

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

Luis Hector Perez Silva,

Case No.: \_\_\_\_\_

Petitioner

v.

**VERIFIED PETITION FOR WRIT OF  
HABEAS CORPUS**

Pamela Bondi, Attorney General; Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of U.S. Immigration & Customs Enforcement; Marcos Charles, Acting Executive Associate Director for Enforcement and Removal Operations; Peter Berg, Field Office Director for Enforcement and Removal Operations; U.S. Immigration & Customs Enforcement; U.S. Department of Homeland Security; John Doe, Local Detention Authority.

Respondents.

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

**INTRODUCTION**

1. Respondents are detaining Petitioner, Luis Hector Perez Silva (A ) , in violation of law.
2. Petitioner is a citizen of Mexico who is presently in valid U-1 nonimmigrant status, which remains valid between February 14, 2024 and February 13, 2028. *See* Exhibit 1 (Copy of U-1 Approval Notice).
3. Petitioner has previously been ordered removed and removed prior to obtaining U-1 status. However, by obtaining U-1 status, these removal orders were cancelled by

operation of law. *See* 8 C.F.R. § 214.14(c)(5)(i) (“For a petitioner who is subject to an order of exclusion, deportation, or removal issued by the Secretary, the order will be deemed canceled by operation of law as of the date of USCIS’ approval of Form I-918.”).

4. Because Petitioner’s removal order is cancelled, there is no basis for detaining Petitioner under 8 U.S.C. § 1231.
5. Petitioner has not been convicted of any new offenses since being granted U-1 nonimmigrant status, and there exist no facts which could possibly support a good faith belief by Respondents that Petitioner is deportable under 8 U.S.C. § 1227 or inadmissible under 8 U.S.C. § 1226.
6. Petitioner is not an arriving alien; he has not left the United States since being granted U-1 nonimmigrant status.
7. In short, there is no conceivable basis for Petitioner’s present detention in the Immigration and Nationality Act (“INA”). Nonetheless, on January 20, 2026, in the early morning hours while Petitioner was at his home with his minor child, around 10 ICE agents broke into his home, pretending to have a warrant that allows them to do so, and kidnapped Petitioner in front his child. Petitioner’s wife came home while ICE agents were inside and spoke to her child to determine exactly what happened, and learned that no one let the ICE agents into the home, and that they claimed to have a warrant that they refused to show to anyone. Upon information and belief, even if ICE did have a warrant, it was an administrative arrest warrant based upon Petitioner’s CANCELLED AND NON-OPERATIVE removal order(s).

8. There is no otherwise lawful basis for Petitioner's detention.
9. Petitioner remains detained at this time in the custody of ICE at the ICE Holding Facility in Fort Snelling, Minnesota.
10. The detention of Petitioner serves no legitimate purpose. Instead, his detention is punitive. Per the instructions of President Donald Trump and Secretary of Homeland Security Kristi Noem, ICE agents in Minnesota are intentionally terrorizing Minnesota residents as an act of political violence designed to encourage sufficient outrage and protests as to permit Trump to invoke the Insurrection Act for the purpose of using military force against Minnesota because it has never voted in Trump's favor, houses his political enemies (Governor Walz and Congresswoman Ilhan Omar), and because the State's residents have had the gall to stand up to tyranny. President Trump and Secretary Noem are actively engaged in an attempted cover up of the shooting and killing of U.S. citizen Renee Good, and this cover up has caused at least six of the top ranking officials in the U.S. Attorney's Office's criminal civil rights division to resign their jobs in protest after being instructed to advance a false official narrative. President Trump and Secretary Noem are aware that they will both be impeached, and are likely to be prosecuted, if they allow the 2026 midterm elections to move forward, and are actively engineering a situation that will allow them to either pause official elections and hold onto power, or to alternatively chill voting by democrats by stationing active duty military at polling stations. Secretary Noem has repeatedly and vocally told the nation, and her ICE officers, that they have "absolute" immunity and should feel free to ignore the

