UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Rudy Alexander Pineda Aguilar,

Petitioner,

v.

Pamela Bondi, Attorney General,

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

Department of Homeland Security,

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

Immigration and Customs Enforcement,

Daren K. Margolin, Director for Executive Office for Immigration Review,

Executive Office for Immigration Review,

and,

David Easterwood, Acting Director, St. Paul Field Office, Immigration and Customs Enforcement.

Respondents.

0:26-cv-563

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Rudy Alexander Pineda Aguilar (hereinafter "Petitioner") was detained by Respondents and subjected to purportedly mandatory detention, without the opportunity for bond, pursuant to the unlawful agency decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

2. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

3. Petitioner seeks a writ of habeas corpus in the form of immediate release from detention or an order to hold a bond hearing pursuant to 8 U.S.C. § 1226(a) within five business days.

4. 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. Customs and Immigration's ("ICE") Fort Snelling, Minnesota of the Office of Enforcement and Removal Operations in the State of Minnesota. ***Petitioner has been told he will be moved to Texas today.***

5. Pending the adjudication of this Petition, Petitioner requests the same opportunity to be heard in a meaningful manner, at a meaningful time, and

thus requests 72-hours-notice prior to any removal or movement of him away from the State of Minnesota.

JURISDICTION AND VENUE

6. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1651 (All Writs Act), and § 2241 (habeas corpus); U.S. Const. art. I, § 9, cl. 2 ("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").

7. 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.

8. 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*, 583 U.S. 281 (2018); *Nielsen v. Preap*, 586 U.S. 392 (2019).

9. Federal district courts have jurisdiction to enforce 8 U.S.C. § 1226(a)(2). This statute, 8 U.S.C. § 1226(a)(2), entitles Petitioner to a bond hearing in which a neutral arbiter determines whether he poses a danger or a flight risk and is thus qualified for release from immigration detention.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), (e)(1)(B), and 2241(d) because Petitioner is detained within this District. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondents are operating in this district.

11. Petitioner's petition is properly before this Court. First, this Court plainly has subject matter jurisdiction over the petition under 28 U.S.C. § 2241.

12. This Court has jurisdiction to consider Petitioner's constitutional and legal challenges to Respondent's erroneous interpretation of 8 U.S.C. § 1225(a)(2)(B).

13. Petitioner here does "not seek review of the Attorney General's exercise of discretion; rather, [he] challenge[s] the extent of the Attorney General's authority. And the extent of the authority is not a matter of discretion." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). Because Petitioner Pineda Aguilar challenges whether the decision to continue his detention under 8 U.S.C. § 1225(a)(2)(B) mandatory passes legal or constitutional muster, this Court has jurisdiction over this claim.

14. Courts in this district and throughout the Eighth Circuit have routinely exercised jurisdiction over this, and materially similar issues.

15. The Supreme Court has repeatedly affirmed the basic principle that district courts have habeas jurisdiction over claims of illegal civil immigration

detention. *See Jennings*, 583 U.S. at 293 (finding jurisdiction over challenge to detention during removal proceedings); *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (same).

16. 8 U.S.C. § 1252(g) does not preclude the Court's jurisdiction over Petitioner's challenge to the legality of his detention.

17. This narrow provision is tethered solely to decisions with respect to "three discrete actions" by the Attorney General to "'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (citing 8 U.S.C. § 1252(g)). By its terms, § 1252(g) does not apply to detention as the Court "did not interpret this language to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves." *Jennings*, 583 U.S. at 294 (citing *A.A.A.D.C.*, 525 U.S. at 482-83).

18. Petitioner does not challenge ICE's general authority to detain him during removal proceedings. Petitioner's challenge is limited to Respondents' assertion that he is subject to mandatory detention without bond in violation of his right to due process and contrary to the will of Congress.

19. The provision at 8 U.S.C. § 1226(e) cannot apply because the Supreme Court has held § 1226(e) has no application to such claims challenging the legality

of detention. *See Demore*, 538 U.S. at 516–17 ("Section 1226(e) contains no explicit provision barring habeas review, and . . . its clear text does not bar [a petitioner's] constitutional challenge" to the legal authority for their detention); *Nielsen*, 586 U.S. at 401 (Section 1226(e) does not bar challenges to "the extent of the statutory authority that the Government claims"). "Because the extent of the Government's detention authority is not a matter of 'discretionary judgment,'" Petitioner's challenge to the legal basis for detention "falls outside the scope of § 1226(e)." *Jennings*, 583 U.S. at 296.

