UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Kevin Murillo Lucero

Petitioner,

v.

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; Samuel J. OLSON; Field Office Director of Enforcement and Removal Operations, St. Paul Minnesota Field Office, Immigration and Customs Enforcement; Peter BERG, Director, St. Paul Field Office, Immigration and Customs Enforcement; Pamela BONDI, Attorney General of the United States and; Joel BROTT, Sheriff of Sherburne County Jail.

Respondents.

Case No._____

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Kevin Murillo Lucero is in the physical custody of Respondents at the Sherburne County Jail in Elk River, Minnesota. He now faces unlawful detention because the Department of Homeland Security and the Executive Office of Immigration Review have erroneously concluded that Respondent is detained under 8 U.S.C. § 1225(b)(2)(A). In an attempt to insulate her decision from review by this Court, the I.J. made a so-called "alternative finding" that Petitioner poses a flight risk and that presumably no amount of bond would insure his future appearances. *See* Ex. A. I.J. Decision.

2. Petitioner entered the United States on or about February 26, 2020 as an Unaccompanied Alien Child[1], and was charged with, inter alia, being removable as an alien present in the United States without admission or parole, or who arrives in the United States at any time or place other than as designated by the Attorney General 8 U.S.C. § 1182(a)(6)(A)(i). *See* Ex. B., Form I- 862 Notice to Appear. Petitioner was immediately placed in the custody of the Office of Refugee Resettlement (ORR) for housing and care, and was released several months later to the custody of a relative. *See* Ex. C., ORR Determination.

3. Respondent has lived in the United States for over five years and has a pending UAC asylum application with United States Citizenship and Immigration Services. *See* Exh. E., I-589 Application for Asylum and Withholding of Removal. Respondent's removal proceedings were administratively closed on August 26,2024, to allow USCIS to exercise initial jurisdiction over Respondent's UAC application for asylum and withholding of removal. *See* Ex. F., Decision

[1] Under U.S. immigration law, an "unaccompanied alien child" is a child who (A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom— (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody. 6 U.S.C. § 279(g)(2).

of I.J. Respondent has no criminal history, and is a rising sophomore on a full scholarship at Augsburg University. *See* Ex. G., Respondent's Documents in Support of Bond.

4. On August 5, 2025, Respondent, for no apparent reason other than he was at the wrong place at the wrong time, was detained by Immigrations and Customs Enforcement (ICE). *See* Ex. D., I-213 Record of Deportable/Inadmissable Alien. After being detained for three weeks, Respondent was finally given a bond hearing, where the DHS argued, and I.J. Zaske agreed, that Respondent was detained as an "applicant for admission" pursuant to 8 U.S.C. § 1225(b)(2)(A), and thus is ineligible for bond.

5. In clear attempt to insulate her decision from judicial review by this Court, I.J. Zaske made an additional finding that "In the alternative, the Court finds that Respondent is a flight risk and bond is also denied for that reason." *See* Ex. A. The I.J. 's determination that Respondent is a flight risk, without any written explanation is a clear violation of Respondent's due process rights. *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001) (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

6. Petitioner never experienced a change in circumstance that led to his detention. There was no change of circumstance that led to the Respondent's arrest; rather, he was a collateral arrest while ICE agents targeted a different group of noncitizens. Furthermore, the Respondent has a pending UAC asylum application, and his removal proceedings were administratively closed.

7. The I.J.'s decision that Petitioner is an "applicant for admission," is consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e.,

those who entered the United States without inspection—to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.

8. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section § 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.

9. Respondents' new legal interpretation of § 1226(a) is plainly contrary to the statutory framework and contrary to decades of agency practice in applying 1226(a) to people like Petitioner.

10. Allowing Respondents to continue to detain Petitioner without a detailed analysis of why Petitioner is a "flight risk" such that no amount of bond or less restrictive means of ensuring his appearance are appropriate allows Respondents to circumvent congressional intent with regards to individuals who entered the United States as unaccompanied alien children. *See* 8 U.S.C. § 1232(c)(2).

11. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released from detention on a bond of $5000, or, in the alternative, requiring that the I.J. hold a new bond hearing acknowledging that Petitioner is detained under § 1226(a), and make a detailed analysis of her reasons for determining that Petitioner is a "flight risk" and no amount of bond or less restrictive measures would ensure his future appearance.

JURISDICTION

12. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Sherburne County Jail in Elk River, Minnesota.

13. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

14. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

15. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Minnesota, the judicial district in which Petitioner currently is detained.

VENUE

16. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Minnesota.

REQUIREMENTS OF 28 U.S.C. § 2243

17. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

18. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and

receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

19. Petitioner Kevin Murillo Lucero is a citizen of Ecuador who has been in immigration detention since August 7, 2025. After arresting Petitioner in Brooklyn Center, Minnesota, ICE did not set bond and Petitioner requested review of his custody by an IJ. On August 26, 2025, Petitioner was granted a bond by an IJ at the Fort Snelling immigration court because he was found to be detained under 8 U.S.C. § 1226(a). Petitioner has resided in the United States since February 2020.