constitution, break into homes in the absence of valid judicial warrants or other exigent circumstances justifying entry, and to harm anyone who evinces the slightest amount of disrespect towards federal ICE officers. *Accord, e.g., Minnesota et al. v. Noem et al.*, No. 26-CV-00190-KMM-DJF, ECF No. 1 (Complaint) (D. Minn. Jan. 12, 2026) (alleging a variety of extraordinarily concerning actions by the federal government taken against Minnesota and its residents since December 2025 in retaliation to perceived political slights); *Hussen v. Noem*, No. 26-CV-00324-PAM-ECW, ECF No. 2 (Class Action Complaint) (D. Minn. Jan. 15, 2026) (Complaint filed by the ACLU on behalf of a putative class that “seeks to end a startling pattern of abuse spearheaded by the [DHS] that is fundamentally altering civic life in the Twin Cities and the State of Minnesota,” noting that “[m]asked federal agents in the thousands are violently stopping and arresting countless Minnesotans based on nothing more than their race and perceived ethnicity irrespective of their citizenship or immigration status, or their personal circumstances.”).

11. To remedy his unlawful detention, Petitioner seeks declaratory and injunctive relief in the form of immediate release from detention.
12. Pending the adjudication of his Petition, Petitioner 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. Immigration &

Customs Enforcement's ("ICE") Fort Snelling Office of Enforcement and Removal Operations in the State of Minnesota.

13. Pending the adjudication of this Petition, Petitioner also respectfully requests that Respondents be ordered to provide seventy-two (72) hour notice of any movement of Petitioner.
14. Petitioner requests the same opportunity to be heard in a meaningful manner, at a meaningful time, and thus requests 72-hour notice prior to any removal or movement of him away from the State of Minnesota.
15. Petitioner requests an order compelling Respondents to release him pending the outcome of this petition.
16. In accordance with 28 U.S.C. § 1657, Petitioner requests that the district court issue an Order to Show Cause ("OSC") giving the government no more than 3 days to file evidence and argument in response to the OSC.
17. In accordance with 28 U.S.C. § 1657 and Rule 4 of the Rules Governing Section 2254 and 2255 Cases, Petitioner requests that rather than proceed via summonses, the Court order the Clerk of Courts to serve a copy of the petition and any subsequent Order on Respondents and any other appropriate individual involved.
18. Petitioner requests that the Court order his immediate release and return him to the conditions of his prior OOS.

#### **JURISDICTION AND VENUE**

19. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal

- question), § 1361 (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. § 214.14(c)(5)(i).
20. Because Petitioner seeks to challenge his custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this court.
  21. 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).
  22. Venue is proper in this Court pursuant to 28 USC §§ 1391(b), (e)(1)(B), and 2241(d) because Petitioner is detained within this District. It is believed that he is currently detained at 1 Federal Drive, Fort Snelling, MN 55111. 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**

23. Petitioner is a citizen of Mexico. His Alien Registration Number (“A number”) is A . Petitioner is a resident of Minnesota. He is an alien with an administratively final removal order THAT HAS BEEN DEEMED CANCELLED BY OPERATION OF LAW AS OF FEBRUARY 14, 2024 WHEN HE WAS

GRANTED U-1 NONIMMIGRANT STATUS. Petitioner is currently in custody of the Immigration and Customs Enforcement (“ICE”) in Fort Snelling, MN. Petitioner has a U.S. citizen wife and children that he lives with, financially supports, and who are extremely worried about Petitioner.

24. 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 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.
25. 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 relevant ICE Field Office, and is legally responsible for pursuing Petitioner’s detention and removal. As such, Respondent Noem is a legal custodian of Petitioner.
26. Respondent Department of Homeland Security (“DHS”) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.
27. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for

Petitioner's detention.

28. 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.
29. Respondent Marcos Charles is the Acting Executive Associate Director for ICE Enforcement and Removal Operations ("ERO")
30. Respondent Peter Berg is being sued in his official capacity as the Field Office Director for the Minnesota Field Office for ICE within DHS. In that capacity, Field Director Berg as supervisory authority over the ICE agents responsible for detaining Petitioner.
31. Respondent John Doe is being sued in his official capacity as the local detention authority, having authority over the operations of whatever jail or holding facility Respondents are presently detaining Petitioner at, or at whatever facility Petitioner will be transferred to. Because Petitioner is or will be detained by John Doe, Respondent has or will have immediate day-to-day control over Petitioner. John Doe is a pseudonym because the present name of the custodian is unknown.

