UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Christian A.S.C., *Plaintiff-Petitioner*, v. Pamela Bondi, et al., *Defendant-Respondents.*	**PETITIONER'S REPLY MEMORANDUM IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS** Case No. 26-778 (JRT/LIB)

INTRODUCTION

A single lawless government agency has apparently decided it can arrest and detain millions[1] of people, indefinitely, without any legal basis for doing so and outside the supervision of this Court. The government's position in this case carries an alarming implication: that any person seeking asylum in the United States can face sudden and arbitrary detention without process—even if they cannot be removed and even if they faithfully complied with the requirements to apply for asylum. Our Constitution does not permit this.

ARGUMENT

Petitioner's argument will first address the issue of jurisdiction. Next, this argument will describe why Petitioner is not subject to detention under 28 U.S.C. § 1225(b)(2). Finally, Petitioner will highlight that—as Respondents implicitly concede—the absence of a warrant preceding Petitioner's arrest necessitates his immediate release.

[1] At the end of fiscal year 2025, more than 2.4 million asylum applications were pending in immigration courts. Holly Straut-Eppsteiner, Asylum Process in Immigration Courts and Selected Trends, CONG. RESEARCH SERV. (Dec. 10, 2026), www.congress.gov/crs-product/R47504.

1. The Court has jurisdiction to hear this Petition.

Petitioner has lived in Minnesota for over five years. [Dkt. 1 ¶ 19.] Immigration and Customs Enforcement (ICE) officials tackled him and arrested him in Minnesota. [Dkt. 1 ¶ 19.] He was initially detained in Minnesota. [Dkt. 1 ¶ 19.] Even though Respondents have since transferred Petitioner to Texas, this Court retains jurisdiction over this petition.

a. *Padilla* is a case about terrorism and should not be extended to civil immigration detention cases such as Petitioner's.

In *Rumsfeld v. Padilla*, the Supreme Court held that the general rule in habeas cases "is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official" and as such, venue is generally proper in the district of detention. 542 U.S. 426, 435 (2004). But this holding should be limited to the facts of that case, which the Court itself acknowledged in its decision.

The habeas petitioner in *Padilla* was detained in connection with the September 11, 2001, terrorist attacks. *Id.* at 430-31. He was initially held in criminal custody in the Southern District of New York. *Id.* at 431. Then, President Bush issued an order to designate Padilla as an "enemy combatant" and direct his transfer to military custody. *Id.* The issue in *Padilla* was whether the district court had jurisdiction to consider a habeas petition for a person being detained in military custody.

The *Padilla* Court relied primarily on three cases, each of which involved either criminal or military custody. It discussed a Japanese-American citizen detained under the War Powers Act (*Ex Parte Endo*, 323 U.S. 283 (1944)), an inactive reservist in California seeking relief from military obligations (*Strait* v. *Laird*, 406 U. S. 341 (1972)), and an Alabama prisoner challenging a future detainer in Kentucky (*Braden v. 30th Judicial Circuit Court of Ky.*, 410 U. S. 484, 494–495 (1973)). *Id.* at 453-441.

The Supreme Court explicitly left open "the question whether the Attorney General is a proper respondent to a habeas petition filed by an alien detained pending deportation":

> The lower courts have divided on this question, with the majority applying the immediate custodian rule and holding that the Attorney General is not a proper respondent. Compare *Robledo-Gonzales* v. *Ashcroft*, 342 F.3d 667 (CA7 2003) (Attorney General is not proper respondent); *Roman* v. *Ashcroft*, 340 F.3d 314 (CA6 2003) (same); *Vasquez* v. *Reno*, 233 F.3d 688 (CA1 2000) (same); *Yi* v. *Maugans*, 24 F.3d 500 (CA3 1994) (same), with *Armentero* v. *INS*, 340 F.3d 1058 (CA9 2003) (Attorney General is proper respondent). The Second Circuit discussed the question at some length, but ultimately reserved judgment in *Henderson* v. *INS*, 157 F.3d 106 (1998). *Because the issue is not before us today, we again decline to resolve it.*

Padilla, 542 U.S. at 435 n. 8 (emphasis added).

The Eighth Circuit has noted in a footnote that certain federal officials may be dismissed as improper respondents in an immigration habeas petition. *See Ali v. Brott*, 770 F. App'x 298, 298 n.1 (8th Cir. 2019) (citing *Padilla*). But the Eighth Circuit has not directly addressed the issue before the Court—namely, if a petitioner is being transferred between federal immigration detention facilities, is there jurisdiction in the district where petitioner was initially detained?

