

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

Lessly Paola Reyes Martinez,

Petitioner,

v.

Pamela Bondi, Attorney General,

0:26-cv-00792

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

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

Executive Office for Immigration Review,

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

Agency # 

Department of Homeland Security,

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

Immigration and Customs Enforcement, and

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

Respondents.

INTRODUCTION

1. Respondents are detaining Petitioner, Lessly Paola Reyes Martinez (“Petitioner”) in violation of law.
2. Respondents are unlawfully detaining Petitioner without an administrative warrant of arrest and further improperly denying her access to a bond hearing to which she is entitled under 8 U.S.C. § 1226(a).
3. “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).
4. 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.
5. To remedy this unlawful detention, Petitioner seeks declaratory relief and a writ of habeas corpus in the form of immediate release or, alternatively an order to hold a bond hearing pursuant to 8 U.S.C. § 1226(a) within five days.
6. Pending the adjudication of his petition, Petitioner seeks an order restraining the Respondents from transferring her to a location where she 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") St. Paul Office of Enforcement and Removal Operations in the State of Minnesota.

7. Pending the adjudication of this Petition, Petitioner also respectfully requests that Respondents be ordered to provide seventy-two (72) hour notice of any movement of Petitioner.
8. 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 her away from the State of Minnesota.

JURISDICTION AND VENUE

9. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1651 (All Writs Act), and § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). This action further arises under the Constitution of the United States and the Immigration and Nationality Act ("INA").
10. 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.
11. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v.*

Rodriguez, 138 S. Ct. 830, 839–41 (2018); *Nielsen v. Preap*, 139 S. Ct. 954, 961–63 (2019); *Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199, 1209-12 (11th Cir. 2016).

12. Federal district courts have jurisdiction to enforce 8 U.S.C. § 1226(a)(2). This statute, 8 U.S.C. § 1226(a)(2), requires the issuance of an administrative warrant and entitles Petitioner to a bond hearing in which an immigration judge may determine her eligibility for release from custody.
13. Venue is proper in this Court pursuant to 28 USC §§ 1391(b), (e)(1)(B), and 2241(d) because Petitioner is detained within this District. Upon information and belief, Petitioner is currently detained in the Bishop Henry Whipple Federal Building in Fort Snelling, Minnesota

PARTIES

14. Petitioner is a citizen of Guatemala. Prior to her detention, she was residing in Minnesota. She is not an arriving alien, nor is she seeking admission.
15. Upon information and belief, Petitioner is currently in Immigration and Customs Enforcement (“ICE”) custody in the Bishop Henry Whipple Federal Building in Fort Snelling, Minnesota.
16. 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.

17. Respondent Daren K. Margolin is the Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including bond hearings. He is sued in his official capacity.
18. 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.
19. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to § 103(a) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1103(a), routinely transacts business in the District of Minnesota, supervises the St. Paul ICE Field Office, and is legally responsible for pursuing Petitioner’s detention and removal. As such, Respondent Noem is a legal custodian of Petitioner.

20. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens. As such, Respondent DHS is a legal custodian of Petitioner.
21. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Respondent Lyons is responsible for Petitioner's detention. As such, Respondent Lyons is a legal custodian of Petitioner.
22. 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. As such, Respondent ICE is a legal custodian of Petitioner.
23. 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. As such, Respondent Easterwood is a legal custodian of Petitioner.

EXHAUSTION

24. ICE asserts authority to detain Petitioner pursuant to the mandatory detention provisions of 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) ("There is no statutory requirement that a habeas petitioner exhaust her administrative remedies before challenging her immigration detention."); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *11 (W.D. Wash. Apr. 24, 2025) (citing *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 962 (N.D. Cal. 2019) ("this Court 'follows the vast majority of other cases which have waived exhaustion based on irreparable injury when an individual has been detained for months without a bond hearing, and where several additional months may pass before the BIA renders a decision on a pending appeal.'"); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) ((citing *Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997) (quoting *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992))).
25. 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).

26. The Board of Immigration Appeals' published decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) binds the immigration court and erroneously denies all noncitizens situated like Petitioner access to bond hearings.