#### **EXHAUSTION**

32. ICE likely asserts authority to jail Petitioner pursuant to the mandatory detention provisions of 8 U.S.C. § 1231(a)(1), which is utter nonsense since Petitioner's order of removal has been CANCELLED BY OPERATION OF LAW. 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))).

33. To the extent that prudential consideration may require exhaustion in some circumstances, Petitioner has exhausted all effective administrative remedies available to him. Any further efforts would be futile.
34. 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).
35. 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 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).

36. 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).
37. 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.

38. In any event, Petitioner has indeed exhausted all remedies available to him.
39. ICE has denied Petitioner release because: (A) ICE is misinterpreting and otherwise failing to follow binding regulations; (B) ICE has failed to review Petitioner's A file to see that he is in valid U-1 nonimmigrant status; (C) ICE seeks to punish Petitioner for remaining in the United States pursuant to lawful process after previously having been ordered removed; (D) ICE seeks to use Petitioner's detention to send a message to similarly situated persons who have not yet been detained as a way to encourage those similarly situated people to immediately leave the United States to avoid Petitioner's fate; (E) ICE seeks to punish Petitioner for being an immigrant living in Minnesota; and (F) ICE is being used as a political tool to inflict harm on Minnesotans for the purpose of sparking outrage and protests that will permit Trump to invoke the Insurrection Act, send active military troops into Minnesota, and declare martial law for the purpose of maintaining and expanding his political power past the bounds of the Constitution.

#### **FACTUAL ALLEGATIONS & PROCEDURAL HISTORY**

40. Petitioner realleges and incorporates by reference paragraphs 1-39 of this Complaint.
41. On January 20, 2026, Petitioner was picked up and detained by ICE. He has remained detained in Respondents' custody since that date. Around 10 ICE agents forced their way into Petitioner's home to effect the arrest, lacking a valid judicial warrant or other exception from the warrant requirement. Any arrest warrant that ICE officers may have had was limited to an administrative arrest warrant that was

not specific to Petitioner, unsupported by probable cause, and insufficient legal grounds for breaking into Petitioner's home and arresting him.

42. ICE is not legally allowed to deport because his removal order has been cancelled. 8 C.F.R. § 214.14(c)(5)(i); Exhibit 1. In order to deport Petitioner, Respondents would need to place him into removal proceedings after charging him as deportable under 8 U.S.C. § 1227. Respondents cannot do this because Petitioner is not deportable and there are no facts that indicate otherwise. Petitioner remains in valid U-1 nonimmigrant status and there is no lawful basis for his present detention.
43. Respondents maintain Petitioner is ineligible for release from custody.
44. On April 30, 2025, the Department of Homeland Security issued a press release entitled *100 Days of Fighting Fake News*.<sup>1</sup> In that document, DHS referenced civil immigration detention and the present administration's heavy reliance on civil detention to accomplish its political aims. Specifically, the document states:

The reality is that **prison isn't supposed to be fun. It's a necessary measure to protect society and punish bad guys.** It is not meant to be comfortable. **What's more: prison can be avoided by self-deportation.** CBP Home makes it simple and easy. If you are a criminal alien and we have to deport you, you could end up in Guantanamo Bay or CECOT. **Leave now.**

Exhibit 2 (emphasis added). In addition, President Donald Trump has been repeatedly and recently referring to Minnesota immigrants, on the whole, as fraudsters who all deserve to be deported, while also attacking a political enemy in Minnesota (Governor Walz).

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<sup>1</sup> Available at: <https://www.dhs.gov/news/2025/04/30/100-days-fighting-fake-news> (attached as Exhibit 2).

