferred and removed the Petitioner.³⁸ On December 23, 2025, Petitioner filed the following motions: a Motion to Withdraw the Petition and then a Motion to Withdraw the Motion to Withdraw, and a Motion for

³³ Id.

³⁴ ECF No 2.

³⁵ ECF No. 4.

³⁶ Id.

³⁷ Id.

³⁸ ECF No. 10, Exhibit A.

Sanctions.³⁹ The following day on December 24, 2025, Petitioner filed a Motion Signing of I918 Supplement B.⁴⁰ On December 29, 2025, Respondents filed their response to Order to Show Cause followed immediately by an Amended Complaint filed by the Petitioner.⁴¹ On December 31, 2025, the Court presided over an Order to Show Cause Hearing.⁴² That same day the Court issued its Memorandum Decision and Order, directing the government to facilitate the Petitioner's return to the U.S.⁴³ As the Petitioner was removed after this Court's order, immigration officials arranged for the Petitioner to return to a port of entry so he could be taken into custody during the pendency of the proceedings as required by this Court.

During January and in the beginning of February, while officials were arranging for the return of the Petitioner, Petitioner and Respondents filed several documents with the Court and the Court issued a number of orders.⁴⁴ On February 5, 2026, the Court

³⁹ ECF No. 6, 7, 8.

⁴⁰ ECF No. 9.

⁴¹ ECF No. 10, 11.

⁴² ECF No. 12.

⁴³ ECF No. 13.

⁴⁴ ECF No. 14 (Motion to Request to Submit for a Decision), 15 (Motion for Extension of Time), 16 (Order Setting Briefing Schedule), 17 (Notice of Appearance), 18 (Status Report), 19 (Status Report), 20 (Transcript Request), 21 (Response to Order to Show Cause), 22 (Response to Response to Order to Show Cause), 23 (Stipulated Motion for Extension of Time), 25 (Stipulated Motion for Extension of Time), 27 (Response to Motion for Sanctions), 29 (Amended Response to Motion for Sanctions), 30 (Response to Response to Motion for Sanctions), 31 (Motion to Dismiss for Lack of Jurisdiction), 32 (Response to Motion to Dismiss), 33 (Response to Motion for Signing of I-918 Supplement), 34 (Notice of Supplement to Motion to Dismiss), 35 (Response to Response to Motion for Signing of I-918), 35 (Emergency Motion to Enforce Court Orders), 37 (Notice of Supplemental Authority), 40 (Notice of Appearance), 41 (Response to Motion for Emergency Motion to Enforce Court Order).

issued its Memorandum Decision and Order Denying Motion to Dismiss for Lack of Jurisdiction and extending the deadline to facilitate Petitioner's return to February 6, 2026.

On February 6, 2026, the petitioner returned to a port of entry where he was immediately taken into custody by Customs and Border Patrol. Customs and Border Patrol did not grant the Petitioner parole under 8 U.S.C. 1182(d)(5). He was not given a parole document nor was he processed for a parole. Rather, the Petitioner was taken into immigration custody at the port of entry. The petitioner has remained under official restraint since February 6, 2026.

On February 6, 2026, the Petitioner moved for a second time to amend the complaint and filed a motion for a temporary restraining order.⁴⁵ Despite not having any evidence of parole, the Petitioner's Second Amended Petition⁴⁶ argues that he is now a parolee with authorized presence and that his detention as a parolee falls outside immigration's detention authority as outlined in 8 U.S.C. §§ 1225, 1226, and 1231.⁴⁷ Petitioner also argues that Petitioner is a qualifying victim of a U-visa crime and that this alone warrants his release.⁴⁸

⁴⁵ ECF No. 43, 44.

⁴⁶ See Motion to Amend, ECF No. 43.

⁴⁷ ECF No. 43, ¶¶ 118, 127, 128, 132, 134, 137.

⁴⁸ ECF No. 43, ¶¶ 97-115.