20. Finally, to the extent Respondents believe this Court does not have jurisdiction or should decline to exercise jurisdiction because Petitioner has not yet exhausted all administrative remedies, such a position also fails as the Board's precedential decision bind immigration judges, *see* 8 C.F.R. § 1003.1(g)(1), and *Matter of Matter of Yajure Hurtado*, 29 I&N Dec. at 216 erroneously dictates that no bond hearing be afforded at the administrative level, so exhaustion would be futile as "the administrative body . . . has . . . predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992).

PARTIES

21. Petitioner is a citizen of Guatemala. Petitioner is currently in Respondents' custody in Minnesota.

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

23. Respondent Kristi Noem is being sued in his 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 Minnesota, supervises the St. Paul ICE Field Office, and is legally responsible for pursuing Petitioner's detention. As such, Respondent Noem is a legal custodian of Petitioner.

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

25. Respondent Daren Margolin is the Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the

BIA, including bond hearings such as the one to which Petitioner is entitled. He is sued in his official capacity.

26. Respondent Executive Office for Immigration Review ("EOIR") is the adjudicative authority with jurisdiction over the removal and bond cases of Petitioner. Its authority includes individuals detained in Minnesota, Iowa, North Dakota, and South Dakota. This district is known as the Fort Snelling district.

27. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, which oversees the detention of aliens in the United States. Mr. Lyons 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, including Petitioner.

29. Respondent David Easterwood is being sued in his official capacity as the Acting Field Office Director for the St. Paul Field Office for ICE within DHS. In that capacity, Field Director Easterwood has supervisory authority over the ICE agents responsible for detaining Petitioner. The address for the St. Paul Field Office is 1 Federal Drive, Fort Snelling, Minnesota 55111.

EXHAUSTION

30. Respondents assert authority to detain Petitioner pursuant to the mandatory detention provisions at 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) ("Thise is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention."); *Rodriguez v. Bostock*, 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*, 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)).

31. 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).

32. Any appeal to the Board of Immigration Appeals is futile as the Board's published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), binds the immigration court, *see* 8 C.F.R. § 1003.1(g)(1), and erroneously denies him access to a bond hearing.

33. 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) ("Hise, 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).

34. 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.

35. 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).

36. 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.

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

37. Petitioner is a native and citizen of Guatemala.

38. Petitioner entered the United States on or about September 27, 2016, at the age of sixteen.

39. Respondents encountered Petitioner and transferred to the custody of the Department of Health and Human Services' Office of Refugee Resettlement.

40. Petitioner was "released … from Federal custody pursuant to section 462 of the Homeland Security Act of 2002 and Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008."

These provisions are codified at 6 U.S.C. § 279 and 8 U.S.C. § 1232, respectively.

41. Respondents commenced removal proceedings under 8 U.S.C. § 1229a.

42. Petitioner filed an application for asylum. *See* Exh. A.

43. Petitioner filed a Form I-360 Petition for Special Immigrant Juvenile Status, which was approved on May 21, 2019. *See* Exh. B.

44. Respondents detained Petitioner in March 2020.

45. Respondents released Petitioner under an Order of Release under his own Recognizance (OREC) on or around June 7, 2021.

46. Petitioner has been attending regular check-ins with Respondent ICE since that time.

47. Petitioner has been fully compliant with his OREC.

48. On January 18, 2024, the Immigration Judge granted Petitioner withholding of removal.

49. An appeal has been pending with the Board of Immigration Appeals since February 2024.

50. Petitioner has had a pending motion to remand with the Board of Immigration Appeals since October 2024.

51. On September 5, 2025, the Board of Immigration Appeals decided *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that "Immigration

Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission."