45. Myriad courts around the country have granted habeas corpus petitions and/or enjoined the current administration's attempts to use civil detention punitively against noncitizens. *See, e.g., Mohammed H. v. Trump*, No.: 25-CV-1576-JWB-DTS, --- F. Supp. 3d ---, 2025 WL 1692739, at \*5 (D. Minn. June 17, 2025) ("Punishing Petitioner for protected speech or **using him as an example to intimidate other students into self-deportation is abusive and does not reflect legitimate immigration detention purposes.**") (emphasis added); *Mahdawi v. Trump*, 781 F. Supp. 3d 214, 231-32 (D. Vt. Apr. 30, 2021) (recognizing that immigration detention cannot be motivated by the desire to punish speech or to deter others from speaking); *Ozturk*, 779 F. Supp. 3d 462, 493 ("So long as detention is motivated by those goals, and not a desire for punishment, the Court is generally required to defer to the political branches on the administration of the immigration system."); *see also Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893) ("The order of deportation is not a punishment"); *Roble v. Bondi*, No. 25-cv-3196, 2025 WL 2443453 (D. Minn. Aug. 25, 2025) (ordering release and characterizing the government's actions as "Kafkaesque"); *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673 (D. Minn. Sept. 3, 2025) (ordering release); *Sonam T. v. Bondi*, No. 25-CV-2834, *slip op.*, ECF No. 19 (D. Minn. Sept. 16, 2025) (R&R recommending order of release); *see also Sonam T. v. Bondi*, No. 25-CV-2834, ECF No. 25 (D. Minn. Sept. 19, 2025) (ordering release); *Mehran S. v. Bondi*, No. 25-CV-3724, ECF No. 11 (D. Minn. Sept. 29, 2025) (ordering release); *Omar J. v. Bondi*, No. 25-CV-3719 (D. Minn. Sept. 29, 2025), ECF No. 11 (ordering release); *Yee S. v.*

*Bondi*, No. 25-CV-02782-JMB-DLM (D. Minn. Oct. 9, 2025), ECF No. 13 (granting habeas petition 4 days after TRO and motion to expedite was filed); *Constantinovici v. Bondi*, No. 3:25-CV-02405-RBM-AHG (S.D. Cal. Oct. 10, 2025), ECF No. 15 (granting habeas petition less than one month after filing).

### **LEGAL FRAMEWORK**

46. Petitioner's present detention is governed by the Constitution; there is no legal basis for his custody under the INA.

#### **Habeas Corpus**

47. The origin of the writ of habeas corpus lies in clause 39 of the Magna Carta, which stated that no free man could be imprisoned except by lawful judgment of his peers or by the law of the land. *See Boumediene v. Bush*, 553 U.S. 723, 740 (2008) (citations omitted). The Magna Carta, and especially clause 39, was designed to limit the king's power by protecting the most fundamental rights of free men. *See Boumediene*, 553 U.S. at 739-42 (collecting sources).
48. When the United States seceded from Great Britain, the Framers of the Constitution and the States that were to make up the Union, in order to ensure sufficient signatories, reserved debate on most of the civil rights for a few years in what would later become the Bill of Rights. However, one right was so fundamental and so undisputed that it was placed into the actual Constitution. *See generally* U.S. Const., Art. I, § 9, cl. 2. The Framers and the States thus recognized and agreed that habeas corpus is the most fundamental and important civil right in any free society. *Cf. Boumediene*, 553 U.S. at 743 ("Surviving accounts of the ratification debates

provide additional evidence that the Framers deemed the writ to be an essential mechanism in the separation-of-powers scheme.”). As Alexander Hamilton explained in The Federalist No. 84:

“[T]he practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny. The observations of the judicious Blackstone ... are well worthy of recital: ‘To bereave a man of life ... or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a *more dangerous engine* of arbitrary government.’ And as a remedy for this fatal evil he is everywhere peculiarly emphatical in his encomiums on the *habeas corpus* act, which in one place he calls ‘the bulwark of the British Constitution.’ ” C. Rossiter ed., p. 512 (1961) (quoting 1 Blackstone \*136, 4 *id.*, at \*438).