Respondents filed their Emergency Response.⁴⁹ The Court issued its Order Setting Briefing Schedule and Notice of Hearing on Motion.⁵⁰ Specifically, the Court ordered Respondents to file their response to the Motion to Amend and the Motion for a Temporary Restraining Order by February 18, 2026, and for Petitioner to file any replies by February 25, 2026.⁵¹

STATUTORY AND REGULATORY FRAMEWORK

Federal courts have jurisdiction to grant writs of habeas corpus to persons “in custody in violation of the Constitution or laws or treaties of the United States.”⁵² A petitioner must satisfy the “in custody” requirement as a prerequisite to habeas corpus jurisdiction.⁵³

Before 1996, the immigration law drew a distinction between exclusion and deportation. Both concepts turned on the definition of “entry” into the United States. Entry was defined in 1101(a)(13) as: “any coming of an alien into the United States, from the foreign port or place or from an outlying possession, whether voluntarily or otherwise”⁵⁴ Similarly, prior to 1996, the detention provisions in the Immigration and

⁴⁹ ECF No. 45.

⁵⁰ ECF No. 46, 48.

⁵¹ ECF No. 48.

⁵² 28 U.S.C. § 2241(c)(3).

⁵³ *Carter v. United States*, 733 F.2d 735, 736 (10th Cir.1984), *cert. denied*, 469 U.S. 1161 (1985).

⁵⁴ 8 U.S.C. § 1101(a)(13) (1994).

Nationality Act (INA) distinguished between aliens who presented at a port of entry and those who evaded inspection.⁵⁵ Specifically, persons who arrived at a port of entry were subject to mandatory detention and could not request release where persons who entered the United States unlawfully without inspection and who were apprehended later inside the United States could seek release on bond pending their immigration proceedings.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) changed both concepts. First, the definition of “entry” was stricken from the Immigration Act, and it was replaced with the concept of “admission.” Admission was defined as the “lawful entry of the alien into the United States after inspection and authorization by an immigration officer.”⁵⁶ This definition remains the same today. Further in 8 U.S.C. 1101(a)(13)(B) it indicates that an “alien who is paroled under section 212(d)(5) [8 U.S.C. § 1182(d)(5)] or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.”⁵⁷

As such, after IIRIRA, the distinction is solely drawn between people who have been lawfully admitted into the United States and all other people.⁵⁸ Following the passage of IIRIRA, an alien’s status as an applicant for admission no longer turned on

⁵⁵ 8 U.S.C. §§ 1225(a), 1251(a) (1994).

⁵⁶ 8 U.S.C. § 1101(a)(13)(A) (1996).

⁵⁷ 8 U.S.C. 1101(a)(13)(B)

⁵⁸ *United States v. Gaspar-Miguel*, 947 F.3d 632, 633 (10th Cir. 2020); *Buenrostro-Mendez v. Bondi, et al.*, 25-20496 (5th Cir. Feb. 6. 2026); 8 U.S.C. § 1101(a)(13)(A).

where or how the alien entered the United States. Simply put, persons who illegally entered the United States were deemed applicants for admission and parolees who were in the United States were also deemed applicants for admission.⁵⁹

Even after IIRIRA, the Immigration and Nationality Act still referenced “entry”, including in the new definition of “admission.”⁶⁰ Entry, as referenced in the Act has been continuously interpreted to require three things: crossing into the territorial limits of the United States; an inspection and admission by an immigration officer or an actual and intentional evasion of inspection at the nearest inspection point; and third, freedom from official restraint.⁶¹

Even after IIRIRA, the Supreme Court has continued to hold to the principles outlined in *Leng May Ma v. Barber*, 357 U.S. 185 (1958).⁶² Specifically, in *Department of Homeland Security v. Thuraissigiam*,⁶³ the Supreme Court held that the United States has a “century-old rule regarding the due process rights of an alien seeking initial entry. That rule rests on fundamental propositions: ‘[T]he power to admit or exclude aliens is a

⁵⁹ 8 U.S.C. § 1225(a)(1).

⁶⁰ 8 U.S.C. § 1101(a)(13)(A).

⁶¹ See *Matter of Martinez-Serrano*, 25 I&N Dec. 151 (BIA 2009), *Matter of Z-*, 20 I&N Dec. 707 (BIA 1993); see also, *Leng May Ma v. Barber*, 357 U.S. 185, 188 (1958)(holding that for the first half of the 19th century the Supreme Court has held that the “detention of an alien in custody pending determination of his admissibility does not legally constitute an entry though the alien is physically within the United States.”)