Here, we do not have an "enemy combatant" charged with the worst terrorist attack in American history. This is not a criminal case, nor is it a military case. We have a father of two who is petitioning the United States for asylum after narrowly escaping assassination attempts in his home country due to his political beliefs. [Dkt. 1 ¶ 19.] He has zero criminal history, and Respondents have not alleged any against him. [*Id.*] It is not a foregone conclusion that Petitioner's suit can only be brought in Texas. The Supreme Court itself acknowledged this is still an open question. *Padilla,* 542 U.S. at 435 n. 8. The Court should decline to extend *Padilla*'s holding to the facts of this case.

b. Respondent ICE is the immediate custodian under *Padilla*.

Should the Court apply *Padilla*, jurisdiction is still proper here because the Respondents representing ICE are Petitioner's "immediate custodian." The Supreme Court's definition of "custodian" is "'the person' with the ability to produce the prisoner's body before the habeas court" or who can release the individual if "no sufficient reasons" for detention are shown. *Padilla*, 542 U.S. at 435.

The *Braden* case is instructive here. *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 494–95 (1973). *Braden* emphasized that a habeas writ "does not act upon the [detainee] who seeks relief, but upon the person who holds [the detainee] in what is alleged to be unlawful custody." *Id.* The Court went on: "So long as the custodian can be reached by service of process, the court can issue a writ 'within its jurisdiction' requiring that the [petitioner] be brought before the court for a hearing on his claim, or requiring that he be released outright from custody, *even if the [petitioner] himself is confined outside the court's territorial jurisdiction*." *Braden*, 410 U.S. at 495 (emphasis added).

Respondent ICE is "the person . . . with the ability to produce Petitioner before the habeas court"—indeed it is ICE itself that has flown Petitioner across the country to another detention facility. *Padilla*, 542 U.S. at 435. Transferring detainees between facilities appears to be Respondent ICE's common practice. *See, e.g., Jose Y.L.*, 2026 WL 264141 (D. Minn Feb 1, 2026) (petitioner transferred from Minnesota to Texas); *Hilario C.D.*, 26-cv-738 (D. Minn. Jan. 30, 2026) (petitioner transferred from Minnesota to Texas); *Carlos D.V.*, 26-cv-521 (JWB/LIB) (Doc. 14, Jan. 29, 2026) (petitioner transferred from Minnesota to Texas, then possibly to New Mexico). If Petitioner demonstrates that habeas relief is appropriate in the present case, it is the Respondents representing ICE who would effectuate his release in Minnesota, not the warden in El Paso, Texas. *Id.*

Even if the proper respondent is a Texas official, "the court can issue a writ 'within its jurisdiction' requiring . . . that he be released outright from custody, even if the petitioner himself is confined outside the court's jurisdiction." *Jose A. v. Noem*, No. 26-CV-480 (JMB/ECW), 2026 WL 172524, at *2 (D. Minn. Jan. 22, 2026) (quoting *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493 (1973)). If *Padilla* indeed applies to immigration detention cases, this Court still has jurisdiction because ICE is the "immediate custodian" who can effectuate Petitioner's immediate release. Respondents do not attempt to claim that this Court lacks jurisdiction over the ICE officials named in this action, nor do they argue that those officials lack the power to enable Petitioner's release.

c. Courts have found exceptions to *Padilla* for removals which frustrate due process rights.

Moreover, the Supreme Court in *Padilla* recognized that the immediate custodian rule is only a "default rule" and subject to certain exceptions. *See Padilla*, 542 U.S. 426, 435 (2004); *see also id.* at 458 (Stevens, J., dissenting) ("All Members of this Court agree that the immediate custodian rule should control in the ordinary case. . . . But we also all agree . . . that special circumstances can justify exceptions from the general rule.") (internal quotation marks omitted); *see also Xia v. King*, No. CV 24-2000 (JRT/DLM), 2025 WL 240792, at *2 (D. Minn. Jan. 17, 2025) (recognizing exceptions) (citing *Padilla*, 542 U.S. at 454 (Kennedy, J., concurring) (collecting cases)).

Justice Kennedy's concurrence in *Padilla* recognized a narrow exception to the immediate custodian rule for cases where "there is an indication that the government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the government was not forthcoming with respect to the identity of the custodian and the place of detention." *Rumsfeld v. Padilla*, 542 U.S. at 454 (Kennedy J.,

concurring). Justice Kennedy wrote that "[i]n cases of that sort, habeas jurisdiction would be in the district court from whose territory the petitioner had been removed." *Rumsfeld v. Padilla*, 542 U.S. at 454 (Kennedy J., concurring).

