UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-2839-NEB-JFD

Jose R.,

Petitioner,

v.

Todd Blanche et al.,

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

RESPONSE TO PETITION

Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). This conclusion is appropriate under long standing Supreme Court precedent and recent Eighth Circuit precedent.

The Eighth Circuit Court of Appeals recently held that aliens, like Petitioner, who entered the United States illegally and who are not "clearly and beyond a doubt entitled to be admitted," "shall be detained" under 8 U.S.C. § 1225(b)(2)(A), until the conclusion of their removal proceedings. *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026).

BACKGROUND

Petitioner is a citizen of Honduras. Doc. No. 1, Petition (hereinafter "Pet.") ¶¶ 10, 15; Ex. C, I-213 (hereinafter "I-213"). Petitioner entered the U.S. at an unknown time without admission or parole. Pet. ¶¶ 15-16 (stating Petitioner entered the U.S. without admission or parole in 2014); *see* Ex. A, NTA (hereinafter "NTA") (stating Petitioner's entry in the U.S. was at an unknown place and date); I-213 (stating Petitioner applied for,

and was denied, a B1/B2 visa on April 30, 2013).

On January 23, 2023, Petitioner was found guilty of driving under the influence of alcohol. I-213.

On January 9, 2023, Petitioner filed for an I-601A, which was approved by USCIS on August 1, 2025. Pet. ¶ 20, Pet. page 14-15. The I-601A states Petitioner must complete various steps for USCIS's recommendation of waiver of inadmissibility to take effect. These steps include: Petitioner leaving the US, and appearing at a U.S. embassy or consulate for an interview, and a U.S. consular officer's determination that Petitioner is eligible for an immigrant visa. Pet. page 14-15. The I-601A also advises Petitioner that it does not give the Petitioner any legal immigration status, or protect him from removal proceedings.[1]

On May 14, 2026, Petitioner was arrested on probable cause for driving under the influence, and that proceeding is pending. I-213. Petitioner was detained at a local confinement facility on account of that charge. I-213; Declaration of Benjamin Northwood (hereinafter "Decl.") ¶ 5. On May 14, 2026, ICE issued a detainer for Petitioner's arrest. I-213; Decl. ¶ 5. A warrant for Petitioner's arrest was issued on May 14, 2026 by a Supervisory Detention and Deportation Officer ("SDDO"). Ex. B, I-200 Warrant (hereinafter "Warrant"). Also on May 14, 2026, the warrant was served on the Petitioner by a Deportation Officer ("DO"), who identified themselves to the Petitioner, and said

[1] Petitioner states he received an I-130 on September 26, 2026. Pet. ¶ 18. This is not possible, as that date is in the future. Also, there is no copy of an I-130 in the record. Assuming Petitioner received an I-130, Respondents maintain that Petitioner has no lawful status in the U.S.

service occurred at Minnehaha county jail, which is in Sioux Falls, SD. Warrant, Decl. ¶ 6. Petitioner was advised of his rights to speak with a consular officer from his home country, and Petitioner was given a list of free legal services. I-213. [2]

Also on May 14, 2026, Petitioner was served with a Notice to Appear, stating a hearing with an immigration judge was scheduled for June 1, 2026. NTA; Pet. page 18. The NTA advised Petitioner that he is an alien present in the U.S., who has not been admitted or paroled. NTA.

Also on May 14, 2026, Petitioner was provided a Notice of Rights and Advisals, and Petitioner requested a hearing before the immigration court to determine if he can remain the U.S. Ex. D, Notice of Rights. The undersigned was advised by ICE that Petitioner had a hearing in front of an Immigration Judge on June 8, 2026.

Petitioner is currently detained in Minnesota. Pet. ¶¶ 1, 7, 24.

Undersigned was advised by ICE that Petitioner has another hearing in front of an Immigration Judge on June 22, 2026.

Argument

Petitioner filed this action on June 3, 2026, seeking relief under 28 U.S.C. § 2241. Petitioner argues his continued detention violates the Fifth Amendment of the U.S. Constitution. Pet. ¶¶ 48-50.

Federal Respondents will explain that Petitioner is subject to mandatory detention.