⁶² *Leng May Ma v. Barber*, 357 U.S. 185 (1958)

⁶³ *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139 (2020)(Internal citations omitted).

sovereign prerogative,’ the Constitution gives ‘the political department of the government’s plenary authority to decide which aliens to admit, and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted.’⁶⁴

The Supreme Court found that the rule would be meaningless if it became “inoperative as soon as an arriving alien set foot on U.S. soil.”⁶⁵ The Court reiterated that when an alien is at an international airport, they are not considered to have entered, a parolee (even if they are within the United States) are treated for purposes of due process as if they were stopped at the border, and alien who is detained after arriving at a port of entry (or even shortly after an unlawful entry) is “on the threshold” and has not entered, and an alien who tries to enter the country illegally is also treated as an applicant for admission.⁶⁶

The Supreme Court then made clear that an alien who has not been admitted or gained admission has “only those rights regarding admission that Congress has provided by statute.”⁶⁷ In 8 U.S.C. § 1231(a)(5), when an alien reenters the United States after being removed pursuant to an Immigration Judge’s final order, the “prior order of

⁶⁴ *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139 (2020)(Internal citations omitted).

⁶⁵ *Id.*

⁶⁶ *Id.* at 139-140 (citing *Saughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); 8 U.S.C. § 1225(a)(1)).

⁶⁷ *Id.* at 140.

removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.”⁶⁸ Further under 8 U.S.C. §1231(a)(2), during the removal period, the person “shall” be detained.⁶⁹

As outlined above, section 1225(a)(1) covers both unadmitted aliens present in the United States and those who arrive at the country’s border.⁷⁰ With the passage of IIRIRA, which defines parolees as persons who have not been admitted, 8 U.S.C.

§ 1101(a)(13)(B), section 1225(b)(1) lays out the alternative framework for detention and removal of aliens who have not been admitted.⁷¹ Further under 8 U.S.C.

§ 1225(b)(1)(A)(iii)(IV), parolees and applicants for admission are subject to mandatory detention.⁷²

ARGUMENT

I. Petitioner Should Not Be Allowed To Amend His Petition To Pursue Non-Habeas Claims Or Fundamentally Dissimilar Claims

Petitioners/complainants may move to amend under Federal Rules of Civil Procedure 15(a). Courts “should freely grant leave to amend when justice so requires, and

⁶⁸ 8 U.S.C. § 1231(a)(5).

⁶⁹ 8 U.S.C. §1231(a)(2).

⁷⁰ 8 U.S.C. § 1225(a)(1).

⁷¹ 8 U.S.C. § 1225(b)(1)(A)(i)–(iii).

⁷² 8 U.S.C. § 1225(b)(1)(A)(iii)(IV).

[w]hen a court refuses to amend, it must state its reasons.”⁷³ Applying the Federal rule, a court may deny a motion to amend for “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc.”⁷⁴ Courts have also denied motions to amend at least partially based upon presentation of an entirely new claim.⁷⁵

Petitioner seeks to amend his Petition to add claims arising out of the events prompted by his own litigation – his return, following removal, by ICE to the United States, which he now claims was a form of parole back into the country. He also adds a claim in his Motion to Amend and attached Second Petition that he is eligible for a U-Visa as a victim and/or witness of a crime, because of those same events.

Both of these new claims are legally deficient and should be rejected as such, as explained in more detail below in Section II. But both claims are also fundamentally dissimilar from the claims in the original Petition and therefore the Motion to Amend should be denied on its face. The parole argument relies upon an entirely different set of facts from the arguments in Petitioner’s original Petition. In the original: entry without review more than 20 years ago, a removal order and removal shortly afterward, a second apprehension and removal about a year later, and finally the latest encounter late last year

⁷³ See *Stafford v. Saffle*, 34 F.3d 1557, 1560 (10th Cir. 1994) (quotation marks omitted).

⁷⁴ *Id.*, quoting *Forman v. Davis*, 371 U.S. 178, 182 (1962).

⁷⁵ See *U.S. v. Burbage*, 280 Fed.Appx. 777, 782-783 (10th Cir. 2008).

and Petitioner's continued detention. In the Amended Petition: removal by the immigration authorities less than one month ago pursuant to the reinstated removal order, return pursuant to Court order, and concomitant claims that he is both a victim of, and witness to, obstruction of justice and witness tampering by the federal government. These are very different claims based on very different facts and should be the subject of separate actions.