Importantly, such an exception to the immediate custodian rule is necessary to prevent "the Kafkaesque specter of supplicants wandering endlessly from one jurisdiction to another in search of a proper forum." *Eisel v. Sec. of the Army*, 477 F.2d 1251, 1258 (D.C. Cir. 1973) (cited with approval by *Abdiselan A.A. v. Bondi*, No. 26-358 (JRT/ECW), 2026 WL 161526, at *1 (D. Minn. Jan. 21, 2026), As recognized in recent decisions in the District of Minnesota and elsewhere, these are the exact circumstances that ICE has created. Federal courts across the country have recognized that ICE is attempting to abuse the immediate custodian rule to frustrate detainee rights.

The Southern District of New York put it well:

> [T]he Court notes ICE's tendency to detain aliens in remote custodial facilities and then insist on applying the immediate custodian rule. For example, children separated from their parents at the Mexican border are transported to New York where they are held. The Court does not believe that this is accidental or random. Rather, the Court believes ICE may be attempting to take advantage of the immediate custodian rule to frustrate detainees' connections to their support system of families and friends; retention of competent immigration counsel; and effective participation in the proceedings. This is not an appropriate for application of the immediate custodian rule.

Calderon v. Sessions, 330 F. Supp. 3d 944, 953 (S.D.N.Y. 2018) [(citing *Henderson v. INS*, 157 F.3d 106, 125 (2d Cir. 1998)); *see also Doe v. Barr*, 2020 U.S. Dist. LEXIS 74650, **16-17 (N.D. Cal. April 27, 2020) ("Respondents may be attempting to take advantage of the immediate custodian rule to frustrate Petitioner's effective access to habeas corpus litigation. In short, Respondents' argument . . . seeks to place Petitioner in a catch-22, where he can neither find habeas corpus jurisdiction in the district in which he is confined, nor elsewhere) (finding

jurisdiction appropriate in district of initial detention); *Luis E. M. C. v. Bondi*, No. 26-333 (JRT/DTS), 2026 WL 184538, at *3 (D. Minn. Jan. 23, 2026) (finding that "government-controlled [immigration] transfers" executed shortly after detention and before the detainee can communicate with counsel "risk[] defeating timely judicial review.") (quoting *E.E. v. Bondi*, No. 26-314, at 5 (D. Minn. Jan. 17, 2026)).

The government has failed to offer a convincing alternative rationale for transferring detainees across the country. There is no evidence of overcrowding or unsuitable detention conditions at ICE's detention center in Minnesota. There are, however, credible reports of overcrowding, disease outbreaks, and inhumane conditions in ICE facilities in Texas. *See, e.g.*, Lomi Kriel and Alex Nguyen, *Two cases of measles detected at Dilley immigrant family detention center*, TEX. TRIB., Feb. 2, 2026, www.texastribune.org/2026/02/02/measles-dilley-immigrant-detention-facility-liam-ramos-texas.

Why would ICE send detainees to areas of the country where their facilities appear to be having the most trouble providing constitutionally sufficient care to detainees? In *Padilla*, there was an easily cognizable explanation for the respondent's transfer. 542 U.S. at 431. The habeas petitioner was initially detained in New York on criminal charges. *Id.* He was moved because the nature of his detention changed from criminal to military detention. *Id.* Here, by contrast, ICE has maintained custody of Petitioner the entire time, as evidenced by its ability to shuffle him around the country. [Dkt. 1.] The transfer serves no legitimate purpose, and *Padilla's* immediate custodian rule should not apply.

d. A strict application of *Padilla* encourages forum-shopping.

Coupling the immediate custodian rule with ICE's ability to transfer detainees around the country and across jurisdictions empowers the government to forum shop. The Court outlined

this concern in *Tah L. v. Trump*, No. 26-CV-171 (MJD/SGE), 2026 WL 184524, at *3 (D. Minn. Jan. 19, 2026):

> In *Vasquez*, the First Circuit explained that in extraordinary circumstances there may be an exception to the general rule that a petition must name their immediate custodian where, for example, ICE 'spirited [a noncitizen] from one site to another in an attempt to manipulate jurisdiction.' 233 F.3d at 696.

Id. (citing *Vasquez v. Reno*, 233 F.3d 688 (1st Cir. 2000)).