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[2] The verified petition confuses dates that Petitioner was taken into custody by ICE. *Compare* Pet. ¶ 1 (stating Petitioner was detained by ICE on February 4, 2026) *with* Pet. ¶ 23 (stating Petitioner was detained on May 14, 2026).

Federal Respondents will next explain that Petitioner's Fifth Amendment rights were complied with. Federal Respondents will also address Petitioner's possible claim in reply to this response that his Fourth Amendment was violated.

Petitioner is Subject to Mandatory Detention

Petitioner seeks an order from this Court directing the Department of Homeland Security to immediately release Petitioner from immigration detention. The Court should deny the petition. The primary issue raised by Petitioner, namely that his detention is unlawful, was rejected by the Eighth Circuit, as Petitioner is subject to detention pursuant to 8 U.S.C. § 1225. *Avila.*

First, *Avila* held that "the ordinary meanings of the phrases 'applicant for admission' and 'seeking admission' are the same." *Avila v. Bondi*, 170 F.4th 1128, 1134 (8th Cir. 2026). In so holding, the Eighth Circuit explained that the text and statutory context of §1225(b)(2)(A) foreclose interpreting "seeking admission" to refer to a "present tense, affirmative action." *Id.* at 1134-1135. In addition, the Eighth Circuit correctly held that the Government's interpretation does not render any portion of §1225(b)(2)(A) surplusage. *Id.* at 1135. Second, *Avila* held that the Government's interpretation is consistent with the "statutory purpose of §1225" of "placing all aliens 'on equal footing'" in immigration proceedings. *Id.* at 1135-1136. By contrast, Avila's interpretation "contradicts the statute's goal." *Id.* at 1136. Third, *Avila* rejected Avila's reliance on language in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) which "was offered only as general background information" and "does not preclude other statutory provisions—such as §1225(b)(2)(A)—from also applying" to aliens inside the country. *Id.*. Fourth, *Avila* correctly held that prior

administrations' decisions to "not exercise their full authority under §1225" does not justify departing from the statute's text, because "'authority granted by Congress cannot evaporate through lack of administrative exercise.'" *Id.* at 1137. Finally, *Avila* held that the Government's reading of §1225(b)(2)(A) does not render §1226(c) superfluous. *Id.* Although §1225(b)(2)(A) and §1226(c) may overlap, the Eighth Circuit correctly held that such overlap does not give "license to rewrite or eviscerate" clear statutory text. *Id.*

Like other applicants for admission to the U.S. whose legal status is governed by 8 U.S.C. § 1225, Petitioner is subject to mandatory detention until the end of his removal proceedings. Those removal proceedings are not indefinite, and are actively progressing, as Petitioner has a hearing before an Immigration Judge again on June 22, 2026.

Due Process Claims

a. Petitioner Claims a Substantive Due Process Violation

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

Recognizing the claim is foreclosed, Petitioner now raises procedural due process. The Constitution prohibits the federal government and States from "depriv[ing]" a "person" of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. The Supreme Court has recognized two types of due-process claims. *See Dep't of State v.*

Muñoz, 602 U.S. 899, 910 (2024). A procedural-due-process claim takes as given the substantive determinations that would justify a deprivation of life, liberty, or property, but challenges the "adequacy of the[] procedures" for making those determinations. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). For example, the statute in *Mathews* made the availability of disability benefits turn on whether a person is "completely disabled" within the meaning of the statute. *Id.* at 323, 336. The procedural due process claim did not challenge the statute's substantive criteria for who may receive benefits, but the adequacy of the procedures available to test whether a person fits within the criteria. *Id.* at 325-26. By contrast, a substantive due process claim challenges the substance of the determinations themselves, arguing that they are inadequate to justify the deprivation "at all, no matter what process is provided." *Reno v. Flores*, 507 U.S. 292, 302 (1993).

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

In essence, Petitioner is requesting the Court to find that due process requires additional procedures in the form of a bond hearing. Pet. ¶ 47. A bond hearing is irrelevant under the statute. Because § 1225(b)(2)(A) requires mandatory detention and does not require a bond hearing, Petitioner's claim is in reality a substantive-due-process challenge,

not a procedural one.