52. On or about January 22, 2026, Respondents detained Petitioner at his ISAP check-in.

53. Petitioner has been compliant with all conditions of his release.

54. Petitioner has no criminal history that invokes 8 U.S.C. § 1226(c).

55. Petitioner remains detained in ICE custody somewhere in Minnesota.

LEGAL FRAMEWORK

56. When a child under the age of eighteen is encountered without a parent along the southern border, as Petitioner was, subsequent actions are governed under 6 U.S.C. § 279 and 8 U.S.C. § 1232.

57. By statute, "the term 'unaccompanied alien child' ["UAC"] means 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).

58. "The custody of unaccompanied alien children not described in paragraph (2)(A)[, related to Mexican and Canadian children,] who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with subsection (b)." 8 U.S.C. § 1232(a)(3).

59. Under the applicable subsection, "the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services." 8 U.S.C. § 1232(b)(1).

60. If, as was the case for Petitioner, a UAC is first encountered by someone other than a Health and Human Services employee, that "department or agency of the Federal Government shall notify the Department of Health and Human services within 48 hours upon the apprehension or discovery of an unaccompanied alien child." 8 U.S.C. § 1232(b)(2)(A).

61. As such, "[a]ll UACs apprehended by DHS, except those who are processed in accordance with 8 U.S.C. 1232(a)(2), will be transferred to ORR for care, custody, and placement in accordance with 6 U.S.C. 279 and 8 U.S.C. 1232." 8 C.F.R. § 236.3(f)(1).

62. "Following the apprehension of a minor or UAC, DHS will process the minor or UAC as expeditiously as possible. Consistent with 6 CFR 115.114, minors and UACs shall be held in the least restrictive setting appropriate to the minor

or UAC's age and special needs, provided that such setting is consistent with the need to protect the minor or UAC's well-being and that of others, as well as with any other laws, regulations, or legal requirements." 8 C.F.R. § 236.3(g)(iii)(2)(i).

63. "Except in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child." 8 U.S.C. § 1232(b)(3).

64. "[A]n unaccompanied alien child in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive setting that is in the best interest of the child. In making such placements, the Secretary may consider danger to self, danger to the community, and risk of flight. Placement of child trafficking victims may include placement in an Unaccompanied Refugee Minor program, pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)), if a suitable family member is not available to provide care. A child shall not be placed in a secure facility absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense. The placement of a child in a secure facility shall be reviewed, at a minimum, on a monthly basis, in

accordance with procedures prescribed by the Secretary, to determine if such placement remains warranted." 8 U.S.C. § 1232(c)(2)(A).

65. "In all cases involving a restrictive placement, ORR shall have the burden to determine, based on clear and convincing evidence, that sufficient grounds exist for stepping up or continuing to hold an unaccompanied child in a restrictive placement. The evidence supporting a restrictive placement decision shall be recorded in the unaccompanied child's case file." 45 C.F.R. § 410.1901(a).

66. "ORR or the care provider providing care for the unaccompanied child shall make and record the prompt and continuous efforts on its part towards family unification and the release of the unaccompanied child pursuant to the provisions of this section." 45 C.F.R. § 410.1203(a).

67. "[W]hen ORR determines that the detention of the unaccompanied child is not required either to secure the child's timely appearance before DHS or the immigration court, or to ensure the child's safety or that of others, ORR shall release a child from its custody without unnecessary delay, in the following order of preference, to [a] parent." 45 C.F.R. § 410.1201(a)(1).

68. "Prior to releasing an unaccompanied child, ORR shall conduct a suitability assessment to determine whether the potential sponsor is capable of providing for the unaccompanied child's physical and mental well-being. At minimum,

such assessment shall consist of review of the potential sponsor's application package, including verification of the potential sponsor's identity, physical environment of the sponsor's home, and relationship to the unaccompanied child, if any, and an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the unaccompanied child." 45 C.F.R. § 410.1202(b).

69. Following the release of a UAC, "ORR may offer PRS for all released children." 45 C.F.R. § 410.1210(a)(3). "PRS" Post-release services."

70. "*PRS provider* means an organization funded by ORR to connect the sponsor and unaccompanied child to community resources for the child and for other child welfare services, as needed, following the release of the unaccompanied child from ORR custody." 45 C.F.R. § 410.1001.