These decisions applied the exception discussed in *Vasquez* to refuse to transfer the petition to a district that ICE had transferred the petitioner to. *Farah*, 2002 WL 31828309, at * 3 ("To now hold that Farah may only file his Petition in the state that the INS determines to send him would be to allow the INS to forum shop, intentionally or not."); *de Jesus Paiva v. Aljets*, 2003 WL 22888865, at *4 (same); *see also de Jesus Paiva v. Aljets*, (DWF/AJB), 2003 WL 22888865, at *4 (D. Minn. Dec. 1, 2003) ("The . . . practical effect of ICE's decision to transport Petitioners from Minnesota to Pennsylvania was to prevent them from filing their Petition while they were present in this state. To now hold that Petitioners may only file their petition in the state that the ICE determines to send them would be to allow the ICE to forum shop, intentionally or not."); *c.f. Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 447–48 (3d Cir. 2021) (identifying forum-shopping when habeas petitioner was transferred at least 15 times to 6 different facilities in 4 states, reasoning "When continuous transfer permeates the reality of ICE detention, it suggests that the government has the machinery already in place to permit extensive forum shopping."); Rosa S. Felibert, *Shopping on Thin Ice; Venue Limits on Ice Detention Transfers to Prevent Forum Shopping*, 65 B.C. LAW. REV. 1099 (2004).

Practically, Petitioner has lived in Minnesota for several years. [Dkt. 1 ¶ 19.] Petitioner was tackled and injured by ICE officials in Minnesota and was then detained in Minnesota. [Dkt.

1 ¶ 19.] Any necessary information, witnesses, or records regarding Petitioner's arrest or his immigration status are located in Minnesota. Petitioner has retained counsel in Minnesota to challenge his arrest and detention. "[T]he decision to arrest and detain [Petitioner] was directed to Personnel within this District, and therefore witnesses and information about the manner of his arrest would also be found in this District." *Jose A. v. Noem*, 2026 WL 172524, at *2 (D. Minn. Jan. 22, 2026); *see also Jose Y.L., Petitioner, v. Pamela Bondi, et al, Respondents.*, 26-CV-807 (KMM/JFD), 2026 WL 264141, at *1 (D. Minn. Feb. 1, 2026) (petitioner with pending asylum application detained in El Paso ordered immediately released). Regardless of Respondent's subsequent decision to fly Petitioner to Texas, this Court has jurisdiction to hear this petition.

e. The Court's authority is not limited to the habeas statute.

Even if the immediate custodian rule limits the Court's jurisdiction under the habeas statute, the Court has broader tools available to it. Petitioner seeks relief on the basis that Respondents violated his constitutional rights to due process. [Dkt. 1 at 17.] He asks this Court to exercise the powers given to it by the habeas corpus statute, but also under its broader powers to issue declaratory and injunctive relief. [Dkt. 1 at 17-18.] Those powers arise from the Declaratory Judgments Act, 28 U.S.C. § 2201 as well as Rules 57 and 65 of the Federal Rules of Civil Procedure. Respondents do not even try to claim this Court lacks jurisdiction over the Attorney General, the Secretary of the Department of Homeland Security, or the other federal officials named in this action. [*See* Dkt. 5.] Nor do they claim that those officials lack the power to transfer Petitioner to Minnesota. [*See id.*]

Even if the Court decides it lacks jurisdiction to order Petitioner's immediate custodian in Texas to release him, it can simply proceed in two steps. First, it can order Respondents to return Petitioner to Minnesota. Then, it can order Respondents to release him. This simple solution belies the form-over-substance nature of Respondents' arguments when it comes to habeas

jurisdiction. The Court has the power to grant Petitioner the relief he seeks. As argued in the next section, it should do so.

2. Petitioner is not subject to detention under 28 U.S.C. § 1225(b)(2).

Respondents argue that Petitioner's detention is mandatory under § 1225(b)(2) because he is a noncitizen present in the United States who entered without inspection. This is wrong.

a. This Court has already rejected Respondents' position multiple times.

This Court has rightly rejected Respondents' argument—multiple times. In the last week alone, this Court has granted habeas petitions for at least thirteen petitioners illegally detained despite their pending asylum claims. *Jose Y.L.*, 2026 WL 264141 (D. Minn. Feb. 1, 2026); *Edita M.S.C.*, 2026 WL 252545 (D. Minn. Jan. 30, 2026); *Jose G.A.M.*, 2026 WL 252546 (D. Minn. Jan. 30, 2026); *Marlon S.T.L.*, 2026 WL 251975 (D. Minn. Jan. 30, 2026); *Miguel B.*, 2026 WL 243997 (D. Minn. Jan. 29, 2026); *Abdiselan A.A.*, 2026 WL 242445 (D. Minn. Jan. 29, 2026); *Laura E.P.G.*, 2026 WL 242266 (D. Minn. Jan. 29, 2026); *Jonathan C.B.*, 2026 WL 242447 (D. Minn. Jan. 29, 2026); *Hector V.*, 2026 WL 228742 (D. Minn. Jan. 28, 2026); *Jose V.*, 2026 WL 222175 (D. Minn. Jan. 28, 2026); *Carmen M.*, 2026 WL 221882 (D. Minn. Jan. 28, 2026); *Dwine L.*, 2026 WL 234188 (D. Minn. Jan. 28, 2026); *Franklin I.G.R.*, 2026 WL 207357 (D. Minn. Jan. 27, 2026). Those decisions join dozens of similar decisions from other judges in this district. *Juan T.R. v. Noem*, 2026 WL 200329, at *1 (D. Minn. Jan. 26, 2026) (noting case quantities of similar petitions).

