JS 44 (Rev. 09/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Sergio ARGUELLO VELAZQUEZ

(b) County of Residence of First Listed Plaintiff Kandiyohi
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Graham Ojala-Barbour (Ojala-Barbour Law Firm, PLLC)
1100 7th St. W., St. Paul, MN 55102; 651-214-6284

DEFENDANTS

Kristi NOEM, Secretary, DHS; Todd Lyons, Acting Dir., ICE; David Easterwood, Acting Director, ICE St. Paul Field Office
Eric TOLLEFSON, Kandiyohi Sheriff
County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☒ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. § 2241

Brief description of cause:
Petition for writ of habeas corpus challenging unlwaful detention under 8 U.S.C. § 1225(b)(2)(A)

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 01/07/2026

SIGNATURE OF ATTORNEY OF RECORD GJB

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Sergio ARGUELLO VELAZQUEZ,

Petitioner,

v.

Kristi NOEM, in her official capacity as Secretary of the Department of Homeland Security;

Todd LYONS, in his official capacity as Acting Director of United States Immigration and Customs Enforcement;

David EASTERWOOD, in his official capacity as Acting Director, St. Paul Field Office, U.S. Immigration and Customs Enforcement;

Eric TOLLEFSON, in his official capacity as Sheriff of Kandiyohi County;

Respondents.

Case No. 26-cv-82

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

[redacted]

INTRODUCTION

1. This petition seeks declaratory relief providing that Sergio Arguello Velazquez ("Petitioner") is subject to detention by the Department of Homeland Security's ("DHS") U.S. Immigration and Customs Enforcement ("ICE") under 8 U.S.C. § 1226(a) and that an Immigration Judge must therefore hold a custody redetermination hearing under 8 C.F.R. § 1236 to allow Petitioner the opportunity to seek a bond for his release from custody. ICE has been detaining Petitioner since at least December 29, 2025 at the Kandiyohi County jail in Willmar, Minnesota.

2. This petition also requests that the Court specifically enjoin Respondents from moving Petitioner outside of the District of Minnesota in the Order to Show Cause. For this injunction to be included in the Order to Show Cause would avoid the repetitive briefing and strain on the Court's resources presented by a motion for a temporary restraining order.
3. Petitioner is a citizen of Mexico who has resided in the United States for more than fifteen years. He entered the United States as an unaccompanied child in 2010 at about six years old.
4. Petitioner is currently detained by ICE at Kandiyohi County Jail in Willmar, MN.
5. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision that unlawfully reinterprets sections of the Immigration and Nationality Act ("INA") pertaining to the issue of whether the Department of Homeland Security (DHS) has mandatory or permissive authority to detain certain noncitizens placed in removal proceedings. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Prior to that decision, noncitizens such as Petitioner, who had lived in the United States for many years, after being detained and released at the border under an Order of Release on Recognizance ("OREC) and who were later apprehended by ICE in the interior of the country, were determined to be subject to detention pursuant to 8 U.S.C. § 1226(a) and therefore eligible to seek bond hearings before Immigration Judges ("IJs"). Under the erroneous legal framework set forth by the BIA in *Yajure Hurtado*, and in contradiction of nearly 30 years of legal precedent and the plain language of the INA, DHS and its subcomponent ICE

now consider Petitioner and others similarly situated to him to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Applying the interpretation of these provisions as set forth in *Yajure Hurtado*, Respondents deny Petitioner any opportunity to seek release on bond during the pendency of his removal proceedings.

6. Petitioner's detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who has resided in the U.S. for more than fifteen years, should not be deemed an "applicant for admission" who is "seeking admission." Rather, he should be deemed detained pursuant to 8 U.S.C. § 1226(a), permitting him to seek release on conditional parole or bond.

7. Petitioner seeks declaratory relief that he is subject to detention under § 1226(a) and its implementing regulations and asks that this Court either order Respondents to release Petitioner from their custody or provide him with a bond hearing before an IJ.

CUSTODY

8. Petitioner is currently in the custody of ICE at Willmar, Minnesota. He is therefore in the custody of the DHS within the meaning of the habeas corpus statute. *See* 28 U.S.C. § 2241.

JURISDICTION & VENUE

9. Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); and Art. I, § 9, cl. 2 of the U.S. Constitution ("Suspension Clause").

10. This Court may grant relief to Petitioner pursuant to 28 U.S.C. § 2241 *et seq.* (habeas corpus); 28 U.S.C. § 2201 *et seq.* (Declaratory Judgment Act); 28 U.S.C. § 1651 (All Writs Act); 5 U.S.C. § 702 (Administrative Procedure Act); and the Court's inherent equitable powers.

11. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) ("[T]he primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases."). Because Petitioner seeks to challenge his custody as a violation of the U.S. Constitution, laws, or treaties of the United States, jurisdiction is proper in this court.

12. Venue lies in the U.S. District Court for the District of Minnesota because it is the judicial district in which Petitioner is currently detained. Venue is also proper in this Court under 28 U.S.C. § 1391(e)(1) 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 this district.

PARTIES

13. Petitioner, Sergio Arguello Velazquez, has lived in the United States for over fifteen years. Prior to his detention on about December 29, 2025, he was residing in Brooklyn Park, Minnesota. Petitioner is currently in ICE Custody at the Kandiyohi County Jail.

14. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As head of the U.S. Department of Homeland Security, the federal agency

tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

15. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. As ICE's Acting Director, Respondent Lyons is a legal custodian of Petitioner.

16. Respondent David Easterwood is sued in his official capacity as Field Office Director of the St. Paul Field Office, Enforcement and Removal Operations, ICE. In his official capacity, Respondent Easterwood is a legal custodian of Petitioner.

17. Respondent Eric Tollefson is sued in his official capacity as Sheriff of Kandiyohi County. As Sheriff of Kandiyohi County, Respondent Tollefson oversees Kandiyohi County Jail, the facility where Petitioner is presently detained, and is therefore one of his legal custodians.

REQUIREMENTS OF 28 U.S.C, § 2243

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

19. 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) (citation omitted). "The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the

trial courts do not act within a reasonable time." *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978).

20. Due to the nature of this proceeding, Petitioner respectfully asks this Court to expedite proceedings as necessary and practicable for justice.

EXHAUSTION OF LEGAL REMEDIES

21. Further administrative exhaustion is unnecessary in this case as it would be futile. *See, e.g.*, *Eliseo A.A. v. Olson*, No. 25-3381, 2025 WL 2886729, at *7 (D. Minn. Oct. 8, 2025).

22. It would be futile for Petitioner to seek a custody redetermination hearing before an IJ because of the BIA's recent decision holding that anyone who has entered the United States without inspection is now considered an "application for admission" who is "seeking admission" and therefore subject to the INA's mandatory detention provision under 8 U.S.C. § 1225(b)(2)(A). *See Yajure Hurtado*, 29 I&N Dec. 216; *see also Eliseo A.A.*, 2025 WL 2886729, at *7 ("[F]urther administrative review would be futile in light of the BIA's recent decision in *Matter of Yajure Hurtado*, . . . which upheld DHS's new § 1225 policy and held that immigration judges 'lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.' Where the agency has already adopted a definitive position, exhaustion serves no purpose." (citation omitted)).

23. Additionally, the IJ does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be

futile for him to pursue administrative remedies related to that claim. *Cf. Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) ("[E]xhaustion would be a futile exercise because the agency does not have jurisdiction to review a selective enforcement claim.").

LEGAL FRAMEWORK

24. The INA prescribes essentially three forms of detention for noncitizens in removal proceedings.

25. First, noncitizens detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a custody-redetermination hearing—also known as a bond hearing—unless they have been arrested, charged with, or convicted of certain crimes that subject them to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (providing that Immigration Judges may review custody determinations made by DHS), 1236.1(d) (providing the same).

26. Second, the INA provides for mandatory detention of noncitizens who are subject to expedited removal under 8 U.S.C. § 1225(b)(1), in addition to other recent arrivals who are deemed to be "seeking admission" to the United States under 8 U.S.C. § 1225(b)(2).

27. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. 8 U.S.C. § 1231(a)–(b).

28. The detention provisions of the INA at 8 U.S.C. §§ 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 of the INA was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

29. Following enactment of the IIRIRA, the U.S. Department of Justice's Executive Office for Immigration Review ("EOIR") drafted new regulations explaining that, in general, individuals who entered the United States without inspection were not considered detained pursuant to § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.")

30. In the decades that followed the enactment of the IIRIRA, most noncitizens who entered the United States without inspection and were thereafter detained and placed in standard removal proceedings were considered eligible to seek release on bond and also received bond hearings before an IJ unless their criminal history rendered them statutorily ineligible. This practice was consistent with many decades of prior practice, in which noncitizens who entered the United States, even without inspection, were entitled to a custody determination hearing before an IJ. In contrast,

those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that 8 U.S.C. § 1226(a) simply "restates" the detention authority previously found at 8 U.S.C. § 1252(a)).

31. For decades, noncitizens who have entered the United States without inspection, were briefly detained and then released under an OREC, and then resided long-term within the country have been deemed to be detained pursuant to § 1226 and have therefore been deemed entitled to bond hearings before IJs, absent a criminal history that would bar them from such a hearing.