20. Respondent Samuel J. Olson is the Director of the St. Paul Field Office of ICE's Enforcement and Removal Operations division. As such, Samuel J. Olson is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his official capacity.

21. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

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

23. Respondent Pamela Bondi is the Attorney General of the United States, and the head of the Department of Justice, which encompasses the BIA and the immigration judges through the

Executive Office for Immigration Review. 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 Petitioner. She is being sued in her official capacity.

24. Respondent Joel Brott is employed by Sherburne County as Sheriff of the Sherburne County Jail, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

FACTS

25. Petitioner has resided in the United States since February 26, 2020, and lives in Minneapolis, Minnesota. *See* Ex. G. Petitioner entered the U.S. as an Unaccompanied Alien Child. *See* Ex. C. Petitioner was placed with the Office of Refugee Resettlement and eventually released to the custody of his Uncle. *Id.*

26. DHS placed Petitioner in removal proceedings before the Fort Snelling Immigration Court, pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien present in the United States without admission or parole. *See* Ex. B.

27. On August 6, 2024, the I.J. administratively closed Petitioner's removal proceedings to allow him to apply for asylum as a Unaccompanied Alien Child (UAC) with United States Citizenship and Immigration Services. *See* Ex. D.

28. On August 7, 2025, Petitioner was arrested by ICE agents while driving to work. Petitioner was encountered by ICE because ICE was looking for another non-citizen who was a passenger in Petitioner's vehicle. *See* Ex. D. Petitioner has no criminal history. His removal proceedings are administratively closed, and he has an unaccompanied alien minor asylum

application pending with USCIS. In short, there were no circumstances justifying Respondent's re-detention.

29. Petitioner is now detained at the Sherburne County Jail.

30. Petitioner is presently 19 years old. He has obtained a driver's license and work authorization. Petitioner has no criminal history. He is a rising sophomore at Augsburg University, on a full scholarship. Petitioner is neither a flight risk nor a danger to the community.

31. Following Petitioner's arrest and transfer to Sherburne County Jail, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

32. Petitioner subsequently requested a bond redetermination hearing before an IJ.

33. On August 26, 2025, a I.J. Zaske issued a decision that Petitioner was detained under 8 U.S.C. § 1225(b)(2)(A), as an "applicant for admission." *See* Ex. A. In the alternative, I.J. Zaske found, without any explanation in her written decision, that Petitioner was a "flight risk." *Id.* Apparently no amount of bond or less restrictive alternative conditions would ensure his appearance. It is clear that this determination was an attempt to insulate her decision from review by this Court.

34. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community, and unable to attend school.

35. Any appeal to the BIA is futile. DHS's new policy was issued "in coordination with the DOJ," which oversees the immigration courts. Further, as noted, the most recent unpublished BIA decision on this issue held that persons like Petitioner are subject to mandatory detention as applicants for admission. Finally, in the *Rodriguez Vazquez* litigation, where EOIR

and the Attorney General are defendants, the DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

36. Due to the position of the BIA that individuals like Respondent are detained under § 1225(b)(2)(A), it is unlikely that the BIA will review the I.J. 's alternative findings regarding Petitioner's flight risk.

LEGAL FRAMEWORK

37. 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).

38. To initiate removal proceedings, "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).

> The "[a]pprehension and detention of aliens" is governed under 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)

39. 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).

40. 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).

41. 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).

42. 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). 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).

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

44. 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).

45. "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).

46. "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).

47. "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).

48. "[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).

49. 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).

50. "Read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention of applicants for admission until certain proceedings have concluded. Until that point, nothing in the statutory text imposes a limit on the length of detention, and neither provision says anything about bond hearings." *Jennings v. Rodriguez*, 583 U.S. 281, 282 (2018).

51. 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.

52. "[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).

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

54. Congress did not intend to subject all people present in the United States after an unlawful entry to mandatory detention if arrested. Prior to the 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).

55. 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).

56. 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).

57. 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).

58. 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.

59. In fact, EOIR confirmed that § 1226(a) applies to Petitioner when it promulgated the regulations governing immigration courts and implemented § 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.

60. 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.

61. Finally, and most importantly in this case, 6 U.S.C. § 279(a) provides that Unaccompanied Alien Children (UACs) are not detained under the provisions of the INA, but rather, ORR assumes the authority for the care, custody, and placement of UAC instead of DHS. UAC are not held in custody by DHS, nor are they paroled by DHS pursuant to 8 U.S.C. § 1225(b). Rather, UACs are held in their initial custody pursuant to 8 U.S.C. § 1232 and 6 USC § 279; they are never detained pursuant to 8 U.S.C. § 1225(b)(1). If released and then subsequently apprehended, a UAC cannot be returned to detention under 8 U.S.C. § 1225(b)(1), as they were never in custody under 8 U.S.C. § 1225(b)(1) to begin with.

