**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MINNESOTA**

Diosdado Aguilar Vazquez,

Petitioner,

v.

Pamela Bondi, Attorney General;

Kristi Noem, Secretary, U.S. Department of Homeland Security;

Department of Homeland Security;

Todd M. Lyons, Acting Director of Immigration and Customs Enforcement,

Immigration and Customs Enforcement,

Sirce Owen, Acting Director for Executive Office for Immigration Review,

Executive Office for Immigration Review,

Peter Berg, Director, Ft. Snelling Field Office Immigration and Customs Enforcement;

and,

Ryan Shea, Sheriff of Freeborn County.

Respondents.

25-3162

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

## INTRODUCTION

1. Respondents are detaining Petitioner, Mr. Diosdado Aguilar-Vazquez ("Aguilar-Vazquez") in violation of law pursuant to a policy treating all aliens who are present in the United States without admission or parole as subject to mandatory detention.

2. Aguilar-Vazquez has challenged his removal and custody through the immigration court.

3. The continued detention of Aguilar-Vazquez serves no legitimate purpose.

4. To remedy this unlawful detention, Aguilar-Vazquez seeks declaratory and injunctive relief in the form of immediate release from detention.

5. Pending the adjudication of his Petition, Aguilar-Vazquez seeks an order restraining the Respondents from transferring him to a location where he cannot reasonably consult with counsel, such a location to be construed as any location outside of the geographic jurisdiction of the day-to- day operations of U.S. Customs and Immigration's ("ICE") Fort Snelling, Minnesota of the Office of Enforcement and Removal Operations in the State of Minnesota.

6. Pending the adjudication of this Petition, Petitioners also respectfully request that Respondents be ordered to provide seventy-two (72) hour notice of any movement of Aguilar-Vazquez.

7. Aguilar-Vazquez requests the same opportunity to be heard in a meaningful manner, at a meaningful time, and thus requests 72-hours-notice prior to any removal or movement of him away from the State of Minnesota.

## JURISDICTION AND VENUE

8. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1361 (federal employee mandamus action), § 1651 (All Writs Act), and § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). This action further arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), specifically, 8 U.S.C. § 1254a.

9. Because Aguilar-Vazquez seeks to challenge his custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this court.

10. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. Demore v. Kim, 538 U.S. 510, 516–17 (2003); Jennings v. Rodriguez, 138 S. Ct. 830, 839–41 (2018); Nielsen v. Preap, 139 S. Ct. 954, 961–63 (2019); Sopo v. U.S. Attorney Gen., 825 F.3d 1199, 1209-12 (11th Cir. 2016).

11. Federal district courts have jurisdiction to enforce 8 U.S.C. § 1226(a)(2). This statute, 8 U.S.C. § 1226(a)(2), entitles Petitioner to a bond hearing in which an immigration judge may determine his eligibility for release from custody.

12. Venue is proper in this Court pursuant to 28 USC §§ 1391(b), (e)(1)(B), and 2241(d) because Aguilar-Vazquez is detained within this District. He is currently detained at the Freeborn County Law Enforcement Center in Albert Lea, Minnesota. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondents are operating in this district.

**PARTIES**

13. Petitioner Aguilar-Vazquez is a citizen of Mexico and a resident of Hennepin County, Minnesota. He is not an arriving alien. He is not seeking admission. Aguilar-Vazquez is currently in custody at the Immigration and Customs Enforcement ("ICE") detention center in Albert Lea, Minnesota.

14. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice, which encompasses the Board of Immigration Appeals ("BIA") and the immigration judges through the Executive Office for Immigration Review ("EOIR"). Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes,

along with Respondent Noem. Attorney General Bondi is a legal custodian of Aguilar-Vazquez.

15. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to § 103(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1103(a), routinely transacts business in the District of Minnesota, supervises the Fort Snelling ICE Field Office, and is legally responsible for pursuing Aguilar-Vazquez's detention and removal. As such, Respondent Noem is a legal custodian of Aguilar-Vazquez.

16. Respondent Department of Homeland Security ("DHS") is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

17. Respondent Sirce Owen is the Acting Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including bond hearings. She is sued in her official capacity.