49. Throughout the history of the United States, habeas corpus has had three principal eras of importance. First, there was the post-reconstruction era following the civil war. *See, e.g., Ex parte Milligan*, 71 U.S. 2 (1866) (ruling that civilians cannot be tried by military tribunals when civilian courts are open and functioning); Habeas Corpus Act of 1867, 14 Stat. 385, 28 U.S.C. § 451 et seq. The second era occurred during World War 2 when the United States placed persons of Japanese origin in internment camps. *See, e.g., Korematsu v. United States*, 323 U.S. 214 (1944), abrogated by *Trump v. Hawaii*, 585 U.S. 667 (2018). Most recently, there was the war on terror and associated detentions at Guantanamo Bay, Cuba. *See Rasul v. Bush*, 542 U.S. 466 (2004) (foreign nationals housed at Guantanamo Bay had the right to challenge their detention via habeas corpus); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (U.S. citizens designated as “enemy combatants” and detained in the

United States have a constitutional right to due process, including a meaningful opportunity to challenge their detention before a neutral decisionmaker); *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (military commissions used to try Guantanamo Bay detainees lacked congressional authorization and violated both the Uniform Code of Military Justice and the Geneva Convention); *Boumediene v. Bush*, 553 U.S. 723, 740 (2008) (foreign detainees at Guantanamo Bay have a constitutional right to habeas corpus and the Military Commissions Act of 2006's procedures were an inadequate substitute for habeas corpus).

50. We are now in the fourth major era of habeas, which began when the present administration started arbitrarily revoking student visas and detaining students on the basis of those revocations, jailing immigrants for exercising their rights to free speech, promulgating and defending new agency rules that categorically deny the ability to seek an immigration bond to hundreds of thousands if not millions of noncitizens who have been previously acknowledged to be bond eligible for decades, and announcing an intent to use civil detention punitively against criminal aliens. *Accord, cf.*, Exhibit 2, *100 Days of Fighting Fake News*, HOMELAND SECURITY (Apr. 30, 2025).<sup>2</sup> Most recently, the present administration has begun rounding up bona fide refugees and throwing them into detention centers without cause, excuse, or justification. Now, the administration is apparently breaking into homes and arresting immigrants who are lawfully present in the United States.

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<sup>2</sup> Available at: <https://www.dhs.gov/news/2025/04/30/100-days-fighting-fake-news>.

51. Over the past year, courts around the country have found that the present immigration administration is using immigration detention punitively, as well as to coerce noncitizens into self-deporting from the United States. *E.g.*, *Mohammed H. v. Trump*, No.: 25-CV-1576-JWB-DTS, --- F. Supp. 3d ---, 2025 WL 1692739, at \*5 (D. Minn. June 17, 2025); *Khalil v. Trump*, No. 25-CV-01963 (MEF/MAH), -- - F. Supp. 3d ---, 2025 WL 1649197 (D.N.J. June 11, 2025), *opinion clarified*, No. 25-CV-01963 (MEF/MAH), 2025 WL 1981392 (D.N.J. July 16, 2025), and *opinion clarified*, No. 25-CV-01963 (MEF/MAH), 2025 WL 1983755 (D.N.J. July 17, 2025); *Noem v. Abrego Garcia*, 145 S. Ct. 1017 (2025); *Mahdawi v. Trump*, No. 2:25-CV-389 (GWC), --- F. Supp. 3d ---, 2025 WL 1243135, at \*11-12 (D. Vt. Apr. 30, 2025); *Ozturk v. Trump*, No. 2:25-CV-374 (WKS), --- F. Supp. 3d ---, 2025 WL 1420540, at \*7 (D. Vt. May 16, 2025) (“Ms. Ozturk argued that her detention is punishment for her op-ed, and that her punishment is intended to serve as a warning to other non-citizens who are contemplating public speech on issues of the day. The Court found that Ms. Ozturk has presented credible evidence to support her argument.”).