b. Respondents' citations and statutory interpretation arguments are unpersuasive.

Respondents allege that 8 USC § 1225(b)(1) has a catchall provision that deems anyone without inspection to be an applicant for admission. Courts have overwhelmingly rejected Respondents' interpretation that section 1225(b)(2) requires the mandatory detention of all noncitizens living in the country who are "inadmissible" because they entered the United States

without inspection. *See, e.g., Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *4 & n.22 (S.D.N.Y. Nov. 26, 2025) (noting that this interpretation had been rejected in 350 cases "decided by over 160 different judges sitting in about fifty different courts spread across the United States" and collecting cases in an Appendix A); *Jose Andres R.E. v. Bondi*, No. 25-CV-3946 (NEB/DLM), 2025 WL 3146312, at *1 n.2 (D. Minn. Nov. 4, 2025) (collecting cases); *Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947, at *5–6 (D. Minn. Oct. 1, 2025) (collecting cases). This Court should also find Respondents' interpretation unpersuasive.

When interpreting a statute, "every clause and word of a statute should have meaning." *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks omitted) (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883)). Noncitizens who have been residing in the United States but who entered without inspection have not, historically, been considered to still be "arriving" under section 1225(b). This is because the statute itself states that, in order to apply, several conditions must be met; specifically, an immigration officer must determine that the noncitizen "is an applicant for admission . . . seeking admission . . . [and] not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Determining the plain meaning of the statute requires consideration of the tense of the verb "is" and the present participle "seeking." Section 1225(b)(2) applies to persons who presently are applicants for admission and who presently are seeking admission at the time of their detention. To be seeking admission means to be seeking entry, which "by its own force implies a coming from outside." *United States ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929). In this case, Petitioner has been residing in the United States on

and off since 1989, and continuously since 2009. He therefore is not currently "seeking admission" into the United States.

Respondents' interpretation of 1225(b)(2) also renders superfluous other immigration laws. Specifically, interpreting section 1225(b)(2) as applying to noncitizens who have already entered the country and are not currently seeking admission into the country, as Respondents urge, would render meaningless a recent amendment to section 1226 by the Laken Riley Act. That legislation added new categories of noncitizens subject to mandatory detention under section 1226(c), and one such category was for noncitizens lacking valid documentation *and* who have been charged with or convicted of certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E)(i)–(ii). But if Respondents' interpretation of section 1225 were correct, then there would have been no need for the Laken Riley Act to create these additional categories—otherwise, all noncitizens who are present in the United States and have not been admitted would have already been ineligible for bond under section 1225(b)(2)(A).

In short, Respondents' interpretation isolates certain words of the statute from the rest of the language to justify a novel interpretation that constitutes an extreme departure from decades of case law and previous practice. It ignores the language of the statute regarding "seeking admission," which implies and has been for decades read as someone presenting at the border to attempt to enter the United States. Also, Section (b)(2)(A) has additional qualifying terms: it is not all applicants for admission, but those applicants for admission who are seeking admission and undergoing an examination by an immigration officer regarding their inadmissibility.

c. A pending asylum application provides protection from removal.

The Court should also recall that Petitioner has additional rights beyond those of other petitioners detained without legal basis. Many of those petitioners have no legal status or protection from removal at all. Here, the Petitioner has a pending asylum case with a scheduled

June 2026 merits appearance, has appeared at every hearing, and timely filed his application. He has complied with all requirements of the asylum process, and has avoided any contact with the criminal system.