Further, Petitioner's claim to U-Visa status fundamentally does not belong in the Amended Petition. Petitions for habeas corpus serve as crucial mechanisms by which the courts safeguard against violations of Constitutional rights and due process. Applications for U Visas are administrative in nature and seek award of special immigration status. As explained more thoroughly below (Section II-D), Congress has tasked the U.S. Citizenship and Immigration Service with receiving and processing applications for U-Visas, which require extensive examination and for which there is a well-established process.

II. Petitioner Is Not Entitled To Habeas Relief Via His Petition Or Amended Petition

Even if the Court is inclined to grant Petitioner's Motion to Amend his Petition, in whole or in part, for the reasons stated below, both his original Petition and Amended Petition should be denied.

- A. Habeas relief is not available to Petitioner, who is the subject of a final order, because his detention is required under 8 U.S.C. §§ 1231(a)(2), 1231(a)(5).**

In the Immigration and Naturalization Act (INA), Congress enacted a statutory scheme for civil detention of a noncitizen pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal.⁷⁶

Relevant here, 8 U.S.C. § 1231(a)(5) provides for the reinstatement of removal orders against noncitizens who illegally reenter the United States. It provides that if a noncitizen has “reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed.”⁷⁷ This statute recognizes that when someone returns after being afforded all of their rights to challenge removal and after being ordered removed and removed previously they no longer have the same protections as they were accorded in their initial proceedings.

Once a DHS officer has determined that the noncitizen is the subject of a prior order of removal, has confirmed the identity of the noncitizen, and has determined that the noncitizen reentered the United States unlawfully, the requirements for reinstatement of the previous removal order are met.⁷⁸ The noncitizen is to be provided with notice and an opportunity to make a statement.⁷⁹ The noncitizen has no right to a hearing before an

⁷⁶ See generally 8 U.S.C. §§ 1225, 1226, 1231.

⁷⁷ 8 U.S.C. § 1231(a)(5).

⁷⁸ 8 C.F.R. § 241.8(c).

⁷⁹ 8 C.F.R. §§ 241.8(b), 241.8(c).

immigration judge before removal.⁸⁰ In such instances, the noncitizen “is not eligible and may not apply for any relief under this chapter, and . . . shall be removed under the prior order at any time after the reentry.”⁸¹

This provision bars relief for adjustment of status, asylum, and other types of relief afforded under the INA, whether the applications were presented before or after the order reinstating the prior removal order.⁸² In addition to providing for removal, 8 U.S.C. § 1231 provides for the detention of noncitizens who are subject to a removal order. Detention pursuant to § 1231 is mandatory.⁸³

The detention authority in § 1231(a) extends to the detention of noncitizens who are subject to a reinstated removal order.⁸⁴ Section 1231 does not provide for bond hearings for noncitizens detained pending removal.⁸⁵

Since 2003, Petitioner has been afforded his legal and due process rights as outlined in the Act. As such, any claim they have been violated, or that he continues to have due process rights, is misplaced. Specifically, in 2003 he was afforded the right to

⁸⁰ See *Martinez v. Garland*, 86 F.4th 561, 564–65 (4th Cir. 2023) vacated on unrelated grounds sub nom., *Martinez v. Bondi*, 145 S. Ct. 2836 (2025).

⁸¹ 8 U.S.C. § 1231(a)(5).

⁸² *Martinez*, 86 F.4th at 565 (“an illegal reentrant may not challenge a reinstated removal order and may not pursue discretionary relief like asylum”); 8 U.S.C. § 1231(b)(5) (authorizing reinstatement of a prior order of removal and states the noncitizen is “not eligible and may not apply for any relief under this Act”).

⁸³ 8 U.S.C. § 1231(a)(2)(A) (“[d]uring the removal period, the Attorney General shall detain the alien”).

⁸⁴ See *Johnson v. Guzman Chavez*, 594 U.S. 523, 535 (2021).