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

27. Petitioner is a native and citizen of Guatemala.
28. In or around July 2023, Petitioner entered the United States without inspection.
29. Petitioner was not apprehended or encountered at the time of her entry.
30. Petitioner has no criminal history of the sort that would subject her to mandatory custody under 8 U.S.C. § 1226(c).
31. On January 27, 2026, Respondents arrested and detained Petitioner.
32. Respondents provided no warrant for Petitioner's arrest.
33. Upon information and belief, Respondents are currently detaining Petitioner in the Bishop Henry Whipple Federal Building in Fort Snelling, Minnesota.

LEGAL FRAMEWORK

34. 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).

35. 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).
36. The “[a]pprehension and detention of aliens” is governed under 8 U.S.C. § 1226, which provides that:

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. Except as provided in subsection (c) and pending such decision, **the Attorney General ... may release the alien on bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General.**

8 U.S.C. § 1226(a)(2)(A) (emphasis added).

37. 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).

38. 8 U.S.C. 1226(a) is the default detention authority, and it applies to anyone who is detained “pending a decision on whether the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a).

39. 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).

40. 8 U.S.C. § 1226(a) applies not just to persons who are deportable, but also to noncitizens who are inadmissible. Specifically, while § 1226(a) provides the general right to seek release, § 1226(c) carves out discrete categories of noncitizens from being released—including certain categories of inadmissible noncitizens—and subjects those limited classes of inadmissible aliens instead to mandatory detention. *See, e.g.*, 8 U.S.C. § 1226(c)(1)(A), (C).
41. The Laken Riley Act (LRA) added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See* LAKEN RILEY ACT, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, people charged as inadmissible under § 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E).
42. By including such individuals under § 1226(c), Congress reaffirmed that § 1226 covers persons charged under § 1182(a)(6)(A) or (a)(7). Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people like lawful permanent residents, who have been lawfully admitted and continue to have lawful status, while grounds of inadmissibility (found in §

1182) apply to those who have not yet been admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020) (“specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.”) (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

43. The [i]nspection by immigration officers [and] expedited removal of inadmissible arriving aliens, [and] referral for hearing” is governed under 8 U.S.C. § 1225, which provides that “[a]n 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).
44. “All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3).
45. “If an immigration officer determines that an alien ... who **is arriving in the United States** ... is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States

without further hearing or review unless the alien indicates either an intention to apply for asylum.” 8 U.S.C. § 1225(b)(1)(A)(i) (emphasis added).

46. “If the officer determines at the time of the interview that an alien has a credible fear of persecution ... the alien shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).
47. “[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).
48. 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 v. Rodriguez*, 583 U.S. 281, 287 (2018).
49. “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 v. Rodriguez*, 583 U.S. 281, 282 (2018).

50. 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.
51. “[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).
52. As such, arriving aliens are not entitled to bond, nor, arguably, are aliens falling within the confines of 8 U.S.C. § 1225(b).
53. 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).

54. 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).
55. 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).
56. 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).

57. EOIR regulations have long recognized that 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.
58. 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.
59. Almost every court that has reached the merits on this matter in the district of Minnesota has ruled contrary to Respondents’ interpretation of the law. *See, e.g., Belsai v. Bondi*, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Eliseo A.A. v. Olson*, 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Ferrera Bejarano v. Bondi*, 25-cv-03236

(D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Herrera Avila v. Bondi*, 25-cv-03741 (D. Minn. Oct. 21, 2025); *Fuentes v. Olson*, 2025 WL 3524455 (D. Minn. Dec. 9, 2025); *E.M. v. Noem*, 2025 WL 3157839 (D. Minn. Nov. 12, 2025); *Mayamu K. v. Bondi et al.*, 2025 WL 3641819 (D. Minn. Oct. 20, 2025); *Mahamed C.A. v. Noem et al.*, 2025 WL 3771299 (D. Minn. Dec. 16, 2025); *Santuario v. Bondi*, 2025 WL 3469577 (D. Minn. Dec. 2, 2025); *Gabriel v. Bondi*, 2025 WL 3443584 (D. Minn. Dec. 1, 2025); *Santos M.C. v. Olson*, 2025 WL 3281787 (D. Minn. Nov. 25, 2025); *Andres R.E. v. Bondi*, 2025 WL 3146312 (D. Minn. Nov. 4, 2025); *Francisco T. v. Bondi*, 797 F. Supp. 3d 970, 975 (D. Minn. 2025); *Ortiz Beltran v. Bondi, et al.*, 2025 WL 3719856 (D. Minn. Dec. 23, 2025); *Vedat C. v. Bondi et al.*, 0:25-cv-04642-JWB-DTS (D. Minn. Dec. 19, 2025).

