UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Wellington Stephen Pallo Freire, Petitioner, v. Todd LYONS, in his capacity as Acting Director, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Executive Office for Immigration Review; David EASTERWOOD, Field Office Director of St. Paul Field Office for U.S. Department of Homeland Security, United States Immigration and Customs Enforcement, Enforcement and Removal Operations, Respondents.	Case No. 0:26-cv-00780-SRB-ECW **REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner submits this reply to the Respondents' response to the petition for writ of habeas corpus filed on January 30, 2026. (ECF No. 5 "Response"). On January 28, 2026, Petitioner filed a petition for a Writ of Habeas Corpus. Also on January 28, 2026, the Court provided an Order, which ordered in part that Respondents "immediately return Petitioner to Minnesota." (ECF No. 3 "Order"). Undersigned counsel would like to confirm with the Court that Respondents have since returned Petitioner to Minnesota, and Petitioner is now being held at the Sherburne County Facility in Elk River, Minnesota, according to the ICE detainee locator.

I. The Court has jurisdiction over Petitioner's habeas case.

In their response, the Respondents contend that this Court does not have subject matter jurisdiction over Petitioner's habeas case, because Petitioner was being held in the state of Texas at the time the habeas petition was filed. However, the Federal District Court for the District of Minnesota does have jurisdiction to hear Petitioner's habeas case, which attached at the time of Petitioner's apprehension and detention in Minnesota by Respondents. Further, Petitioner is now detained in Minnesota, and therefore the jurisdiction issue is moot.

In *Braden*, the U.S. Supreme Court reasoned that the location of the detained person at the time that a habeas petition is filed is not "some dowsing rod pointing to the only correct district." *Braden v. 30th Jud. Cir. Ct. Of Ky.*, 410 U.S. 484, 494-95 (1973). (See also, *Carlos D.V.*, R & R, No. 26-521 (JWB/LIB) (D. Minn. 01/29/2026)). An exception to the general rule applies when a petitioner, at the time their petition is filed, "is held in an undisclosed location by an unknown custodian, [and] it is impossible to apply the immediate custodian and district of confinement rules." *Padilla*, 542 U.S. at 434. The exception also applies when "the government is not forthcoming with respect to the identity of the custodian and the place of detention." *Id.* When an exception applies, the appropriate district in which to file a habeas petition is "in the district court

from whose territory the petitioner had been removed," *Id.*, and "the naming of a more remote custodian- [such as] the Secretary of Homeland Security [in immigration related habeas proceedings]- satisfies the statutory requirements." *Ozturk*, 136 F.4th at 392 (quoting *Demjanjuk v. Meese*, 784 F.2d 1114, 1116 (D.C. Cir. 1986)). The exception exists to forestall forum shopping by the Government and "to help prevent the Kafkaesque specter of supplicants wandering endlessly from one jurisdiction to another in search of a proper forum, only to find that it lies elsewhere." *Eisel v. Sec'y of the Army*, 477 F.2d 1251, 1258 (D.C. Cir. 1973); *see Abdiselan A.A. v. Bondi*, No. 26-cv-358 (JRT/ECW), 2026 WL 161526, at *1 (D. Minn. Jan. 21, 2026) (quoting *Eisel*).

It was not until January 28, 2026, fifteen (15) days after Petitioner's arrest and detention in Minnesota, that Respondent, ICE, provided Petitioner's counsel and the EOIR with notice of Petitioner's transfer from Minnesota to Karnes City, Texas. Ex. D. As of today's date, February 1, 2026, Petitioner's EOIR proceedings still show as being venued in Fort Snelling, Minnesota. Ex. E. However, Petitioner submitted a request for a bond redetermination hearing to the Fort Snelling Immigration Court on January 19, 2026, and on January 30, 2026, the immigration judge in Fort Snelling, Minnesota "decline[d] to exercise its authority to redetermine [Petitioner]'s custody status," reasoning that Petitioner is "in DHS custody, but he is not detained within the bond venue of the Immigration Court in Fort Snelling, Minnesota." Ex. F.