### **Detention Authorities**

52. There are several detention statutes that can authorize the detention of noncitizens depending on their procedural circumstance. See 1225(b)(1) (applying to noncitizen subjected to expedited removal); 1225(b)(2)(A) (applying to certain inadmissible noncitizens detained while seeking admission at the border); 1231(a) (applying to noncitizens with final removal orders); 1226(a) (discretionary detention authority

for those in removal proceedings); 1226(c) (applying to noncitizens in removal proceedings with certain criminal history).

53. Section 1231 mandates detention “[d]uring the removal period.” *Accord* 8 U.S.C. § 1231(a)(1)(A), (a)(2). However, because Petitioner’s removal order has been cancelled by operation of law, there is no removal order in his case capable of implicating § 1231’s mandatory detention provision.
54. To secure a removal order against a U-1 nonimmigrant pursuant to removal proceedings under 8 U.S.C. 1229a, DHS must establish by clear and convincing evidence that one more grounds of deportability under 8 U.S.C. 1227 apply to the U-1 nonimmigrant. *See* 8 U.S.C. 1227 (applying to those “admitted” to the United States); *Matter of D-K*, 25 I&N Dec. 761 (BIA 2012) (“Thus, we conclude that under the language of the Act and regulations, and also in view of the context and structure of the provisions at issue, an alien admitted to the United States as a refugee has been “admitted” for purposes of section 101(a)(13)(A) of the Act.” And as such, “the respondent is present in the United States pursuant to a prior admission as a refugee, and any charges in the notice to appear must be based on the grounds of deportability under section 237 of the Act.”).
55. Even if a noncitizen has previously been subject to an order of removal and/or been lawfully removed, their prior removal order is cancelled by operation of law when the individual obtains U-1 nonimmigrant status. *See* 8 C.F.R. § 214.14(c)(5)(i).
56. Detention and the invasion of non-citizen liberty may not be at the whim of the Respondents.

57. Under the Supreme Court's decision in *Zadvydas v. Davis*, a noncitizen subject to a civil immigration detention cannot, consistent with the Due Process Clause, be detained indefinitely. 533 U.S. 678, 699-700 (2001).
58. *Zadvydas* further held that civil detention violates due process unless special, nonpunitive circumstances outweigh an individual's interest in avoiding restraint. 533 U.S. at 690 (**immigration detention must remain "nonpunitive in purpose and effect"**) (emphasis added).

#### **The *Accardi* Doctrine Requires Agencies to Follow Internal Rules**

59. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").
60. *Accardi* is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. *See Morton v. Ruiz*, 415 U.S. 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *United States v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by

IRS agents for violating instructions on investigating tax fraud).

### **REMEDY**

61. Respondents' detention of Petitioner 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. V.
62. 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)).
63. Petitioner seeks immediate release because there is no lawful basis for his detention. Respondents cannot rebut this showing.
64. 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.").
65. 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. United States*, 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.”).

66. 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.”).
67. Immediate release is an appropriate remedy in this case.

### **CAUSE OF ACTION**

#### **COUNT ONE: DECLARATORY RELIEF**

68. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
69. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner is detained without lawful cause, excuse, or justification, and in plain violation of the Constitution.
70. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that his removal order was cancelled by operation of law on February 14, 2024 pursuant to

8 C.F.R. § 214.14(c)(5)(i).

71. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that ICE violated his rights to be free from unreasonable searches and seizures under the Fourth Amendment when ICE broke into Petitioner's home to arrest him on January 20, 2026.

**COUNT TWO: VIOLATION OF THE IMMIGRATION & NATIONALITY ACT**  
**– 8 C.F.R. § 214.14(c)(5)(i)**

72. Petitioner re-alleges and incorporates by reference each allegation contained in ¶¶ 1-67 as if set forth fully herein.
73. Petitioner's removal order was cancelled by operation of law on February 14, 2024 when he entered U-1 nonimmigrant status. 8 C.F.R. § 214.14(c)(5)(i). There are no new facts since that date that indicate Petitioner is deportable under 8 U.S.C. § 1227. As such, his detention is plainly unlawful and there is no detention authority anywhere in the INA that permitted Petitioner's arrest or present and ongoing civil detention.
74. No independent alternative basis supports Respondents' decision to detain Petitioner.
75. Petitioner is therefore detained in violation of the INA.