71. "PRS providers shall work with sponsors and unaccompanied children to address challenges in parenting and caring for unaccompanied children. This may include guidance about maintaining a safe home; supervision of unaccompanied children; protecting unaccompanied children from threats by smugglers, traffickers, and gangs; and information about child abuse, neglect, separation, grief, and loss, and how these issues affect children." 45 C.F.R. § 410.1210(b)(1).

72. "[T]he PRS provider shall make a determination regarding the appropriate methods, timeframes, and schedule for ongoing contact with the released unaccompanied child and sponsor based on the level of need and support needed." 45 C.F.R. § 410.1210(e)(1)

73. The PRS provider shall assess the released unaccompanied child and sponsor for PRS needs and shall document the assessment. The assessment shall be developmentally appropriate, trauma-informed, and focused on the needs of the unaccompanied child and sponsor." 45 C.F.R. § 410.1210(d).

74. PRS also involves the provision to "immigration proceedings, guardianship, legal services, education, employment, medical services, family stabilization/counseling, substances use, gang prevention, and other services. *See* 45 C.F.R. § 410.1210(b).

75. In short, despite release on a "sponsorship agreement," UACs remain in the "custody" of the US Department of Health and Human Services pursuant to that "sponsorship agreement" because they are "subject to restraints 'not shared by the public generally.'" *Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty., California*, 411 U.S. 345, 351 (1973) (citing *Jones v. Cunningham*, 371 U.S. 236, 240 (1963)).

76. "If a minor described in subparagraph (A) reaches 18 years of age and is transferred to the custody of the Secretary of Homeland Security, the

Secretary shall consider placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight. Such aliens shall be eligible to participate in alternative to detention programs, utilizing a continuum of alternatives based on the alien's need for supervision, which may include placement of the alien with an individual or an organizational sponsor, or in a supervised group home." 8 U.S.C. § 1232(c)(2)(B).

77. Arrest and detention of noncitizens present inside the United States is governed under 8 U.S.C. § 1226, which states, in pertinent part, "[o]n 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." 8 U.S.C. § 1226(a).

78. Except as provided in subsection (c) and pending such decision, the Attorney General-

(1) may continue to detain the arrested alien; and

(2) may release the alien on-

(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole;

8 U.S.C. § 1226(a).

79. 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) (emphasis added).

80. 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).

81. Certain classes of noncitizens are not eligible for release on bond. *See* 8 U.S.C. § 1226(c). Amongst the classes of noncitizens who are not eligible for bond are noncitizens who are "inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title" – that is, for presence without admission or parole – who are also "charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person." 8 U.S.C. 1226(c)(1)(E).

82. Congress did not intend to subject all people present in the United States without admission or parole to mandatory detention without the possibility of bond. 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).

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

84. For 29 years, from 1996 to 2025, Respondents provided bond hearings to noncitizens who were present without admission or parole. This longstanding practice of considering people like Petitioner as detained under § 1226(a) further supports reading the statute to apply to them.

85. In fact, EOIR confirmed that § 1226(a) applies to Petitioner when it promulgated the regulations governing immigration courts and implementing § 1226 decades ago. At that time, EOIR explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323.

86. The detention of noncitizens arriving at the border is governed by 8 U.S.C. § 1225.

87. In pertinent part, "in 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)

88. "An 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).

89. "The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13).

90. Where a "term is not statutorily defined, we consider its ordinary dictionary definition," *Iverson v. United States*, 973 F.3d 843, 848 (8th Cir. 2020), and "seeking" is defined, alternatively, as "to go in search of," "to ask for," "to try to acquire or gain," or "to make an attempt." *Seek,* MERRIAM WEBSTER'S ENGLISH DICTIONARY (11th Ed. 2020).

91. Thus, "seeking entry" is to try to acquire lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

92. 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*, 583 U.S. at 287.

93. "[I]t is a commonplace of statutory construction that the specific governs the general." *Morales v. Trans World Airlines*, 504 U.S. 374, 384 (1992).

94. 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).

95. 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).

96. The "[a]pprehension and detention of aliens" is governed by a different provision of the code. *See* 8 U.S.C. § 1226.

REMEDY

97. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243.