⁸⁵ See *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581 (2022).

proceed before an immigration judge, to challenge any allegations of inadmissibility, and to seek any forms of relief available to him as his case was presented to the immigration court under 1229a proceedings.⁸⁶ Petitioner chose to admit the allegations, concede removal, he chose not to apply for any forms of relief before the Immigration Court, and he chose to waive appeal.⁸⁷ As such, after all his rights were afforded to him, he was lawfully removed for the first time on March 13, 2003.⁸⁸

Petitioner then knowingly and intentionally illegally reentered the United States. His illegal reentry could have been the basis for a criminal prosecution under 8 U.S.C. § 1326. When he was taken into custody by immigration officials in December 2004, immigration authorities followed 8 U.S.C. § 1231(a)(5) as required and after the requisite findings were made and after the Petitioner chose not to contest, the Petitioner was lawfully removed a second time on January 27, 2005.⁸⁹

Petitioner again chose to violate the immigration and criminal laws of the United States and reentered a third time, actions which could have subjected him to another criminal prosecution under 8 U.S.C. § 1326. When he was apprehended by immigration authorities in December 2025, immigration authorities complied fully with the parameters that Congress set under 8 U.S.C. § 1231(a)(5).⁹⁰ Again, after the requisite

⁸⁶ Form I-862, (Exhibit A).

⁸⁷ Immigration Judge Order, (Exhibit B).

⁸⁸ Form I-205 dated March 13, 2003 (Exhibit D).

⁸⁹ Form I-871 dated December 20, 2004 (Exhibit F), Form I-205 dated January 27, 2005 (Exhibit G).

⁹⁰ Form I-871 dated December 19, 2025 (Exhibit H).

findings were made, and after the Petitioner chose not to contest, immigration authorities proceeded with a removal pursuant to 8 U.S.C. § 1231(a)(5).⁹¹

Petitioner continually claims the removal on December 23, 2025, was “unlawful,” but a distinction must be made. The removal was in violation of this Court’s Order – an order that failed to inform the Court of Petitioner’s previous removals – but it was not unlawful as immigration authorities had legal authority to detain the Petitioner under 8 U.S.C. §1231 (a)(2) without a bond hearing and to remove him under 8 U.S.C. § 1231(a)(5).⁹²

Federal courts have jurisdiction to grant writs of habeas corpus to persons “*in custody* in violation of the Constitution or laws or treaties of the United States.”⁹³ In this case, habeas relief is not available to Petitioner because his detention and removal is required under 8 U.S.C. § 1231(a)(5).

B. Alternatively, habeas relief is unavailable to Petitioner as an arriving alien because his detention is required under 8 U.S.C. § 1225.

Throughout Petitioner’s Second Amended Petition, he claims that after his removal when he was taken into custody at the border he was paroled into the United States. This is purely inaccurate. Parole is granted by immigration authorities and cannot just be assumed by the Petitioner or relied upon as a default action. In this case, Customs

⁹¹ Id.

⁹² See also *Johnson v. Guzman Chavez*, 594 U.S. 523, 535 (2021); *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581 (2022).

⁹³ 28 U.S.C. § 2241(c)(3).

and Border Protection chose not to parole the Petitioner. Rather, Customs and Border Protection took Petitioner into custody at the port of entry solely to comply with this Court's order. As such, Petitioner remains in the same position he was prior to the removal. Specifically, Petitioner has not been granted admission into the United States and is subject to a final removal order issued on March 13, 2003.

Further, the government's removal in December 2025 does not change the Petitioner's due process rights. Even if the Court finds that the removal alters the procedural posture of the Petitioner's case, the law does not support any viable claim for habeas relief. As outlined above, the Petitioner is an applicant for admission because he has not made a "lawful entry of the alien into the United States after inspection and authorization by an immigration officer."⁹⁴ Here, Petitioner was taken into custody at the port of entry and therefore has not even made an "entry" into the United States. Entry, as referenced in the Act has been continuously interpreted to require three things: crossing into the territorial limits of the United States; an inspection and admission by an immigration officer or an actual and intentional evasion of inspection at the nearest inspection point; and third, freedom from official restraint.⁹⁵

Here, the Petitioner has not been free from official restraint since authorities took him back into custody on February 6, 2026. Since the passage of IIRIRA, Courts and the

⁹⁴ 8 U.S.C. § 1101(a)(13)(A).