The Court should find jurisdiction over Petitioner's habeas petition, because habeas jurisdiction turns on custody and control, not on the Government's post-seizure movement of a detainee. Further, the vast majority of acts at issue in Petitioner's habeas petition occurred in the District of Minnesota, and were caused by Respondents' actors in the District of Minnesota. Respondents arrested and detained Petitioner in the District of Minnesota. Prior to his arrest,

Petitioner lived for years in the District of Minnesota. At the time of his arrest, Petitioner was already in pending immigration court proceedings in the District of Minnesota, where he submitted his asylum application, and his immigration court proceedings remain venued in the District of Minnesota. Petitioner retained counsel in Minnesota to challenge his arrest and detention. The only factor tying Petitioner to a venue in Texas is the unilateral decision of the Respondents to immediately, and without notice, transfer Petitioner to Texas after arresting him in Minnesota, without a warrant and as a part of the current immigration enforcement surge taking place in Minnesota. Respondents have not provided a reasoned explanation for Petitioner's move from Minnesota to Texas. Respondent ICE did not provide notice to Petitioner's counsel or EOIR about Petitioner's transfer from Minnesota to Texas until January 28, 2026, fifteen (15) days after his arrest and detention in Minnesota, and the same day on which Petitioner filed his habeas petition in the District of Minnesota.

Each of these factors and the overall circumstances of the present case weigh heavily in favor of a finding that this District was a proper forum for Petitioner to file his habeas petition. *See Jose A. v. Noem*, No. 26-cv-480 (JMB/ECW), 2026 WL 172524, at *2 (D. Minn. Jan. 22, 2026); *Abdiselan A.A. v. Bondi*, No. 26-cv-358 (JRT/ECW), 2026 WL 161526, at *2 (D. Minn. Jan. 21, 2026); *Tah L. v. Trump*, No. 26-cv-171 (MJD/SGE), 2026 WL 184524, at *4 (D. Minn. Jan. 19, 2026), *report and recommendation adopted as modified*, 2026 WL 184529 (D. Minn. Jan. 23, 2026); *Flores-Linares v. Bondi*, No. 26-cv-298 (SJB), 2026 WL 179208, at *5 (E.D.N.Y. Jan. 22, 2026). This Court has previously observed in a similar case that "transferring venue would prolong both [Petitioner's] detention and the adjudication of his claims" unnecessarily. *Jose A.*, 2026 WL 172524, at *2.

> Further, venue should not be transferred simply because a petitioner was unable to file their petition prior to transfer, particularly when

> that transfer was not at a petitioner's request, is wholly outside of their control, and occurs in a very short time after arrest. Transferring venue solely on the basis that a petitioner was transferred, and thereby currently detained elsewhere, could also have the effect of incentivizing forum shopping, as Respondents could quickly transfer detained individuals to a district of their choosing.

Id. The Court should find that the same rationale applies in the present case, and should apply it equally. As the Supreme Court reasoned in *Braden*, "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. It is clear that Respondents can be reached through service of process, proven in the fact that they received the Order of this Court ordering the immediate return of Petitioner to Minnesota, and they were capable of complying. Accepting Respondents' argument would require petitioners in immigration-related habeas proceedings to speculate as to forum, to delay filing a habeas petition until the Government, at a time of its own choosing, decided to inform counsel the petitioner's location, or to risk the petition being summarily rejected as having been brought in an inappropriate forum. Such circumstances have no place in habeas litigation challenging the legality of detention, especially when, like here, the arguments raised in support of that detention have been overwhelmingly rejected by Courts across the nation.

II. Petitioner was not issued a warrant for his arrest, and therefore should be ordered to be immediately released pursuant to his December 18, 2023, Order of Release on Recognizance.

Under § 1226(a), "on a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." Here, Respondents have not produced a warrant for Petitioner's arrest, and their Response filed on

January 30, 2026, does not indicate the existence of an arrest warrant for Petitioner. In the Court's order dated January 28, 2026, the Respondents were ordered to provide "such affidavits and exhibits as are needed to establish the lawfulness and correct duration of Petitioner's detention," and to address "whether a warrant was issued for Petitioner's arrest, and if so, Respondents shall attach the warrant to their answer." (Dkt. 3 at 1-2.) As Respondents' response did not affirm the existence of a warrant, or include a copy of any such warrant, it can only be assumed that Petitioner was arrested by Respondents without a warrant, despite the fact that Petitioner had not violated the terms of his Order of Release on Recognizance.