18. The Fort Snelling Immigration Court is the adjudicatory body within EOIR with jurisdiction over the removal and bond cases of Petitioner. Its authority includes individuals detained in Minnesota, Iowa, North Dakota, and South Dakota.

19. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, which overseas the detention of aliens in the United States. Mr. Lyons is sued in his official capacity. Defendant Lyons is responsible for Petitioner's detention.

20. Respondent Immigration and Customs Enforcement ("ICE") is the subagency within the Department of Homeland Security responsible for implementing and enforcing the Immigration & Nationality Act, including the detention of noncitizens.

21. Respondent Peter Berg is being sued in his official capacity as the Field Office Director for the Fort Snelling Field Office for ICE within DHS. In that capacity, Field Director Berg has supervisory authority over the ICE agents responsible for detaining Aguilar-Vazquez. The address for the Fort Snelling Field Office is 1 Federal Drive, Fort Snelling, Minnesota 55111.

22. Respondent Sheriff Ryan Shea is being sued in his official capacity as the Sheriff responsible for the Freeborn County Law Enforcement Center. Because Petitioner is detained in the Freeborn County Law Enforcement Center, Respondent has immediate day-to-day control over Petitioner.

**EXHAUSTION**

23. ICE asserts authority to jail Aguilar-Vazquez pursuant to the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A). No statutory requirement of exhaustion applies to Aguilar-Vazquez's challenge to the lawfulness of his detention. See, e.g., Araujo-Cortes v. Shanahan, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) ("There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention."); Rodriguez v. Bostock, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *11 (W.D. Wash. Apr. 24, 2025) (citing Marroquin Ambriz v. Barr, 420 F. Supp. 3d 953, 962 (N.D. Cal. 2019) ("this Court 'follows the vast majority of other cases which have waived exhaustion based on irreparable injury when an individual has been detained for months without a bond hearing, and where several additional months may pass before the BIA renders a decision on a pending appeal.'"); Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) ((citing Portela-Gonzalez v. Sec'y of the Navy, 109 F.3d 74, 77 (1st Cir. 1997) (quoting McCarthy v. Madigan, 503 U.S. 140, 146 (1992)).

24. To the extent that prudential consideration may require exhaustion in some circumstances, Aguilar-Vazquez has exhausted all effective administrative remedies available to him as he has sought bond and appealed to the Board

of Immigration Appeals. Administrative appeals, however, will take several months to complete. Any further efforts would be futile.

25. Prudential exhaustion is not required when to do so would be futile or "the administrative body . . . has . . . predetermined the issue before it." McCarthy v. Madigan, 503 U.S. 140, 148 (1992), superseded by statute on other grounds as stated in Woodford v. Ngo, 548 U.S. 81 (2006).

26. Any appeal to the BIA is futile. ICE's new policy of construing all uninspected aliens as subject to mandatory detention was issued "in coordination with DOJ," which oversees the immigration courts. Further, as noted, a recent unpublished BIA decision on this issue held that aliens like Petitioner, who are present without admission or parole, are subject to mandatory detention as applicants for admission.

27. Prudential exhaustion is also not required in cases where "a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." McCarthy, 503 U.S. at 147. Every day that Aguilar-Vazquez is unlawfully detained causes him and his family irreparable harm. Jarpa v. Mumford, 211 F. Supp. 3d 706, 711 (D. Md. 2016) ("Here, continued loss of liberty without any individualized bail determination constitutes the kind of irreparable harm which forgives exhaustion."); Matacua v. Frank, 308 F. Supp. 3d 1019, 1025 (D. Minn.

2018) (explaining that "a loss of liberty" is "perhaps the best example of irreparable harm"); Hamama v. Adducci, 349 F. Supp. 3d 665, 701 (E.D. Mich. 2018) (holding that "detention has inflicted grave" and "irreparable harm" and describing the impact of prolonged detention on individuals and their families).

28. Prudential exhaustion is additionally not required in cases where the agency "lacks the institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute." McCarthy, 503 U.S. at 147–48. Immigration agencies have no jurisdiction over constitutional challenges of the kind Aguilar-Vazquez raises here. See, e.g., Matter of C-, 20 I. & N. Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); Matter of Akram, 25 I. & N. Dec. 874, 880 (BIA 2012); Matter of Valdovinos, 18 I. & N. Dec. 343, 345 (BIA 1982); Matter of Fuentes-Campos, 21 I. & N. Dec. 905, 912 (BIA 1997); Matter of U-M-, 20 I. & N. Dec. 327 (BIA 1991).