32. In July 2025, however, ICE contravened this longstanding legal framework by beginning to assert that all individuals who entered the country without inspection should be considered to be "seeking admission" and therefore subject to the mandatory-detention provision of 8 U.S.C. § 1225(b)(2)(A).

33. On September 5, 2025, the BIA issued a precedential decision adopting ICE's new interpretation of the detention provisions of the INA, departing from the plain language of the text of the INA, federal precedent, and long-standing regulations. *See Yajure Hurtado*, 29 I&N Dec. 216.

34. Respondents' new legal interpretation of the custody provisions of the INA is plainly contrary to the statutory framework of the INA and its implementing regulations. For decades, Respondents applied § 1226(a) to individuals similarly situated to Petitioner. Respondents' new policies regarding custody determinations are therefore not only contrary to law, but also arbitrary and capricious in violation of

the Administrative Procedure Act ("APA"). This new interpretation of the statutes was also adopted without following the procedural requirements of the APA. *See* 5 U.S.C. § 553.

35. In recent months, numerous federal courts have rejected Respondents' new interpretation of the custody statutes and have instead consistently found that § 1226—not § 1225(b)(2)—authorizes detention of noncitizens who entered without inspection, were briefly detained and released on their own recognizance, and who were later apprehended in the interior of the country. *See, e.g.*, *Khalid B.Q. v. Noem*, No. 25-4584 (D. Minn. Dec. 18, 2025); *Aguilar Maldonado v. Olson*, 795 F. Supp. 3d 1134 (D. Minn. 2025); *Mayamu K.*, No. 25-3035, 2025 WL 3641819; *Jose J.O.E.*, 797 F. Supp. 3d 957; *Eliseo A.A.*, 2025 WL 2886729; *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, 799 F. Supp. 3d 14 (D. Mass. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771 (E.D. Mich. Aug. 29, 2025); *Martinez*, 792 F. Supp. 3d 211; *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV03162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025).

36. Under *Loper Bright v. Raimondo*, "the role of the reviewing court under the APA is . . . to independently interpret the statute and effectuate the will of Congress subject to constitutional limits." 603 U.S. 369, 395 (2024). Applying *Loper Bright*, this

Court should independently interpret the pertinent statutes and give no weight to the BIA's expansive and unprecedented interpretation of § 1225(b)(2), as that interpretation conflicts with the plain text of the statute, is contrary to the regulations, and contravenes precedent on the question of jurisdiction for bond proceedings.

37. As discussed above, the detention provisions at issue in this case were enacted as part of the IIRIRA in 1996. Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. After the enactment of the IIRIRA, EOIR issued regulations clarifying that individuals who entered the country without inspection were not considered to be detained under § 1225, but rather under § 1226(a). *See* 62 Fed. Reg. 10312, 10323 (Mar. 6 1997).

38. In 1997, after Congress amended the INA through the IIRIRA, EOIR and USCIS's predecessor agency, Immigration and Naturalization Services, issued an interim rule guiding interpretation and application of the IIRIRA. Specifically, under the heading "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. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

39. The overall statutory framework of the INA also clearly supports that § 1226 applies to individuals who have not been admitted and who entered without inspection. In 2025, Congress added new mandatory-detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) (codified in relevant part at 8 U.S.C. § 1226(c)(1)(E)).

40. By specifically referencing inadmissibility for entry without inspection as falling within 8 U.S.C. § 1182(6)(A), Congress clearly expressed its will that such individuals are covered by § 1226(a) if they do not have the sort of criminal history identified in the Laken Riley Act. Accordingly, § 1226 plainly applies to noncitizens who entered without inspection and are later charged as inadmissible within the interior of the country, including those who never received an admission or parole.

41. The Supreme Court has explained that 8 U.S.C. § 1225(b) "applies primarily to aliens seeking entry into the United States," and is generally imposed "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, 297 (2018). In contrast, § 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.* at 289 (emphasis added).

42. Further, § 1225(b)(2) specifically applies only to those "seeking admission," and the definitions provided at the implementing regulations state that an "[a]rriving alien" is one who is "coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. The use of the present progressive tense would exclude

noncitizens like Petitioner who are initially apprehended in the interior of the country almost two decades after they had entered the country, as they cannot reasonably be considered to be actively "seeking admission" or "coming . . . into the United States" after years spent building a life within the interior of the country, as is the case for Petitioner. *Id.*; *see Martinez v. Hyde*, 792 F. Supp. 3d (D. Mass. July 24, 2025) (citing the use of the present and present-progressive tenses to conclude that 8 U.S.C. § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (interpreting the language "is arriving" in 8 U.S.C. § 235(b)(1)(A)(i) and concluding that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

43. Accordingly, the mandatory detention provision of 8 U.S.C. § 1225(b)(2) does not apply to Petitioner, who entered the U.S. 15 years ago, was not initially detained near the border, and was only ever detained recently well within the interior of the country.