⁹⁵ See *Matter of Martinez-Serrano*, 25 I&N Dec. 151 (BIA 2009), *Matter of Z-*, 20 I&N Dec. 707 (BIA 1993); see also, *Leng May Ma v. Barber*, 357 U.S. 185, 188 (1958); see also *United States v. Gaspar-Miguel*, 947 F.3d 632 (2020).

Board of Immigration Appeals have continued to construe “entry,” in multiple contexts, as only completed once the person is free from “official restraint.”⁹⁶ As such, he has not made an entry and has not been admitted.

As such, if the Court is persuaded that the procedural posture has changed, Petitioner would be an alien seeking admission just as if he remained at the port of entry. The Supreme Court has made clear that an alien who has not been admitted or gained admission has “only those rights regarding admission that Congress has provided by statute.”⁹⁷ As outlined above, section 8 U.S.C. § 1225(a)(1) covers both unadmitted aliens present in the United States and those who arrive at the country’s border. Section 1225(b)(1) lays out the alternative framework for detention and removal of aliens who have not been admitted. 8 U.S.C. § 1225(b)(1)(A)(i)–(iii) and specifically finds that applicants for admission are subject to mandatory detention.

Further under 8 U.S.C. § 1225(b)(1)(A)(iii)(IV), parolees and applicants for admission are subject to mandatory detention. Petitioner’s amended habeas petition claiming his detention and failure to be given a bond hearing after being taken into custody at the border is not viable as he has not outlined any violations of the

⁹⁶ *United States v. Gaspar-Miguel*, 947 F.3d 632, 634 (10th Cir. 2020); *Lopez v. Sessions*, 851 F.3d 626, 631 (6th Cir. 2017) (entry for special rule cancellation purposes the individual must be free from official restraint); See *Matter of Martinez-Serrano*, 25 I&N Dec. 151 (BIA 2009); and *Matter of Z-*, 20 I&N Dec. 707 (BIA 1993).

⁹⁷ *Thuraissigiam*, 591 U.S. at 140.

“Constitution or laws or treaties of the United States.”⁹⁸ In this case, if Petitioner is deemed an applicant for removal, immigration authorities “shall” detain the Petitioner without regards to a bond hearing under 8.U.S.C. § 1225(b)(1).

C. Alternatively, habeas relief is unavailable to Petitioner as a “parolee” because his detention is required under 8 U.S.C. § 1225.

As outlined above, Petitioner’s amended habeas petition claiming his detention and failure to be given a bond hearing after being taken into custody at the border based on an unsupported claim that he was paroled in is not viable. As outlined above, Petitioner was never paroled into the United States and Respondents wholly disagree with Petitioner’s claim that he was paroled, just because Petitioner said so. Even if Petitioner was paroled, which did not happen in this case, Respondent’s habeas petition is not viable as it outlined no violations of the “Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). In this case, if Petitioner is deemed an applicant for admission, immigration authorities “shall” detain the Petitioner without regards to a bond hearing under 8.U.S.C. § 1225(b)(1).

8 U.S.C. 1101(a)(13)(B) indicates under the definition of “admission: that an “alien who is paroled under section 212(d)(5) [8 U.S.C. § 1182(d)(5)] or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.” As

⁹⁸ 28 U.S.C. § 2241(c)(3).

such, a parolee is an applicant for admission who is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(A)(iii)(IV).

Therefore, even if the Petitioner had been paroled, which did not happen in this case, his claim for habeas relief is unmeritorious because immigration authorities are required to detain him and he does not have any right to a bond hearing.

D. Alternatively, habeas relief is unavailable to Petitioner as an individual who has not filed for a U-Visa.

Here, the claims included in the Second Amended Petition, that he is entitled to certification that he is a victim of a crime for a U-Visa, do not describe a concrete and continuing injury which habeas can correct.