29. Because requiring Aguilar-Vazquez to exhaust administrative remedies would be futile, would cause him irreparable harm, and the immigration agencies lack jurisdiction over the constitutional claims, this Court should not require exhaustion as a prudential matter.

30. In any event, Aguilar-Vazquez has indeed exhausted all remedies available to him. Aguilar-Vazquez has sought his release in a bond hearing to no avail.

31. The immigration court denied bond because it incorrectly believes Aguilar-Vazquez is not eligible for a bond redetermination hearing.

## FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

32. Aguilar-Vazquez is a native and citizen of Mexico.

33. Aguilar-Vazquez entered the United States without inspection on or about April 3, 2003.

34. On August 31, 2004, Aguilar-Vazquez was convicted of a DWI. He was sentenced to 180 days in jail, which was stayed for two years and two years of probation.

35. On February 27, 2013, Aguilar-Vazquez was convicted of a DWI and a probation violation. He was sentenced to 180 days in jail.

36. On June 21, 2013, Respondents served a Notice to Appear on Aguilar-Vazquez, thereby initiating removal proceedings under 8 U.S.C. § 1229a.

37. At the same time that they served the Notice to Appear, Respondents served Aguilar-Vazquez with a form I-200 Warrant of Arrest.

38. On June 21, 2013, Respondents arrested released Aguilar-Vazquez but subsequently released him on an order of supervision. The form I-286 issued by Respondents expressly states that:

> Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that pending a final determination by the immigration judge in your case, and in the event you are ordered removed from the United States, until you are taken into custody for removal, you shall be … released on your own recognizance.

39. On November 13, 2013, Aguilar-Vazquez filed an application for cancellation of removal with the Immigration Court in Fort Snelling.

40. On August 8, 2014, the Immigration Court administratively closed Aguilar-Vazquez's removal proceedings.

41. In the intervening years, Aguilar-Vazquez has participated as a member of Grupo Vida y Esperanza (Life and Hope Group), one of the few Spanish-speaking Alcoholics Anonymous groups in Minneapolis, ultimately becoming a coordinator arranging 4th and 5th step weekends for new members to work with sponsors to confront and address issues around alcohol abuse and assisting participants in achieving lives of sobriety.

42. On May 19, 2025, Aguilar-Vazquez was pulled over by law enforcement for speeding. He was cited for failing to equip his vehicle with an ignition interlock device pursuant to restrictions on him arising from his DWIs.

43. On June 27, 2025, Aguilar-Vazquez was convicted of a misdemeanor for a violation of an ignition interlock restriction. He was sentenced to 90 days in

jail, stayed for a period of one year. He was also sentenced to one year of supervised probation.

44. On the morning of July 7, 2025, an Immigration Judge at the Fort Snelling Immigration Court granted bond to a foreign national who had been present in the United States for decades without inspection or parole pursuant to the release authority under 8 U.S.C. § 1226(a)(2)(A).

45. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

46. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

47. In a May 22, 2025, unpublished decision from the Board of Immigration Appeals (BIA), EOIR adopts this same position. That decision holds that all noncitizens who entered the United States without admission or parole are

considered applicants for admission and are ineligible for immigration judge bond hearings.

48. On July 9, 2025, an Immigration Judge at the Fort Snelling Immigration Court denied bond to a foreign national who had been present in the United States for decades without inspection or parole by invoking mandatory detention under 8 U.S.C. § 1225(b)(2).

49. On July 15, 2025, an Immigration Judge at the Fort Snelling Immigration Court denied bond to another foreign national who had been present in the United States for decades without inspection or parole by invoking mandatory detention under 8 U.S.C. § 1225(b)(2).

50. On July 16, 2025, while Aguilar-Vazquez was attending an appointment related to his probation, Respondents arrived in the lobby of the Steele County Probation Office and took Aguilar-Vazquez into custody.