The Supreme Court's decision in *Connecticut Dep't of Pub. Safety*, is definitive on this point. The statute in that case required sex offenders to register with the State so their information could be published on a sex-offender registry. 538 U.S. at 4-5. John Doe, who had previously been convicted of a sex offense, claimed that the statute violated his procedural-due-process rights by requiring him to register without a "hearing to determine whether" he was "currently dangerous." *Id.* at 4 (citation omitted).

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

The rule of *Connecticut Dep't of Pub. Safety* is straightforward: "Plaintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme." 538 U.S. at 9.

Accordingly, Petitioner has no procedural due process right to be released on account of there not being a bond hearing. A bond hearing is irrelevant to § 1225(b)(2), which subjects Petitioner to mandatory detention based on Petitioner's uncontested status

as an "applicant for admission" who has not shown he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(a)(1), (b)(2)(A).

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

b. Petitioner's Substantive Due Process is not violated

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

Petitioner's Desire for a Bond Hearing is Irrelevant

Section 1225 clears the rational basis bar. In *Demore*, the Supreme Court considered a "substantive due process" challenge to detention under § 1226(c). *Demore v. Kim*, 538 U.S. 510, 515 (2003). Hyung Joon Kim "argued that his detention under § 1226(c) violated due process because the [government] had made no determination that he posed either a danger to society or a flight risk." *Id.* at 514. The Court rejected that claim. The Court

explained that its cases had long "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process," because "deportation proceedings 'would be vain if those accused could not be held in custody pending the inquiry into their true character.'" *Id.* at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *see also id.* at 526 (reiterating the "Court's longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings"). Therefore, because "[d]etention during removal proceedings is a constitutionally permissible part of that process," the Court held that the aliens substantive due process "claim must fail." *Id.* at 531. Like *Denmore*, the Court in this case must reject Petitioner's argument that the lack of a bond hearing is a violation of due process.

c. Petitioner's Procedural Due Process is not Violated

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

For more than a century, the rule has been that for aliens who have never "been admitted into the country pursuant to law, the decisions of executive and administrative officers, acting within the powers expressly conferred by Congress, are due process of law." *Thuraissigiam*, 591 U.S. at 138 (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)). This is true even of aliens "paroled elsewhere in the country for years pending removal" who have developed significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)).

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

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

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

connections to the United States. *Id.* at 229. Still, because she had never been lawfully admitted, the Due Process Clause did not require *any* additional procedures beyond what Congress provided. *Id.* at 229-30.

The same result should follow here. Petitioner's entry and presence in the United States has been unlawful. The moment of entry into the United States constituted a criminal act under 8 U.S.C. § 1325(a).

As the Eighth Circuit recognized, by enacting § 1225(b)(2)(A), Congress sought to eliminate the preferential treatment of aliens who violate the country's immigration laws. *Avila v. Bondi*, 170 F.4th 1128, 1135-37 (8th Cir.2026). Under Petitioner's argument aliens who violate federal law would enjoy *greater* constitutional protections than those who comply with it. Nothing in law allows an alien to adversely possess additional due process rights by virtue of unlawfully entering the United States and successfully evading enforcement for some length of time—especially when the nine years of *lawful* presence in *Kaplan* did not suffice.

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

In summary, Petitioner's case is dictated by 8 U.S.C. § 1225. Petitioner's argument that his detention violates procedural due process is without merit, because 8 U.S.C. § 1225 mandates detention until the removal proceedings are concluded. At this time, the removal proceedings are in progress. Petitioner is scheduled to appear for a hearing in front of an

Immigration Judge on June 22, 2026. Thus, the removal proceedings are not final. This Court should find that the removal proceedings are not final, and thus Petitioner should remain detained.

Possible Warrantless Arrest Claim

If Petitioner argues that there was a Fourth Amendment violation in reply to this response, Respondents will preemptively address that now. Respondents note that the arrest was not warrantless, as a warrant was issued and served on May 14, 2026. Warrant. The warrant was issued by a Supervisory Detention and Deportation Officer ("SDDO"), and served by a Deportation Officer ("DO"). Therefore, the warrant was issued and served in compliance of 8 C.F.R. §§ 287.5(e)(2)-(3).