62. Upon his initial entrance to the United States, the Respondent was immediately determined to be a UAC and transferred to ORR custody. ORR was responsible for the Respondent's custody, care, and eventual release. The Respondent's detention and subsequent release were thus governed by 8 U.S.C. §§ 1232(b)-(c) and not by 8 USC § 1225(b). Now that the Respondent is over 18 years of age, his arrest by ICE on August 7, 2025, was pursuant to 8 U.S.C .§ 1226(a).

REMEDY

63. Respondents' detention of Petitioner under 8 U.S.C. § 1225(b)(2) violates the Due Process Clause of the United States Constitution. Petitioner'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.

64. 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)).

65. Petitioner 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.

66. Petitioner seeks release on a bond in the amount of $5000, to the extend that Respondent's justify his detention on the grounds that he is a supposed flight risk.

67. In the alternative, Petitioner seeks a new bond hearing in which the I.J. is required to find that Petitioner is detained under 8 U.S.C .§ 1226(a) and articulate in their written decision the reasons for determining that, notwithstanding Respondent's length of time in the United States, his enrollment as a full-time student on a full scholarship at Augsburg University, and history of attending his court hearings, why no amount of bond, or less restrictive means such as an ankle monitor, would ensure his appearance.

68. 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.").

69. 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.").

70. 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.").

71. Immediate release is an appropriate remedy in this case, where the I.J. has concluded that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2).

EXHAUSTION

72. ICE asserts authority to jail Petitioner pursuant to the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(a). No statutory requirement of exhaustion applies to Petitioner'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)).

73. To the extent that prudential consideration may require exhaustion in some circumstances, Petitioner 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 many months to complete. Meanwhile, Petitioner will be forced to remain in immigration custody that is virtually identical to criminal custody. Any further efforts would be futile.

74. Any appeal to the Board of Immigration Appeals is futile. Respondents' new policy was issued "in coordination with the DOJ," which oversees the immigration courts. Further, as noted, the most recent unpublished Board of Immigration Appeals decision on this issue held that persons like Petitioner are subject to mandatory detention as applicants for admission.

75. 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 Petitioner 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).

76. 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 Petitioner 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).

77. Because requiring Petitioner 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.

78. In any event, Petitioner has indeed exhausted all remedies available to him. Petitioner has sought review of the I.J.'s decision to the BIA.

CLAIMS FOR RELIEF

COUNT I
Declaratory Relief

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

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

81. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner is detained pursuant to 8 U.S.C. § 1226(a)(1).

82. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner is eligible for release from Respondents' custody.

COUNT II
Violation of the INA – 8 U.S.C. § 1226(a) & 8 U.S.C. § 1225(b)(2)

83. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

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

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

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

87. 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. 8 U.S.C. § 1225(b)(2)(A).

88. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT III

Violation of the Fifth Amendment

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

90. 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.

91. Petitioner is not subject to mandatory custody under the Immigration & Nationality Act and is therefore entitled to be released on the bond set by the I.J. Respondent's continued detention constitutes a violation of the Fifth Amendment's guarantee of due process.

COUNT IV

Violation of 8 C.F.R. §§ 236.1, 1236.1 and 1003.19
Unlawful Denial of Release on Bond

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

93. 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).

94. 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.

95. 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.

96. 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 V

Violation of the Administrative Procedure Act ("APA") – Contrary To Law and Arbitrary and Capricious Agency Policy

97. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

98. 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).

99. 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 individuals who, like Petitioner, entered the U.S. as Unaccompanied Alien Children (UACs) that were previously in the custody and care of the Office of Refugee Resettlement, pursuant to . 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.

100. 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.

101. 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.

102. The application of § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT II

Violation of the APA – Failure to Observe Required Procedures

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

104. 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).

105. 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).

106. 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.

107. 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

108. 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 prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue an order restraining Respondents from attempting to move Petitioner from the State of Minnesota during the pendency of this Petition;

c. Issue an order requiring Respondents to provide 72-hour notice of any intended movement of Petitioner;

d. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. § 153;

e. Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately; or, in the alternative order Petitioner released on a bond of $5,000, or order Respondents to provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 14 days where the I.J. is required to articulate in a written decision their reasons supporting any flight risk finding;

f. Declare that Respondents' action is arbitrary and capricious;

g. Declare that Respondents' failed to adhere to its regulations;

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

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

j. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

k. Grant any other and further relief that this Court deems just and proper.

DATED: this 5 day of September, 2025.

/s/ Evangeline Dhawan-Maloney
Evangeline Dhawan-Maloney
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Verification by Petitioner's Legal Counsel
Pursuant to 28 U.S.C. § 2242

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

/s/Evangeline Dhawan-Maloney Date: September 5, 2025
Evangeline Dhawan-Maloney, Esq.