51. Respondents subsequently filed a Form I-213, Record of Inadmissible/Deportable Alien with the Immigration Court.

52. On July 21, 2025, Aguilar-Vazquez sought a custody redetermination hearing before the immigration court sitting in Fort Snelling, Minnesota.

53. On July 29, 2025, an Immigration Judge at the Fort Snelling Immigration Court denied bond to another foreign national who had been present in the

United States for decades without inspection or parole by invoking mandatory detention under 8 U.S.C. § 1225(b)(2).

54. On July 30, 2025, the immigration court denied Petitioner's bond request, holding that it did not have jurisdiction to release Petitioner because he entered without inspection and as such is an 'applicant for admission' pursuant to INA section 235(b)(2)(a).

55. Respondents maintain Aguilar-Vazquez is ineligible for release from custody.

56. On August 4, 2025, Aguilar-Vazquez filed an appeal of the decision with the Board of Immigration Appeals.

57. On August 5, 2025, an Immigration Judge at the Fort Snelling Immigration Court denied another bond to a foreign national who had been present in the United States for decades without inspection or parole by invoking mandatory detention under 8 U.S.C. 1225(b)(2).

58. Aguilar-Vazquez's appeal remains pending.

## LEGAL FRAMEWORK

59. Removal proceedings are governed under 8 U.S.C. § 1229a, which provides that "[a]n immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien," 8 U.S.C. § 1229a(a)(1) and that "[u]nless otherwise specified in this chapter, a proceeding under this section

shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States." 8 U.S.C. § 1229a(a)(3).

60. To initiate removal proceedings under 8 U.S.C. § 1229a, "written notice (in this section referred to as a 'notice to appear') shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any)." 8 U.S.C. § 1229(a)(1).

61. The "[a]pprehension and detention of aliens" is governed by a different provision of the code, 8 U.S.C. § 1226, which provides that:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, **the Attorney General ... may release the alien on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General.**

8 U.S.C. § 1226(a)(2)(A) (emphasis added).

62. Initiation of removal proceedings is an independent section of law. 8 U.S.C. § 1229a.

63. The issue of whether an individual is subject to mandatory versus discretionary detention is an independent question that is not relevant to the operation of 8 U.S.C. § 1229(a).

64. Petitioner is not challenging Respondent's authority to initiate, commence, or complete a removal proceeding. This matter apprehension and detention exclusively.

65. The sole issue before the Court is Respondents' detention of Petitioner during the pendency of his removal proceedings. 8 U.S.C. § 1252 is not a bar to the Court resolving the pure legal question of whether Petitioner is subject to mandatory custody or eligible to apply for a discretionary bond.

66. The regulations provide that, to detain a person under 8 U.S.C. § 1226(a), the Department must issue an I-200 to take a person into custody; and that such a person is subject to release on bond. The regulation states:

> *(b) Warrant of arrest—*
>
> *(1) In general.* ***At the time of issuance of the notice to appear, or at any time thereafter*** *and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I–200, Warrant of Arrest. A warrant of arrest may be issued only by those immigration officers listed in § 287.5(e)(2) of this chapter and may be served only by those immigration officers listed in § 287.5(e)(3) of this chapter.*
>
> *(2) If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation.*
>
> *(c) Custody issues and release procedures—*
>
> *(1) In general.*
>
> *(i) After the expiration of the Transition Period Custody Rules (TPCR) set forth in section 303(b)(3) of*

> *Div. C of Pub.L. 104–208, no alien described in section 236(c)(1)* ***of the Act may be released from custody during removal proceedings except pursuant to section 236(c)(2) of the Act.***

8 C.F.R. § 236.1(b).

67. 8 U.S.C. 1226(a) is the default detention authority, and it applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a).

68. 8 U.S.C. 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings." Jennings v. Rodriguez, 583 U.S. 281, 289 (2018).

69. 8 U.S.C. § 1226(a) applies not just to persons who are deportable, but also to noncitizens who are inadmissible. Specifically, while § 1226(a) provides the general right to seek release, § 1226(c) carves out discrete categories of noncitizens from being released— including certain categories of inadmissible noncitizens—and subjects those limited classes of inadmissible aliens instead to mandatory detention. *See, e.g.,* 8 U.S.C. § 1226(c)(1)(A), (C).