60. 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))).
61. “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).

62. 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.
63. “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)).
64. “[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).
65. 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-Arevalo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025).
66. Where a noncitizen “not abscond from his proceedings ... [n]or is there anything in the record to indicate that he has committed any crimes or

endangered anyone during his three years at liberty in the United States,” the burden to the government is minimal and any concerns about flight and danger “would be squarely addressed if the Court were to grant the petition and order a bond hearing.” *Id.*

67. As a general proposition, “the Fourth Amendment applies to arrests of illegal aliens.” *United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010).
68. Warrantless searches and seizures “are generally prohibited under the Fourth Amendment unless an exception to the warrant requirement applies.” *United States v. Hayes*, 75 F.4th 925, 927 (8th Cir. 2023).
69. By statute, immigration officers may only “arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest.” 8 U.S.C. § 1357(a)(2).

REMEDY

70. Respondents’ arrest and detention of Petitioner without an administrative warrant, purportedly under 8 U.S.C. § 1225(b)(2) violates that statute, section 1226(a), section 1357(a)(2), the Due Process Clause of the United States Constitution, and the Fourth Amendment. Petitioner’s ongoing detention violates the Fifth Amendment’s guarantee that “[n]o person shall be . . .

deprived of life, liberty, or property without due process of law.” U.S. Const., Amend. 5.

71. Due Process requires that detention “bear [] a reasonable relation to the purpose for which the individual [was] committed.” *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001) (citing *Jackson v. Ethiopianians*, 406 U.S. 715, 738 (1972)).
72. Petitioner seeks immediate release to the extent that Respondents justify her detention on 8 U.S.C. § 1225(b)(2), which plainly does not apply to her.
73. Petitioner also seeks immediate release to the extent that Respondents justify her detention on 8 U.S.C. § 1226(a) if Respondents cannot produce a warrant of arrest, given that detention under the provision plainly requires a warrant of arrest.
74. 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.”).

75. 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. US*, 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.”).
76. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, “habeas corpus is, at its core, an equitable remedy,” *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and that as an equitable remedy, federal courts “[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . . to dispose of habeas corpus matters ‘as law and justice require.’” *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987), quoting 28 U.S.C. § 2243. An order of release falls under court’s broad discretion to fashion relief. *See, e.g., Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) (“Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien’s release.”).
77. Alternatively, if Respondents do produce a warrant of arrest, Petitioner requests a constitutionally adequate custody redetermination hearing in which she is not erroneously treated as detained pursuant to 8 U.S.C. § 1225(b)(2)

and is instead treated as a detainee under 8 U.S.C. § 1226(a) within seven days.

CAUSE OF ACTION

**COUNT ONE: VIOLATION OF THE IMMIGRATION & NATIONALITY
ACT – 8 U.S.C. § 1225(b)(2)**

78. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
79. Section 1225 of Title 8 of the U.S. Code governs aliens arriving at the border and seeking admission from outside the country. *See* 8 U.S.C. § 1225.
80. 8 U.S.C. § 1225(b)(2)(A), specifically, cannot apply as it only applies to those “applicants for admission” who are “seeking admission” at the time of detention and Petitioner was not “seeking admission” at the time she was detained, nor is he doing so now. 8 U.S.C. § 1225(b)(2)(A).
81. As Respondents assert authority to detain Petitioner under 8 U.S.C. § 1225(b)(2)(A), and no such authority exists under that provision, she requests that he be immediately released.

**COUNT TWO: VIOLATION OF THE IMMIGRATION & NATIONALITY
ACT – 8 U.S.C. § 1226(a)**

82. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
83. Section 1226 of Title 8 of the U.S. Code governs the detention of aliens

pending a determination of removal from the United States.

84. That provision provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested” 8 U.S.C. § 1226(a)(2)(A).
85. If Respondents are unable to produce a warrant of arrest, Petitioner must be immediately released pursuant to the plain terms of 8 U.S.C. § 1226(a)(2)(A), as, absent a warrant, the arrest and ongoing detention are improper.