98. If an Order to Show Cause is issued, the Court must require respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed."

99. Respondents' detention of Petitioner Pineda Aguilar under 8 C.F.R. § 1003.19(i)(2) violates the Due Process Clause of the United States Constitution. Petitioner Pineda Aguilar'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.

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

101. Respondents' decision to prolong his detention under this regulation violates Petitioner Pineda Aguilar's rights to substantive due process and procedural due process under the Fifth Amendment of the United States Constitution.

102. Respondents' policy of treating all aliens present in the United States without admission or parole as subject to mandatory custody is arbitrary and

capricious, out of accordance with the law, violative of both 8 U.S.C. § 1225(b)(2) and 8 U.S.C. § 1226(a)(2), contrary to the Fifth Amendment of the United States Constitution, and constitutes a systematic failure to apply the custody procedural framework set forth at 8 U.S.C. § 1226(a)(2).

103. 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.").

104. 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").

105. 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) (citing 28 U.S.C. § 2243). An order of release falls under the 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.").

106. Respondents detained Petitioner without a warrant of arrest. Immediate release is the proper remedy in this case.

CAUSE OF ACTION

COUNT ONE

Declaratory Relief

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

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

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

110. Petitioner Pineda Aguilar requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner Pineda Aguilar is eligible for release.

COUNT TWO

Violation of the Immigration & Nationality Act – 8 U.S.C. § 1226(a)

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

112. 8 U.S.C. § 1226 governs the detention of aliens pending a determination of removal from the United States.

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

114. 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.

115. 8 U.S.C. § 1225(b)(2)(A) cannot apply as it only applies to those "seeking admission" at the time of detention, and Petitioner was not "seeking admission" at the time he was detained, nor is he now. 8 U.S.C. § 1225(b)(2)(A).

116. If Respondents do not release Petitioner pursuant to his Order of Release on Recognizance, he requests that he be afforded the opportunity to present his case for release in a bond hearing pursuant to 8 U.S.C. § 1226(a)(2)(A).

COUNT THREE

Violation of the Fifth Amendment

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

118. 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.

119. Petitioner Pineda Aguilar is not subject to mandatory custody under the Immigration & Nationality Act and is therefore entitled to pay his bond and be released pursuant to the Immigration Judge's bond order. Respondents' denial constitutes a violation of the Fifth Amendment's guarantee of due process.

120. Due process asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner Pineda Aguilar of his liberty. Petitioner Pineda Aguilar is in civil immigration detention.

121. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

122. The government's detention of Petitioner Pineda Aguilar is unjustified. Respondents have not demonstrated that Petitioner Pineda Aguilar needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner Pineda Aguilar cannot be safely released back to his community.

123. Petitioner Pineda Aguilar's detention is also punitive and bears no "reasonable relation" to any legitimate purpose for detaining him. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("nature and duration" of civil confinement must "bear some reasonable relation to the purpose for which the individuals is committed"); *Zadvydas*, 533 U.S. at 690 (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). His "detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

124. Petitioner Pineda Aguilar entered the United States as a UAC, which means he is governed under 6 U.S.C. § 279 and 8 U.S.C. § 1232.

125. Paragraph 24A under the *Flores Settlement* affords individuals like Petitioner Pineda Aguilar a bond redetermination request. *Flores v. Sessions*, 862 F.3d 863, 867 (9th Cir. 2017).

126. Anyone designated as a UAC must be put into removal proceedings under INA § 240 without requiring a credible fear interview. 8 U.S.C. § 1232(a)(5)(D). There is no statutory termination of INA § 240 status when reaching the age of 18. Even though Petitioner Pineda Aguilar is now over 18 years old, his designation as a UAC is controlled by his initial encounter back in 2016. 8 U.S.C. § 1232(a).

127. Under 8 U.S.C. § 1232(a)(5)(D), any UAC "shall be placed in removal proceedings under section 1229a of this title." Under 8 U.S.C. § 1229a, the detention authority is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2) as Respondents have previously argued.

128. Petitioner's ongoing detention violates the Due Process Clause of the Fifth Amendment.

<u>COUNT FOUR</u>

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

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

130. 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." 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 (emphasis added).

131. 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.