The Immigration and Nationality Act (INA) and decades of case law are exceedingly clear that asylum seekers have a right to present testimony and evidence in support of their asylum claim before any decision may be issued on their application. INA Section 240(b)(4)(B) (providing that an individual in removal proceedings "shall have a reasonable opportunity . . . to present evidence on their own behalf); INA Section 240(c)(4)(B) (stating that in determining whether the applicant has met their burden of proof the immigration judge shall weigh the credible testimony along with over evidence of record); INA Section 240(b)(1) (requiring immigration judges to interrogate the non-citizen and any witnesses related to their claim). *See also,* 8 C.F.R. § 1240.11(c)(3); 8 C.F.R § 1240.11(c)(3)(iii); 8 C.F.R. § 1208.13(a) (additional regulations describing the key role of an asylum applicant's testimony under oath in an Immigration Judge's decision on their application for relief). *See also Matter of Mogharrabi,* 19 I&N Dec. 439, 445 (BIA 1987) (describing how an asylum applicant's testimony alone can meet his or her burden of proof if credible)*; Matter of Interiano-Rosa,* 25 I&N Dec. 264, 266 (BIA 2010) (directing immigration judges to proceed to a merits hearing even where an applicant has not met an immigration judge's deadline to provide evidence in support of their application, so that the immigration judge can hear testimony before deciding their case).

Due process also protects an asylum applicant's right to an opportunity to be heard on their claim for protection from deportation. *See, e.g., Tun v. Gonzales,* 485 F.3d 1014, 1025 (8th Cir. 2007) (holding that for a hearing on an asylum claim to be fair, the immigrant must be given the opportunity to fairly present evidence, offer arguments, and develop the record). Here, the

government has not and cannot present any evidence that Petitioner—an asylum seeker preparing to testify in support of his claim at his scheduled merits hearing, who has complied with all aspects of the asylum process—is either a flight risk, a danger to the community, or someone who can be imminently removed.

d. Detention of a noncitizen with pending final merits hearing on an asylum claim violates due process.

Respondents' primary defense of Petitioner's detention is that he is detained under 8 U.S.C. § 1225(b), which authorizes mandatory detention. But that is beside the point. What matters in this case is that all detention—even mandatory detention—is subject to the protections imposed by the Due Process Clause of the Constitution. As the Supreme Court has repeatedly made clear, "[t]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976). This includes noncitizens detained under 8 U.S.C. § 1225(b). *See Jennings v. Rodriguez*, 138 S. Ct. 830, 851 (2018) (allowing lower courts to consider as-applied due process challenges to detention under § 1225(b)). For this reason, "preoccupation with technical concerns over 1225 processing versus 1226 processing for detention only exalts form over substance insofar as the Due Process Clause, writ large, is concerned," especially where, as here, the case involves "a prolonged period of [lawful presence in the United States]." *Rodrigues De Oliveira v. Joyce*, No. 2:25-cv-00291, 2025 WL 1826118, at *5 (D. Me. July 2, 2025).

Substantive due process requires that there be a reasonable relation between an individual's detention and the government's purported interests in that detention. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). With immigration detention, the Supreme Court has acknowledged that the government's interests are limited to (1) preventing flight risk, so a

person can go through removal proceedings *and ultimately be removed*, or (2) otherwise ensuring the safety of the community. *Zadvydas*, 533 U.S. at 690-91. "[B]y definition, the first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility at best." *Id.* at 690; *see also id.* ("[W]here detention's goal is no longer practically attainable, detention no longer 'bear[s] [a] reasonable relation to the purpose for which the individual [was] committed.'") (citation omitted); *cf. Phan v. Reno*, 52 F. Supp. 2d 1149, 1156 (W.D. Wash. 1999) ("Detention by the INS can be lawful only in aid of deportation."). The second justification, in turn, is only permissible "when limited to specially dangerous individuals and subject to strong procedural protections." *Id.* at 691.

Here, no rationale can justify Petitioner's detention. He is the survivor of two assassination attempts in his home country of Guatemala. [Dkt. 1 ¶ 17.] He has applied for asylum and has a final merits hearings scheduled for June 2026. [Dkt. 1 ¶ 17.] The merits of his asylum claim have yet to be adjudicated. *See* Section 2c, *supra,* describing the asylum adjudication process and the crucial role an asylum applicant's testimony under oath plays in any decision on the merits of an asylum claim. *See also, Mathews v. Eldridge,* 424 U.S. 319, 333 (1976) (explaining that "the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner). While Respondents may not like this—the arresting ICE officials laughed when Petitioner told them of his pending asylum application—they still must await the adjudication of his asylum process before determining whether removal is appropriate. [Dkt. 1 ¶ 19.]

e. Petitioner is entitled to relief as a *Maldonado Bautista* class member.