This Court has previously found that the appropriate remedy for an arrest under section 1226(a) without a warrant is immediate release. In *Adriano L.V.*, the Court explained that, "the warrant requirement should not come as a surprise to Respondents, since it is plainly in the text of Section 1226(a), and it has been the basis for several orders for the immediate release of other, similarly situated, petitioners in this district." *R. & R. adopted*, No. 26-269 (MJD/DJF), 2026 WL 194401 (D. Minn. Jan. 23, 2026)). Petitioner is similarly situated to the petitioner in *Adriano L.V.*, as there is "not even a hint of a warrant" being obtained prior to Petitioner's arrest and detention. *Id.* As Respondents have not provided proof of a warrant in Petitioner's case, he should be ordered to be immediately released from their custody.

III. Petitioner is entitled to a discretionary bond hearing under § 1226.

If the Court finds that the appropriate remedy in Petitioner's case is not immediate release, the Court should find that Petitioner is entitled to a bond hearing under section 1226. The issue in this case is whether Petitioner, who entered the United States over ten years ago and was not apprehended upon arrival, is to be treated as an "applicant for admission" under § 1225, and therefore subject to mandatory detention, or as "an alien" who was "arrested and detained pending

a decision on whether the alien is to be removed from the United States" under § 1226, and therefore entitled to a bond hearing before the immigration judge.

The Court should determine that Petitioner's situation is substantially similar to many cases that the Court has decided recently, and find that Petitioner is "an alien" who was "arrested and detained pending a decision on whether the alien is to be removed from the United States" under § 1226, and therefore entitled to a bond hearing before the immigration judge. "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." *Martin R. v. Noem*, No. 26-CV-168 (JMB/LIB), 2026 WL 115024 at *2 (D. Minn. Jan. 15, 2026). The Court here should adopt the statutory analysis in *Martin R.* and the many other cases rejecting Respondents' position about 1225 vs. 1226 detention, and find that Petitioner is entitled to a bond hearing with the immigration court.

IV. Petitioner is a member of the *Maldonado* Class, and thus not subject to Mandatory Detention.

The Respondents' response argues that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Petitioner's petition for writ of habeas corpus addressed the arguments presented in Respondents' response. Here, Petitioner will summarily focus on why he is not subjected to the mandatory detention, and instead, is a member of the class of persons established in *Maldonado Bautista v. Santacruz*, 5:25-cv-01873 (C.D. Cal. Dec. 18, 2025 (ECF No. 92).

In the alternative to immediate release, Petitioner requests that the court find that he is detained under § 1226(a) and order that he be given a bond hearing under § 1226(a) before the immigration court. The *Maldonado* class, certified by the federal court, includes: "All noncitizens of 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 INA § 236(c) or § 241 at the time the Department of Homeland Security makes an initial custody determination." *Id.* Petitioner entered the United States without inspection, was released on his own recognizance, has not violated the terms of his order of release, and is not subject to detention under INA § 236(c) or § 241. This District has previously determined that noncitizens in the same position as the Petitioner are detained under § 1226 and are therefore entitled to a bond hearing.

CONCLUSION

As discussed above, Petitioner respectfully requests that the Court maintain jurisdiction over Petitioner's habeas petition, and order that he be immediately released from immigration detention. In the alternative, as per the Petition, Petitioner requests that the court provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days, enjoin Respondents from denying Petitioner a bond hearing under U.S.C. § 1225(b)(2), and should the Immigration Judge grant a bond, enjoin Respondents from invoking the auto-stay provision found at 8 C.F.R. § 1003.19(i)(2) during the pendency of any bond appeal, and grant any other and further relief that this Court deems just and proper.

DATED this 1 February 2026

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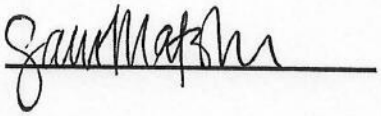
Verification Pursuant to 28 U.S.C. § 2242

The undersigned counsel submits this verification on behalf of the Petitioner. Undersigned Counsel has discussed with Petitioner the events described in this Reply and, on the basis of those discussions, verify that the statements in the Petition are true and correct to the best of his knowledge and belief.

Date: 1 February 2026



I certify that I caused a copy of the foregoing

REPLY

to be served on all counsel of record via ECF.

Dated this 1st day of February 2026.

Samantha Matsch