STATEMENT OF FACTS

44. Petitioner is a citizen of Mexico.

45. Petitioner was born on [redacted].

46. Petitioner has resided in the United States since about October 2010.

47. Petitioner is now detained in ICE Custody. On our information and belief, he is in detention at Kandiyohi County Jail in Willmar, Minnesota.

48. Without relief from this Court, Petitioner faces continued detention without access to a bond hearing.

COUNT I
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Bond Hearing

49. Petitioner restates and realleges all paragraphs as if fully set forth herein.

50. In light of his manner of entry and the timing and location of his arrest and detention, Petitioner may only be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

51. Petitioner is entitled to a bond hearing under 8 U.S.C. § 1226(a) and associated regulations. *See* 8 C.F.R. §§ 236.1(d) & 1003.19(a)-(f).

52. Petitioner has not been, and absent relief from this Court, will not be provided with a bond hearing as required by law.

53. Petitioner's ongoing detention is therefore unlawful.

COUNT II
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1003.19, 1236.1 and Unlawful Denial of Access to Release on Bond

54. Petitioner restates and realleges paragraphs 1 to 47 as if fully set forth herein.

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

COUNT III
Violation of 8 U.S.C. § 1225(b)(2)
Unlawful Detention Under This Provision

56. Petitioner restates and realleges paragraphs 1 to 47 as if fully set forth herein.

57. 8 U.S.C. § 1225(b) applies to those actively seeking entry to the United States and is generally imposed at the Nation's borders and ports of entry, where the

Government must make its initial determination as to whether a noncitizen seeking to enter the country is admissible.

58. Because Petitioner has resided in the United States since 2010, he is neither an arriving alien nor now seeking admission to the United States.

59. Because 8 U.S.C. § 1225(b) does not apply to Petitioner, Respondents' ongoing detention of him under this provision is unlawful.

COUNT IV
Violation of Fifth Amendment Right to Due Process

60. Petitioner restates and realleges paragraphs 1 to 47 as if fully set forth herein.

61. The Due Process Clause of the Fifth Amendment to the United States Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V.

62. The Constitution generally requires a hearing before the government deprives a person of his liberty. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). Under the factors set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the balance of Petitioner's and Respondents' interests, as well as the balance between the risk of erroneously depriving him of process contrasted with any burden on the government, strongly favor Petitioner's release or, at a minimum, his access to a bond hearing.

63. Petitioner's private interest in freedom from unlawful detention is profound. A person's interest in freedom from detention is "the most elemental of liberty interests" implicated by the Due Process Clause of the Fifth Amendment. *Hamdi v.*

Rumsfeld, 542 U.S. 50, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

64. The risk of erroneously depriving Petitioner of his liberty is exceptionally high. At the time of his arrest, Petitioner was on his way to work. Currently, in addition to being deprived of his freedom, Petitioner is also being deprived of the opportunity to be with his family who rely on him.

65. The government's interest in detaining Petitioner without due process is minimal at most. Immigration detention is civil, and in theory is not intended to be punitive, and it may only be prolonged for a bond-eligible individual if that person is either a danger to the community or unlikely to appear at future immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

66. Further, the "fiscal and administrative burdens" of providing Petitioner a bond hearing are minimal for the government, particularly when weighed against the significant liberty interests implicated by his ongoing detention. *See Mathews*, 424 U.S. at 334-35.

67. In light of this balance of the factors, Petitioner requests that this Court order his immediate release from custody or provide declaratory relief ordering an IJ to provide him with a bond hearing

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

(1) Assume jurisdiction over this matter;

(2) Issue an order requiring Respondents to show cause within three days as to why this petition should not be granted;

(3) In the order to show cause, issue an order enjoining Petitioner's removal or transfer outside of this District and the jurisdiction of this Court pending adjudication of this petition;

(4) Declare that Petitioner's detention is unlawful;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days; and

(6) Grant Petitioner any further relief that this Court deems to be just and proper.

Respectfully submitted,

Dated: January 7, 2026

/s/ Graham Ojala-Barbour /s/
Graham Ojala-Barbour
Minnesota Bar No. 0392397
Ojala-Barbour Law Firm, PLLC
1100 7th Street West
Saint Paul, MN 55102
Tel: (651) 214-6284
Email: graham@ojalabarbour.com
ATTORNEY FOR PETITIONER

VERIFICATION

I represent the Petitioner, Sergio Arguello Velazquez, and submit this verification on his behalf. Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Petition for Writ of Habeas Corpus are true and correct.

Executed this 7th day of January, 2026.

/s/ Graham Ojala-Barbour /s/
Graham Ojala-Barbour
Attorney at Law