Respondents argue that Petitioner has failed to state a reason why he deems himself a member of the *Maldonado Bautista* Class. *Maldonado Bautista*, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). The *Maldonado Bautista* court granted certification as to the following class:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Petitioner meets each criterium. As outlined in Petitioner's I-589 application for asylum, he (1) entered the United States without inspection, and (2) was released on recognizance after he entered the United States, and filed his asylum application with the Immigration Court pursuant to the Court's required procedures. His recent re-detention without a warrant or any individualized determination of probable cause was not an apprehension "upon arrival." The *Maldonado Bautista* court's reasoning and language indicate that the relevant inquiry for determining class membership is a person's most recent arrest. *See e.g.,* Order granting Petitioner's Motion for Partial Summary Judgment and Denying Request to Enter Final Judgment, 5:25-cv-01873-SSS-BFM (November 20, 2025), at 10-17 (explaining that § 1226 governs re-arrest of individuals already in the country pending the outcome of removal proceedings). The *Maldonado Bautista* court entered a binding, final judgment on December 18, 2025, granting class-wide declaratory relief. *Maldonado Bautista*, 5:25-cv-01873-SSS-BFM (Dec. 18, 2025).

For the reasons outlined above, at the time of Petitioner's most recent arrest, he was (3) not subject to detention under § 1225(b). Nor is he subject to detention under § 1226(c)—Respondents have not alleged he has committed any crimes. Nor is he subject to detention under § 1231 because he has not received a final order of removal from the United States.

Even if the Court were to deem Petitioner to not be a member of the *Maldonado Bautista* class despite the above facts demonstrating membership, the same legal analysis present in the *Maldonado Bautista* decision provides persuasive reasoning here. Specifically, as the *Maldonado Bautista* court reasoned, an individual like Petitioner, who was re-detained inside the United States

several years after his initial entry, while his asylum application was pending before the Court was detained under Section 1226(a). *See e.g. Del Valle Castillo v. Wamsley*, No. 2:25-cv-02054-TMC (W.D. Wash. Nov. 26, 2025), Dkt. 28, at *4 ("[T]he fact that Petitioners are not Bond Denial Class members does not prevent them from seeking habeas relief on similar legal grounds."). "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

Section 1225(b)'s mandatory detention scheme applies "at the Nation's borders and ports of entry, where the government must determine whether an alien seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). "Read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention of applicants for admission until certain proceedings have concluded. Until that point, nothing in the statutory text imposes a limit on the length of detention, and neither provision says anything about bond hearings." *Jennings*, 583 U.S. at 282.

By regulation, "[a]rriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked." 8 C.F.R. § 1.2. "[A]n immigration judge may not redetermine conditions of custody imposed by the Service with respect to … [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act." 8 C.F.R. § 1003.19(h)(2)(i)(B). As such, "arriving

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

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

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

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

Executive Office of Immigration Review (EOIR) regulations have long recognized that noncitizens like Petitioner are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19—the regulatory basis for the immigration court's jurisdiction—provides otherwise. 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 Fed. Reg. 10312, 10323, 62 Fed. Reg. 10312-01, 10323.

Additionally, "'[i]t is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." *Trump v. J.G.G.*, 604 U.S. 673 (2025) ((quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976)." *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025).

Those factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333 (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). "[T]he interest in

being free from physical detention by one's own government" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

Where there is no "opportunity to contest the existence, nature, or significance of [any] supervision violations' or otherwise make an individualized assessment of the need to re-detain, … there is a high risk that [Petitioner] has been and will continue to be erroneously deprived of his liberty." *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025).

Respondents also suggest that, because the *Maldonado Bautista* matter is pending before the Ninth Circuit, they need not follow the district court's order. But it is a "basic proposition that all orders and judgments of courts must be complied with promptly," *Maness v. Meyers*, 419 U.S. 449, 458 (1975), and thus, in "suits against government officials and departments, [courts] assume that they will comply with declaratory judgments." *United Aeronautical Corp. v. United States Air Force*, 80 F.4th 1017, 1031 (9th Cir. 2023). This is because declaratory judgments, like the one in *Maldonado Bautista* have "the same effect as an injunction in fixing the parties' legal entitlements." *Florida ex rel. Bondi v. U.S. Dep't of Health & Hum. Servs.*, 780 F. Supp. 2d 1307, 1316 (N.D. Fla. 2011); *see also Pub. Citizen v. Carlin*, 2 F. Supp. 2d 18, 20 (D.D.C. 1998) ("The government's decision to appeal this Court's ruling does not affect the validity of the declaratory judgment unless and until the judgment is reversed on appeal or the government seeks and is granted a stay pending appeal."), *rev'd on other grounds*, 184 F.3d 900 (D.C. Cir. 1999).