70. The Laken Riley Act (LRA) added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See* LAKEN RILEY ACT, PL 119-1, January 29, 2025,

139 Stat 3. Pursuant to these amendments, people charged as inadmissible under § 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E).

71. By including such individuals under § 1226(c), Congress reaffirmed that § 1226 covers persons charged under § 1182(a)(6)(A) or (a)(7).

72. Grounds of deportability (found in 8 U.S.C. § 1227) apply to people like lawful permanents residents, who have been lawfully admitted and continue to have lawful status, while grounds of inadmissibility (found in § 1182) apply to those who have not yet been admitted to the United States. See, e.g., Barton v. Barr, 590 U.S. 222, 234 (2020) ("specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies.") (quoting Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010)).

73. The [i]nspection by immigration officers. expedited removal of inadmissible arriving aliens, [and] referral for hearing" is governed under 8 U.S.C. § 1225, which provides that "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a

designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1).

74. "All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3).

75. "If an immigration officer determines that an alien … who **is arriving in the United States** … is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum." 8 U.S.C. § 1225(b)(1)(A)(i) (emphasis added).

76. "If the officer determines at the time of the interview that an alien has a credible fear of persecution … the alien shall be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii).

77. "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien **seeking admission** is not clearly and beyond a doubt entitled to be admitted, the alien shall be

detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

78. 8 U.S.C. § 1225(b)'s mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." Jennings v. Rodriguez, 583 U.S. 281, 287 (2018).

79. By regulation, "[a]*rriving alien* means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked." 8 C.F.R. § 1.2.

80. "[A]n immigration judge may not redetermine conditions of custody imposed by the Service with respect to … [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act." 8 C.F.R. § 1003.19(h)(2)(i)(B).

81. As such, arriving aliens are not entitled to bond, nor, arguably, are aliens falling within the confines of 8 U.S.C. § 1225(b).

82. Congress did not intend to subject all people present in the United States after an unlawful entry to mandatory detention if arrested. Prior to Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), which codified both 8 U.S.C. § 1225 and 8 U.S.C. § 1226, aliens present without admission were not necessarily subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportability proceedings, which applied to all persons within the United States).

83. In articulating the impact of IIRIRA, Congress noted that the new § 1226(a) merely "restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added). *See* also H.R. Rep. No. 104-828, at 210 (same).

84. Respondents' longstanding practice of considering people like Petitioner as detained under § 1226(a) further supports reading the statute to apply to them. Typically, DHS issues a person Form I-286, Notice of Custody Determination, or Form I-200, Warrant for Arrest of Alien, stating that the person is detained under § 1226(a) (§ 236 of the INA).

85. As these arrest documents demonstrate, DHS has long acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the country's borders long after their entry. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." Abramski v. United States, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); See also Bankamerica Corp. v. United States, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government's interpretation and practice to reject its new proposed interpretation of the law at issue).

86. EOIR regulations have long recognized that Petitioner are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19—the regulatory basis for the immigration court's jurisdiction—provides otherwise.

87. In fact, EOIR confirmed that § 1226(a) applies to Petitioner when it promulgated the regulations governing immigration courts and implementing § 1226 decades ago. At that time, EOIR explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens;

Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323.

88. In *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 04 (BIA 2020), the Board referenced § 1226(a) as the detention authority for a noncitizen who unlawfully entered the United States the prior year and was detained soon thereafter.

89. Congress separately defined how Respondents initiate removal proceedings. 8 U.S.C. § 1229a(a)(i)(3) provides that "a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States."

90. The sole exception is the expedited removal process under 8 U.S.C. §1228 for individuals convicted of aggravated felonies.

91. 8 C.F.R. § 1003.14(a) confirms that Respondents also maintain that proceedings "initiate" or "commence" under 8 U.S.C. § 1229a. The regulation states, "Jurisdiction vests, and proceedings before an Immigration Judge *commence*, when a charging document is filed with the Immigration Court by the Service."

92. There is no reference to a person's custody status in 8 C.F.R. § 1003.14(a).

93. The commencement or initiation of proceedings is a separate question from how and why Respondents apprehend and detain an individual.