Also, the warrant was served on Petitioner at the Minnehaha local confinement facility, which is located in Sioux Falls, SD. *Supra.* Thus, the warrant was served on Petitioner before he was detained by ICE.

Assuming the Warrant is Invalid

Assuming *arguendo* that the warrant was invalid, Respondents argue the arrest was still valid. An officer may arrest any alien without warrant if the officer has reason to believe the alien is in the U.S. in violation of "any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens" and said alien is "likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2).

Here, there was reason to believe Petitioner was in violation of a relevant law or regulation because Petitioner, was in fact in violation of a relevant law. 8 U.S.C. § 1325 prohibits non-citizens to enter or attempt to enter the U.S. at any time or place other than

designated ports of entry. Petitioner violated that law when he entered the U.S. without inspection. NTA (documentation served on Petitioner on May 14, 2026 indicating the Government was aware Petitioner "arrived at a time or place other than as designated by an Attorney General"). Furthermore, the warrant states that Petitioner made statements to an immigration officer and/or there was other evidence that indicated Petitioner either lacked immigration status or is removable from the U.S. under immigration law. Warrant.

There was probable cause that Petitioner would likely escape before a warrant could be obtained. Petitioner entered the country illegally, and was living in the U.S. for at least ten years. In other words, Petitioner evaded immigration officers for over ten years. Additionally, Petitioner has a criminal record for driving under the influence. Together, these facts establish probable cause that he could not be trusted to report back to an immigration official – *i.e.* that he would "likely escape." Petitioner's approved I-601A does not change the calculus. Put simply, there is no indication Petitioner respects USCIS's recommendation, as Petitioner has seemingly failed to complete any of the required steps to effectuate USCIS's recommendation since receiving the recommendation on August 1, 2025. As such, there is no reason to believe that Petitioner's I-601A would incentive Petitioner to avoid fleeing.

Also, assuming the arrest is warrantless, the procedures in 8 C.F.R. § 287.3 were followed, as required. As required by § 287.3(a), Petitioner was examined on May 14, 2026. I-213. As required by § 287.3(b), the case was referred to an IJ. NTA. As required by § 287.3(c), Petitioner was notified of the reasons for his detention. NTA. As required

by § 287.3(d), a determination to keep Petitioner in custody was made on May 14, 2026. I-213.

Finally, mere failure to follow these regulations does not require dismissal of removal proceedings. A regulatory violation will not serve to exclude evidence or invalidate deportation proceedings unless the "regulation in question serves a purpose of benefit to the alien and the violation prejudiced interests of the alien which were protected by the regulation." *Puc-Ruiz v. Holder*, 629 F.3d 771, 780 (8th Cir. 2010) *applying In Matter of Garcia-Flores*, 17 I.&N. Dec. 325, 329 (BIA 1980) (adopting "prejudice" test put forth by the 9th Circuit in *Calderon-Medina*). Prejudice must be specifically demonstrated unless compliance with the regulation is mandated by the Constitution, in which case prejudice will be presumed. *Id.* Otherwise, the burden lies on the petitioner to show the "regulatory violations potentially affected the outcome of his deportation proceeding." *Id.* Because compliance with these regulations are not constitutionally mandated, prejudice cannot be presumed from a failure to follow them. *Puc-Ruiz v. Holder*, 629 F.3d at 780 (8th Cir. 2010); see also *Ali v. Gonzales*, 440 F.3d 678, 682 (5th Cir. 2006) (finding prejudice cannot be presumed for violations of 8 C.F.R. § 287.3). Thus, even if DHS did not follow procedures, the effect on Petitioner was not prejudicial, because they did not potentially affect the outcome of his deportation proceeding

CONCLUSION

This Court should follow the Eighth Circuit's reasoning in *Avila*. Respondents respectfully request that the Court deny this petition.

Alternatively, if this Court is inclined to grant the petition, Respondents request that the Court order a bond hearing rather than order release of Petitioner.

No evidentiary hearing is necessary.

Dated: June 11, 2026

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