132. Nonetheless, DHS and some immigration judges have adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.

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

COUNT FIVE

Violation of the Administrative Procedure Act – Contrary to Law and Arbitrary and Capricious Agency Policy

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

135. 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).

136. 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.

137. 8 U.S.C. § 1225(b)(2) does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

138. 8 U.S.C. § 1225(b)(2) does not apply to those who previously entered the country as UACs.

139. 8 U.S.C. § 1225(b)(2) does not apply to those who previously were released under an Order of Release of Recognizance (OREC).

140. Respondents have adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.

141. Respondents have failed to articulate any reasonable 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.

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

COUNT SIX

Violation of the Fourth Amendment to the U.S. Constitution, 8 U.S.C. § 1357(a)(2), and 8 C.F.R. § 287.3(d) Unlawful Arrest

143. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

144. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. Amend. IV. Immigration arrests and detentions are seizures within the meaning of the

Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the "seizure" of the person).

145. The Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). "Probable cause requires a 'substantial probability; based on facts related to the individual." *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *15 (D. Colo. Nov. 25, 2025) (quoting *Storey v. Taylor,* 696 F.3d 987, 992 (10th Cir. 2012) (finding probable cause for immigration arrests lacking). That determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id.*

146. It must, however, occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstance. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

147. There is a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). The INA thus provides immigration agents with only limited authority to conduct warrantless arrests. 8 U.S.C.§ 1357(a)(2). Specifically, an officer must have probable cause to believe the person is violating the immigration laws *and* that the person "is

likely to escape before a warrant can be obtained," *i.e.*, is a flight risk *Id.*; *see also Ramirez Ovando*, 2025 WL 3293467, at *2. Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

148. Petitioner's warrantless arrest occurred without probable cause that Petitioner posed a flight risk. "Courts have … made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties." *Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. CV 25-3417 (BAH), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (collecting cases).

149. At the moment of Petitioner's seizure, Petitioner was living at a stable home address and had been in the United States for years. Petitioner has built ties to his community. Petitioner was complying with his check-ins. Petitioner fully complied with the ICE officers and in no way tried to disobey or flee. Therefore, no officer could have probable cause that Petitioner was likely to escape before a warrant could be obtained.

150. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Petitioner. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. Petitioner received no such judicial determination, yet his

detention continued well beyond 48 hours, rendering it presumptively unconstitutional.

151. Regulations also provide that noncitizens arrested without a warrant must receive a custody determination within 48 hours of the arrest, unless there is "an emergency or other extraordinary circumstance" that requires "an additional reasonable period of time" to make the custody determination. 8 C.F.R. § 287.3(d).

152. During that custody determination, the immigration officer must make findings as to whether "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). Similarly, upon information and belief, Petitioner has received no such custody determination.

PRAYER FOR RELIEF

WHISEFORE, Petitioner Pineda Aguilar, asks this Court for the following relief:

1. Assume jurisdiction over this matter.

2. Issue an Order to Show Cause under 28 U.S.C. § 2243 commanding Respondents to demonstrate, within three days or within whatever time period the Court deems reasonable, why the Court should not grant this writ.

3. Issue an order restraining Respondents from attempting to move Petitioner Pineda Aguilar from the State of Minnesota during the pendency of this Petition.

4. Issue an order requiring Respondents to provide 72-hour notice of any intended movement of Petitioner Pineda Aguilar.

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

6. Order Petitioner's immediate release pursuant to his Order of Release on Recognizance.

7. Order Petitioner's immediate release because he was not detained with a warrant of arrest, Form I-200.

8. Alternatively, order Respondents to conduct a bond hearing consistent with 8 U.S.C. § 1226(a) within five business days or immediately release Petitioner.

9. Declare that 8 U.S.C. § 1226 controls Petitioner's detention, and the Executive Office for Immigration Review has the legal authority to conduct a bond redetermination hearing.

10. Declare that Respondents' action is arbitrary and capricious.

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

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

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

DATED: January 22, 2026

Respectfully submitted,

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Attorneys for Petitioner

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

I am submitting this verification because I am Counsel for 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/ Gabriela Anderson
Gabriela Anderson

Date: January 22, 2026