94. Respondents - as a matter of plain statutory language and explicit regulatory recognition - cannot assert that Respondents "initiate" proceedings under the authority of 8 U.S.C. § 1225(b)(2).

**REMEDY**

95. Respondents' detention of Aguilar-Vazquez under 8 U.S.C. § 1225(b)(2)(A) violates the Due Process Clause of the United States Constitution. Aguilar-Vazquez's ongoing detention violates the Fifth Amendment's guarantee that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const., Amend. 5.

96. Due Process requires that detention "bear [] a reasonable relation to the purpose for which the individual [was] committed." Zadvydas, v. Davis, 533 U.S. 678, 690 (2001) (citing Jackson v. Indiana, 406 U.S. 715, 738 (1972)).

97. Respondents' policy of treating all aliens present in the United State without admission or parole as subject to mandatory custody is arbitrary and capricious, out of accordance with the law, violative of both 8 U.S.C. § 1225(b)(2) and 8 U.S.C. § 1226(a)(2), contrary to the Fifth Amendment of the United States Constitution, and constitutes a systematic failure to apply the custody procedural framework set forth at 8 U.S.C. § 1226(a)(2).

98. Aguilar-Vazquez seeks immediate release to the extent that Respondents justify his detention on 8 U.S.C. § 1225(b)(2), which plainly does not apply to him.

99. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, I.N.S. v. St. Cyr, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) ("A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus"), implicit in habeas jurisdiction is the power to order release. Boumediene v. Bush, 553 U.S. 723, 779 (2008) ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.").

100. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. See, e.g., Munaf v. Geren, 553 U.S. 674 (2008) ("The typical remedy for [unlawful executive detention] is, of course, release."); See also Wajda v. US, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 "is to obtain release from the duration or fact of present custody.").

101. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, "habeas corpus is, at its core, an equitable remedy," Schlup v. Delo, 513 U.S. 298, 319 (1995), and that as an equitable

remedy, federal courts "[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . . to dispose of habeas corpus matters 'as law and justice require.'" Hilton v. Braunskill, 481 U.S. 770, 775 (1987), quoting 28 U.S.C. § 2243. An order of release falls under court's broad discretion to fashion relief. See, e.g., Jimenez v. Cronen, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) ("Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien's release.").

102. Immediate release is an appropriate remedy in this case.

103. Alternatively, Aguilar-Vazquez requests a constitutionally adequate custody redetermination hearing in which he is not erroneously treated as detained pursuant to 8 U.S.C. § 1225(b)(2)(A) and is instead treated as a detainee under 8 U.S.C. § 1226(a) within seven calendar days.

## CAUSE OF ACTION

## COUNT ONE: DECLARATORY RELIEF

104. Aguilar-Vazquez re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

105. Aguilar-Vazquez requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Aguilar-Vazquez is not subject to detention under to 8 U.S.C. § 1225(b)(2).

106. Aguilar-Vazquez requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Aguilar-Vazquez is detained pursuant to 8 U.S.C. § 1226(a)(1).

107. Aguilar-Vazquez requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Aguilar-Vazquez is eligible for release from Respondents' custody on bond.

**COUNT TWO: VIOLATION OF THE IMMIGRATION & NATIONALITY ACT – 8 U.S.C. § 1226(a) & 8 U.S.C. § 1225(b)(2)**

108. Aguilar-Vazquez re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

109. Section 1226 of Title 8 of the U.S. Code governs the detention of aliens pending a determination of removal from the United States.

110. Such an alien "may [be] release[d] … on bond of at least $1,500." 8 U.S.C. § 1226(a)(2)(A).

111. The denial of Aguilar-Vazquez's bond eligibility is in violation of 8 U.S.C. § 1226(a)(2)(A), which specifically makes him eligible for bond.

112. 8 U.S.C. § 1225(b)(2)(A) cannot apply as it only applies to those "seeking admission" at the time of detention and Petitioner was not "seeking admission at the time he was detained, nor is he now. 8 U.S.C. § 1225(b)(2)(A).

113. If Respondents do not release Aguilar-Vazquez without any conditions, he must be afforded a bond hearing in which a neutral arbiter determines whether he poses either a danger or flight risk.