Because the Petitioner has been erroneously deprived of his liberty, the Court should grant his immediate release, or at minimum order that he be granted bond at a minimum amount, given his pending application, lack of any criminal history, and lack of any indicia that he intended to abscond or flee from proceedings before the Court.

3. The Court should order Petitioner's immediate release.

Immediate release is the appropriate remedy here. The reason for this is twofold—(a) Respondents conceded this argument by failing to address it in their brief, and (b) Petitioner's liberty interest is such that he should have been provided process *before* the government detained him in the first place.

a. Respondents concede that the absence of a warrant preceding Petitioner's arrest necessitates Petitioner's immediate release.

The Court ordered Respondents to brief "Whether the absence of a warrant preceding Petitioner's arrest necessitates Petitioner's immediate release. *See e.g., Ahmed M. v. Bondi*, No. 25-4711, 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026)." [Dkt. 3.] Respondents do not discuss the lack of a warrant at any point in their brief; in fact, the word "warrant" appears nowhere. This is likely because the lack of a warrant is fatal to Respondents' argument.

Courts are "not obliged to consider [a] perfunctorily raised, undeveloped argument," let alone a complete failure to provide any argument at all. *In re Vera T. Welte Testamentary Tr.*, 96 F.4th 1034, 1039 (8th Cir. 2024) (quoting *United States v. Kirk*, 528 F.3d 1102, 1104 n.2 (8th Cir. 2008)); *c.f.* Fed. R. Civ. P. 12(h) (certain defenses deemed waived through omission in responsive pleading); *Juan M. v. Bondi*, 2026 WL 129059, at *2 (D. Minn., 2026) (deeming a failure to respond to arguments as waiver) (citing *Doe v. Mayorkas*, No. 22-cv-752 (ECT/DTS), 2022 WL 4450272, at *2 (D. Minn. Sep. 23, 2022) (citing *Espey v. Nationstar Mortg., LLC*, No. 13-cv-2979 (ADM/JSM), 2014 WL 2818657, at *11 (D. Minn. June 19, 2014) (collecting cases))).

b. Immediate release, not a bond hearing, is the appropriate relief.

"Where the record shows Respondents have not identified a valid statutory basis for detention in the first place, the remedy is not to supply one through further proceedings." *Munaf*

v. Geren, 553 U.S. 674, 693 (2008). Respondents agree that Petitioner was arrested without a warrant. [Dkt. 5.] This fact alone warrants Petitioner's immediate release in Minnesota, along with all his personal belongings.

The crux of the procedural due process claim is that Petitioner's pending asylum application gives him a particularly strong liberty interest, and the government cannot take that away without meaningful process—which it has never provided. The government does not contest this. Release is the appropriate remedy for this due process violation. *See Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532, 542 (1985) ("'[T]he root requirement' of the Due Process Clause" is "that an individual be given an opportunity for a hearing *before* he is deprived of any significant protected interest.") (quoting *Boddie v. Connecticut,* 401 U.S. 371, 379 (1971)); *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) ("Applying [the *Mathews*] test, the Court usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty ...."); *Morrissey v. Brewer*, 408 U.S. 471, 480–86 (1972) (holding this in the context of re-detention of individuals released from criminal custody on parole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same for individuals subject to revocation of probation).

Because Petitioner was not lawfully detained, the proper remedy is to release him rather than to give a bond hearing. The nationwide declaratory judgment in *Maldonado Bautista v. Noem,* 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025), simply requires that individuals like Petitioner *at minimum* receive a bond hearing. But here, the Court should order that Petitioner be released without bond.

Ordering an immigration court to conduct a bond hearing in this case would only unnecessarily prolong Petitioner's already unreasonable detention. There are no ongoing proceedings before any immigration court. In many cases, noncitizens granted bond by

immigration judges are faced with (a) a prohibitively high bond, or (b) an unconstitutional automatic stay of the decision under 8 C.F.R. § 1003.19(i)(2)—rendering this relief hollow. So, to return Petitioner to the status quo ante, the Court must order his release and ensure that he is not again deprived of his liberty without meaningful pre-deprivation process.

"Habeas is at its core a remedy for unlawful executive detention. The typical remedy for such detention is, of course, release." *Munaf*, 553 U.S. at 693. The Court should order Petitioner's immediate release, in Minnesota, with all of his belongings. If the Court does not agree that release is appropriate, Petitioner is entitled to post bond at minimum. *Maldonado Bautista v. Noem,* 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025).

CONCLUSION

For these reasons, Petitioner respectfully asks the Court order his immediate release without a bond hearing. In the alternative, Petitioner requests this Court specify a bond amount.

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Minneapolis, Minnesota

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