Petitioner claims he is the victim of Obstruction of Justice and Witness Tampering because immigration officials effectuated a lawful removal pursuant to 8 U.S.C. § 1231(a)(5) not knowing that this Court had entered an Order precluding the removal. In one line and with no supporting legal authority in Petitioner's Second Amended Petition (¶ 99) he claims he is the victim of an offense under 18 U.S.C. §§ 1512(b)⁹⁹,

⁹⁹ 18 U.S.C. § 1512(b) reads: Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to--

- (1) influence, delay, or prevent the testimony of any person in an official proceeding;
- (2) cause or induce any person to--
 - (A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;
 - (B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;
 - (C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or
 - (D) be absent from an official proceeding to which such person has been summoned by legal process;
- or (3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United

(c)¹⁰⁰, and 18 U.S.C. § 1515(a)(1). Petitioner, however, fails to outline even the subsection of the criminal conduct that would be applicable or any case law or supporting authority which outlines that this claim would be viable or even chargeable under Federal law without an alleged perpetrator. Petitioner also fails to present any supporting law that the unnamed perpetrator had the knowledge requirement for the crime and therefore could be charged accordingly.

Administration of the U-Visa is among United States Citizenship and Immigration Service's delegated responsibilities.¹⁰¹ An alien may be entitled to a U-Visa if (1) "the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity"; (2) "the alien ... possesses information concerning criminal activity"; (3) "the alien ... has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity"; and (4) "the criminal activity ... violated the laws of the United States or occurred in the United States (including in Indian country

States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation¹ supervised release, parole, or release pending judicial proceedings;

¹⁰⁰ 18 U.S.C. § 1512(c) reads: (c) Whoever corruptly--

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or
(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

¹⁰¹ 8 U.S.C. § 1101(a)(15)(U).

and military installations) or the territories and possessions of the United States.”¹⁰² Aliens approved for a U-Visa are entitled to remain on the temporary visa and are granted employment authorization.¹⁰³

No statutory provision requires USCIS to approve a U-Visa application, even if the application meets the statutory criteria. Congress has instead committed the decision of when to admit a U-Visa application—and the process for making that decision—to USCIS's discretion.¹⁰⁴ Under that delegated authority, USCIS has said that it “will approve” a U-Visa application if the applicant meets the statutory definition in Section 1101(a)(15)(U).¹⁰⁵ But importantly, Congress has limited USCIS's authority to approve U-Visas by imposing a 10,000-visa-per-fiscal-year cap.¹⁰⁶

This means that depending on the number of U-Visa applications in a given year, many worthy applicants may not receive a U-Visa and there are many more U-Visa applications than U-Visas available. As such, a U-Visa waitlist has been created, and an

¹⁰² 8 U.S.C. § 1101(a)(15)(U)(i).

¹⁰³ 8 U.S.C. § 1184(p)(3).

¹⁰⁴ See 8 C.F.R. § 214.14(c).

¹⁰⁵ 8 C.F.R. § 214.14(c)(5)(i).

¹⁰⁶ 8 U.S.C. § 1184(p)(2). “The number of aliens who may be issued visas or otherwise provided status as nonimmigrants under section 1101(a)(15)(U) of this title in any fiscal year shall not exceed 10,000.”

applicant's priority on the wait list is “determined by the date the petition was filed with the oldest petitions receiving the highest priority.”¹⁰⁷

Petitioner has failed to cite any case law to support his argument that habeas relief is available in the present situation or that would allow this Court in a habeas petition to sign a law enforcement certification for a potential U-Visa applicant, or that habeas is available to prevent detention and removal for a Petitioner who may in the future file for discretionary relief before USCIS. Any allegation that petitioner makes claiming a protected due process right arising from the fact that he may, at some point in the future, be eligible to apply for a U-Visa is unfounded. Parallel proceedings for immigration relief do not alone expand the due process rights afforded by statute. A claim of due process arises only if there is “a legitimate claim of entitlement” to a right.¹⁰⁸

U-Visa applications are a discretionary form of relief that can be sought while in the United States or from another country. U-Visa applications do not create liberty or property interest protected by the Due Process clause.¹⁰⁹ Absent a constitutionally protected liberty or property interest, Petitioner's due process claim grounded in his

¹⁰⁷ 8 C.F.R. § 214.14(d)(2).

¹⁰⁸ *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 756 (2005) (quoting *Bd. of Regents*, 408 U.S. at 577).

¹⁰⁹ *Arambula-Medina v. Holder*, 572 F.3d 824, 828 (10th Cir. 2009) (“[I]n immigration proceedings, a petitioner has no liberty or property interest in obtaining purely discretionary relief”) (quoting *Dave v. Ashcroft*, 363 F.3d 649, 652–53 (7th Cir. 2004)).

alleged rights must fail.¹¹⁰ Further, Petitioner has not yet filed an application for a U Visa therefore Petitioner would have no claim to a right associated with a nonexistent application.