**COUNT THREE: VIOLATION OF THE FIFTH AMENDMENT**

114. Aguilar-Vazquez re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

115. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

116. Aguilar-Vazquez is not subject to mandatory custody under the Immigration & Nationality Act and is therefore entitled to a bond hearing in which a neutral arbiter may determine the justification for his continued detention under 8 U.S.C. § 1226(a)(2)(A), the denial of which constitutes a violation of the Fifth Amendment's guarantee of due process.

**COUNT FOUR: VIOLATION OF 8 C.F.R. §§ 236.1, 1236.1 AND 1003.19 - UNLAWFUL DENIAL OF RELEASE ON BOND**

117. Aguilar-Vazquez re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

118. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to

interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at10323 (emphasis added).

119. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before immigration courts under 8 U.S.C. § 1226 and its implementing regulations.

120. Nonetheless, DHS and the Fort Snelling Immigration Court have adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.

121. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

**COUNT FIVE: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT – CONTRARY TO LAW AND ARBITRARY AND CAPRICIOUS AGENCY POLICY**

122. Aguilar-Vazquez re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

123. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and

capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

124. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

125. Nonetheless, DHS and the Fort Snelling Immigration Court have adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.

126. Respondents have failed to articulate any reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

127. The application of § 1225(b)(2) to Petitioner and those like him is arbitrary, capricious, out of accordance with law, contrary to constitutional right, and in excess of statutory authority, and thus it violates the APA. *See* 5 U.S.C. § 706(2).

**COUNT SIX – VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT – FAILURE TO OBSERVE REQUIRED PROCEDURES**

128. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs as if fully set forth herein.

129. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D). Specifically, the APA requires agencies to follow public notice-and-comment rulemaking procedures before promulgating new regulations or amending existing regulations. *See* 5 U.S.C. § 553(b), (c).

130. Respondents failed to comply with the APA by adopting its policy and departing from its regulations without any rulemaking, let alone any notice or meaningful opportunity to comment. Respondents failed to publish any such new rule despite affecting the substantive rights of thousands of noncitizens under the INA, as required under 5 U.S.C. § 553(d).

131. Had Respondents complied with the advance publication and notice-and-comment rulemaking requirements under the APA, members of the public

and organizations that advocate on behalf of noncitizens like Petitioner would have submitted comments opposing the new policies.

132. The APA's notice and comment exceptions related to "foreign affairs function[s] of the United States," id. § 553(a)(1), and "good cause," *id.* § 553(d)(3) are inapplicable.

133. Respondents' adoption of their no-bond policies therefore violates the public notice-and-comment rulemaking procedures required under the APA.

## PRAYER FOR RELIEF

WHEREFORE, Petitioner, Diosdado Aguilar-Vazquez, asks this Court for the following relief:

1. Assume jurisdiction over this matter.
2. Issue an order restraining Respondents from attempting to move Aguilar-Vazquez from the State of Minnesota during the pendency of this Petition.
3. Issue an order requiring Respondents to provide 72-hour notice of any intended movement of Aguilar-Vazquez.
4. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. § 153.
5. Order Aguilar-Vazquez's immediate release, or, alternatively, order Respondents hold a bond hearing consistent with 8 U.S.C. § 1226(a).
6. Declare that Respondents' action is arbitrary and capricious.

7. Declare that Respondents failed to adhere to its regulations.

8. Declare that Respondents adopted a new policy without undergoing the required notice and comment in violation of the Administrative Procedure Act.

9. Set aside Respondent's policy of treating all aliens heard before the Immigration Court at Fort Snelling, Minnesota, who are present in the United States without admission or parole as subject to mandatory custody under 8 U.S.C. § 1226(a).

10. Declare that Petitioner's detention absent a bond hearing violates the Due Process Clause of the Fifth Amendment.

11. Grant Aguilar-Vazquez reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).

12. Grant all further relief this Court deems just and proper.

DATED: August 7, 2025

Respectfully submitted,

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***Attorneys for Petitioner***

**Verification by**
**Petitioner Pursuant to 28 U.S.C. § 2242**

I am submitting this verification because I am the Petitioner. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding my detention status, are true and correct to the best of my knowledge.

Diosdado Aguilar-Vazquez

Date: August 7, 2025