UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-02949-JMB-EMB

Yonton Alfedo Pena Pinto.,

Petitioner,

v.

Markwayne Mullin et al.,

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

RESPONSE TO PETITION

Petitioner is subject to mandatory detention under the Laken Riley Act and 8 U.S.C. § 1225(b)(2).

As for detention under the Laken Riley Act, Petitioner was arrested on probable cause for committing theft/burglary on April 30, 2026, and therefore subject to mandatory detention.

As for detention under § 1225, 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 Venezuela. Doc. No. 1, Petition (hereinafter "Pet.") ¶ 7; Declaration of Steven Draves (hereinafter "Decl.") ¶ 4. Petitioner entered the U.S. on

approximately December 1, 2023. Ex. B, NTA (hereinafter "NTA"); Decl. ¶ 4; *see* Pet. ¶ 16.

On December 3, 2023, Petitioner was released on an order of recognizance. Ex. A, OREC (hereinafter "OREC). OREC advised Petitioner that he was released in accordance with section 236 of the INA with various conditions including his obligation to not violate any local, state or federal laws. OREC (advising Petitioner of the obligation to remain law-abiding twice in the same document.)

On December 4, 2023, Petitioner was served a Notice to Appear advising that he has a hearing with an Immigration Judge on April 14, 2027. NTA. The NTA advised Petitioner that he is removable under 212(a)(6)(A)(i) of the INA. NTA.

On April 30, 2026, Petitioner was arrested on probable cause for committing burglary or theft. Ex. E, I-213 (hereinafter "I-213"); Decl. ¶ 6; Ex. F, Apr 30 2026 Citation. As a result of the consequent booking, on April 30, 2026, ICE lodged an I-247 Detainer on Petitioner. Ex. C, Detainer; I-213; Decl. ¶ 7. ICE issued and served a warrant on Petitioner on April 30, 2026. Ex. D, I-200 Warrant (hereinafter "Warrant"); I-213 (stating Petitioner was detained by ICE on *May* 30, 2026 – an obvious scrivener's error, as all other documents indicate the arrest by ICE occurred on April 30, 2026, including Pet. ¶ 20); Decl. ¶ 8. The warrant was issued by a Supervisory Detention and Deportation Officer ("SDDO"), and served by a Deportation Officer ("DO").[1] Petitioner was picked up by ICE without incident from the local confinement facility. Decl. ¶ 8; I-213; *contra* Pet. ¶ 23 (stating Petitioner was picked

[1] The undersigned counsel was advised by ICE that officer who served the Warrant was a Deportation Officer.

up in a parking lot of Walmart.)

Petitioner was given a list of free legal service providers and advised of his A-number in writing. I-213. Petitioner was examined by an officer different than the officer who served the warrant. *Compare* I-213 (stating he was examined by an officer with initials J.H); *with* Warrant (stating the warrant was served by an officer with initials D.C).

Petitioner is currently detained in Minnesota. Pet. ¶ 7. [2]

Argument

Petitioner filed this action on June 13, 2026, seeking relief under 28 U.S.C. § 2241. Petitioner argues his continued detention violates the Fifth and Fourth Amendments of the U.S. Constitution. Pet. ¶¶ 60-73.

Respondents will explain that Petitioner is subject to mandatory detention under the Laken Riley Act and 8 U.S.C. § 1225. Respondents will next explain that Petitioner's constitutional rights were complied with.

Petitioner is Subject to Mandatory Detention because of the Laken Riley Act

Respondent has been charged with theft/burglary and is therefore subject to mandatory detention under the Laken Riley Act. The Laken Riley Act amends the categories of aliens subject to mandatory detention under INA § 236(c), by adding an additional crimes requiring mandatory detention. The Laken Riley Act requires detention of any alien who is, in part, inadmissible under INA § 212(a)(7), like Petitioner, and who "is charged with, arrested for . . . acts which constitute the essential elements of any . . .

[2] Petitioner does not claim to be a member of any class action, and Respondents are not aware of his status in any class action. *See* Doc. No. 3 (Court requiring this relevant response).

burglary, [or] theft." Pub. L. 119-1. The Laken Riley Act also amended the judicial review provision at INA § 236(e), 8 U.S.C. § 1226(e). The provision as amended provides that no court "may set aside any action or decision by the Attorney General" under INA § 236, 8 U.S.C. § 1226, "regarding the detention of any alien or the revocation or denial of bond or parole." INA § 236(e), 8 U.S.C. § 1226(e).

Here, Petitioner is charged as inadmissible under INA § 212(a)(7) and he has been arrested for and charged with theft or burglary, bringing him squarely within the mandatory detention requirements of the Laken Riley Act. The Laken Riley Act further removes the ability of this Court to set aside the decision to detain the Petitioner for the same. The Court should therefore deny this habeas petition.

Petitioner is Subject to Mandatory Detention because of *Avila*

Assuming the Court finds the argument regarding the Laken Riley act unpersuasive, this Court should still deny the petition, because 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 with an Immigration Judge on April 14, 2027.

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 determining whether or not Petitioner's OREC was appropriately revoked. Pet. ¶¶ 60-69. Such a determination is irrelevant under the statute. Because § 1225(b)(2)(A) requires mandatory detention and does not require determining if the OREC was appropriately revoked, 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 the allegation that the OREC was inappropriately revoked. Such a determination 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 an Analysis that his OREC was Revoked Properly 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.

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 before an IJ on April 14, 2027. Thus, the removal proceedings are not final. This Court should find that the removal proceedings are not final, and thus Petitioner should remain detained.

Assuming Due Process Requires Analyzing the Revocation of Petitioner's OREC

Assuming this Court finds that analyzing the revocation of Petitioner's OREC is required on account of Petitioner's Fifth Amendment Rights, Respondents argue that Petitioner's OREC was appropriately revoked. Petitioner's OREC is clear that the conditions required that Petitioner not violate or commit any crimes. OREC. On April 30, 2026, Petitioner was arrested on probable cause for burglary or theft. I-213; Decl. ¶ 6. Therefore, the OREC was appropriately revoked.

Warrantless Arrest Claim

Petitioner argues that there was a Fourth Amendment violation. Pet. ¶¶ 70-73. Respondents note that the arrest was not warrantless, as a warrant was issued and served on April 30, 2026. Warrant.

The warrant was issued by a Supervisory Detention and Deportation Officer ("SDDO"), and served by a Deportation Officer ("DO"). Warrant; *supra* n. 1. Therefore, the warrant was issued and served in compliance of 8 C.F.R. §§ 287.5(e)(2)-(3).

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.

There was probable cause that Petitioner would likely escape before a warrant could be obtained. Petitioner was ultimately detained by ICE, because Petitioner was detained by local authorities on probable cause that he committed theft or burglary, which would make him subject to mandatory detention pursuant to the Laken Riley Act. Knowing this, Petitioner would have an incentive to evade immigration authorities. Thus, there was

probable cause that he could not be trusted to report back to an immigration official – *i.e.* that he would "likely escape."

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 April 30, 2026. I-213; *supra* (noting the examining officer was different than the arresting officer). As required by § 287.3(b), the Petitioner has a hearing before an Immigration Judge on April 14, 2027. NTA. As required by § 287.3(c), Petitioner was notified of the reasons for his detention, and given a list of free legal service providers. I-213. As required by § 287.3(d), a determination to keep Petitioner in custody was made on April 30, 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 deny the petition on account of Laken Riley Act and 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 17, 2026

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