Likewise, the fact that a detainee is simultaneously applying for discretionary relief to remain in the United States does not confer an independent right to release from civil immigration detention or require additional process beyond that provided by statute.¹¹¹ Therefore, Petitioner's pending detention does not expand upon the rights established by statute, and as discussed herein, Petitioner was afforded the rights accorded by statute, which do not include the opportunity for bond review.

In this case, even if Petitioner were to file a U-Visa, the pendency of his application would not negate the fact that he has a final order of removal issued on March 13, 2003, and is subject to detention and removal pursuant to that order under 8 U.S.C. § 1231(a)(2). If the Court deems the Petitioner to be an arriving alien, the pendency of an application for a U-Visa does not negate Petitioner's inadmissibility under 8 U.S.C. § 1182(a)(7) as the Petitioner lacks valid entry documents.¹¹² Even if the Court deems

¹¹⁰ *See id.* (holding that a due process claim is contingent on the existence of a liberty or property interest).

¹¹¹ *United States v. Sussman*, 444 F. App'x 302, 304 (10th Cir. 2011) (finding that "collateral adverse consequences" of the federal government's issuance of a detainer to a person detained in state custody did not "trigger due process protections").

¹¹² *See DHS v. Thuraissigiam*, 591 U.S. 103, 108 (2020) (citing 8 U.S.C. § 1182(a)(7)(A)(i)(I)).

the Petitioner a parolee, the statutory language is clear that the grant of temporary parole under 8 U.S.C. § 1182(d)(5) cannot cure inadmissibility under 8 U.S.C. § 1182(a)(7).¹¹³

III. Petitioner Should Not Be Granted Release Via Temporary Restraining Order

Preliminary injunctive relief should be granted where necessary to maintain the status quo until there can be a hearing on the merits.¹¹⁴ Here, the Petitioner is seeking the very relief sought in his original Petition for habeas corpus and his Amended Petition – release from detention contrary to law, as explained above – via the “extraordinary remedy”¹¹⁵ of injunctive relief. Such relief would not preserve the status quo but change it, perhaps irreparably if Petitioner were to abscond.

While Petitioner is not entitled to a TRO effecting his release from detention, Respondents are amenable to a TRO fashioned to preserve the status quo: maintaining the Petitioner’s detention, within the United States, at a facility as close as practicable to the U.S. Courthouse in Salt Lake City, pending resolution of the Petitioner’s habeas Petition. Finally, as explained above in Section II, Petitioner is unlikely to win on the merits of his Petition, and therefore a TRO is not warranted.

¹¹³ The relevant statutory provision provides that discretionary parole under INA § 212(d)(5) “shall not be regarded as an admission.” 8 U.S.C. § 1182(d)(5). *In re Ballard*, 526 F.3d 634, 638 (10th Cir. 2008) (where the statutory language is clear, the court “need not look beyond it”). A grant of discretionary parole under § 212(d)(5) does not confer admitted status on the grantee.

¹¹⁴ *Sierra Club v. U.S. Army Corps of Engineer*, 732 F.2d 253, 256 (2nd Cir. 1984).

¹¹⁵ *See Winter v. Natural Resources Defense Council*, 555 U.S. 7, 22 (2008).

CONCLUSION

Petitioner Federico Reyes Vasquez should not be allowed to amend his petition for habeas corpus to add claims that are fundamentally different from the original, and do not belong in a habeas petition. Further, the claims made in both his Petition and sought-for Amended Petition are contrary to law and should be denied – therefore rendering Petitioner’s likelihood of success on the merits extremely low. Finally, Petitioner should not be allowed to obtain release – the ultimate remedy sought – via TRO, but Respondents are amenable to a TRO that preserves the status quo.

DATED: February 18, 2026.

MELISSA HOLYOAK
United States Attorney

/s/ Adam Elggren

ADAM ELGGREN
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office, and that a copy of the foregoing Response was caused to be served on all persons named below, either by electronic filing notice, U.S. Mail (postage prepaid), or hand delivery, on February 18, 2026.

/s/ Adam Elggren