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

76. Petitioner re-alleges and incorporates by reference each allegation contained in ¶¶ 1-67 as if set forth fully herein.
77. 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. It further requires that detention is not permitted when it is intended to be punitive or its effect is punitive.

78. Petitioner is no longer subject to mandatory custody under the Immigration & Nationality Act. The government has not rebutted this with credible or probative evidence, nor can it. There are no new circumstances that otherwise justify Petitioner's detention. Respondents have violated Petitioner's Fifth Amendment guarantee of due process.
79. Respondents have also independently violated Petitioner's Fifth Amendment due process right by incarcerating him to punish him or to otherwise send a message to similarly situated individuals that they must leave the United States to avoid a similar fate.

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

80. Petitioner re-alleges and incorporates by reference each allegation contained in ¶¶ 1-67 as if set forth fully herein.
81. 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).
82. Respondents have failed to articulate any reasoned explanation for detaining

Petitioner.

83. Respondents have failed to articulate any reasoned explanation for deviating from or otherwise ignoring or failing to comply with the plain language of 8 C.F.R. § 214.14(c)(5)(i).
84. Respondents' 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.
85. Respondents' decision to redetain 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 FIVE: VIOLATION OF THE ACCARDI DOCTRINE**

86. Petitioner re-alleges and incorporates by reference each allegation contained in ¶¶ 1-67 as if set forth fully herein.
87. Under the *Accardi* doctrine, Petitioner has a right to set aside and enjoin agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) ("If Petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").
88. Respondents are in violation of, and intend to continue violating, 8 C.F.R. § 214.14(c)(5)(i) that specifically covers Petitioner's situation and governing when a prior order of removal is cancelled by operation of law for U-1 nonimmigrants.

89. Under *Accardi*, Respondents' actions should be set aside and enjoined for violating agency procedures, rules, or instructions.
90. 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).
91. Respondents have failed to articulate any reasoned explanation for deviating from prior and presently binding interpretations of the INA.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner, Luis Hector Perez Silva, asks this Court for the following relief:

1. Assume jurisdiction over this matter.
2. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. Ch. 153.
  - a. Issue an Order to Show Cause ordering Respondents to state the true cause of Petitioner's detention within 3 days of the Court's issuance of the OSC.
  - b. If a magistrate is assigned then, pursuant to 28 U.S.C. § 1657, issue an Order shortening the time for making any objections to the magistrate's forthcoming Report & Recommendation from 14 days to 3 days.
  - c. Order the Clerk of Courts to promptly serve a copy of the petition and any subsequent Order on Respondents and any other appropriate individual

involved pursuant Rule 4 of the Rules Governing Section 2254 and 2255 Cases.

- d. Issue an Order to Show Cause as to why a Temporary Restraining Order and Preliminary Injunction should not issue enjoining Respondents from continuing to detain Petitioner pending the outcome of this case.
3. Issue an emergency preliminary order restraining Respondents from attempting to move Petitioner from the State of Minnesota during the pendency of this Petition.
4. Issue an emergency preliminary order requiring Respondents to provide 72-hour notice of any intended movement of Petitioner.
5. Order Petitioner's immediate release.
6. Declare that Respondents' action is arbitrary and capricious.
7. Declare that Respondents failed to adhere to binding regulations and precedent.
8. Declare that Petitioner's detention violates Due Process Clause of the Fifth Amendment, the INA, the APA, and the *Accardi* doctrine.
9. Grant Petitioner reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).
10. Grant all further relief this Court deems just and proper.

DATED: January 20, 2026

Respectfully submitted,

**RATKOWSKI LAW PLLC**

/s/ Nico Ratkowski

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*Attorney for Petitioner*

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

I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding the Petitioner's detention status, are true and correct to the best of my knowledge and belief. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that all of the factual allegations and statements in the Petition are true and correct to the best of my knowledge and belief.

/s/ Rachel Perez Wall  
Rachel Perez Wall

Dated: January 20, 2026