**COUNT THREE: VIOLATION OF THE IMMIGRATION &
NATIONALITY ACT – 8 U.S.C. § 1226(a)**

86. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
87. Section 1226 of Title 8 of the U.S. Code governs the detention of aliens pending a determination of removal from the United States.
88. Such an alien “may [be] release[d] ... on bond of at least \$1,500.” 8 U.S.C. § 1226(a)(2)(A).
89. 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.
90. If Respondents do not release Petitioner without any conditions, she requests that he be afforded the opportunity to present her case for release in a bond hearing pursuant to 8 U.S.C. § 1226(a)(2)(A).

COUNT FOUR: DECLARATORY RELIEF

91. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
92. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner is not subject to detention under to 8 U.S.C. § 1225(b)(2) and must be released unless Respondents assert authority to detain her under 8 U.S.C. § 1226(a).
93. In the event Respondents assert that Petitioner is detained under 8 U.S.C. § 1226(a), Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner must be released if Respondents are unable to produce a warrant for arrest.
94. In the event Respondents assert that Petitioner is detained under 8 U.S.C. § 1226(a) and produce the requisite warrant, Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner is eligible for release from Respondents' custody pursuant to a bond as set forth at 8 U.S.C. § 1226(a)(1).

COUNT FIVE: VIOLATION OF THE FIFTH AMENDMENT

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

96. 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.
97. Petitioner is not subject to mandatory custody under the Immigration & Nationality Act and is therefore entitled to a bond hearing in which a neutral arbiter may determine the justification for his continued detention under 8 U.S.C. § 1226(a)(2)(A), the denial of which constitutes a violation of the Fifth Amendment's guarantee of due process.
98. Moreover, even if Respondent were subject to 8 U.S.C. § 1225(b)(2)(A), those mandatory detention provisions, absent a bond hearing, would be unconstitutional in violation of the Fifth Amendment's procedural due processes clause as set forth in as applied to her under the standard set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

**COUNT SIX: VIOLATION OF 8 C.F.R. §§ 236.1, 1236.1 AND 1003.19 -
UNLAWFUL DENIAL OF RELEASE ON BOND**

99. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
100. 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.” 62 Fed. Reg. at 10323 (emphasis added).

101. 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.
102. Nonetheless, DHS and EOIR have adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.
103. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.
104. As such, the Court must order the Respondents afford Petitioner a bond hearing to comport with these regulatory requirements.

**COUNT SEVEN: 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**

105. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.
106. 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).

107. 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.*
108. 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).
109. 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).

110. 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). 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 in the community. 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.
111. 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.

112. Regulations also provide that noncitizen 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).
113. 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.

COUNT EIGHT: VIOLATION OF THE FOURTH AMENDMENT

114. As a general proposition, “the Fourth Amendment applies to arrests of illegal aliens.” *United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010).
115. Warrantless searches and seizures “are generally prohibited under the Fourth Amendment unless an exception to the warrant requirement applies.” *United States v. Hayes*, 75 F.4th 925, 927 (8th Cir. 2023).
116. By conducting a warrantless arrest, Respondents violated the Fourth Amendment’s warrant requirement.
117. Respondents had no probable cause to claim any exception to the warrant requirement and thus violated the Fourth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner asks this Court for the following relief:

1. Assume jurisdiction over this matter.
2. Issue an order restraining Respondents from attempting to move Petitioner from the District of Minnesota during the pendency of this Petition.
3. Issue an order requiring Respondents to provide 72-hour notice of any intended movement of Petitioner.
4. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. § 153.
5. Order Petitioner's immediate release, or, alternatively, order Respondents to hold a bond hearing pursuant to 8 U.S.C. § 1226(a) within five days.
6. Declare that Respondents' action is arbitrary and capricious.
7. Declare that Respondents failed to adhere to its regulations.
8. Declare that Petitioner's detention absent a bond hearing violates the Due Process Clause of the Fifth Amendment.
9. Declare that Petitioner's warrantless arrest violates the Fourth Amendment.
10. Declare that Petitioner's warrantless arrest violates 8 U.S.C. § 1357(a)(2).
11. Grant Petitioner reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).
12. Grant all further relief this Court deems just and proper.

DATED: January 28, 2026

Respectfully submitted,

/s/ David Wilson

David Wilson

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Attorney for Petitioner

**Verification by Someone Acting on
Petitioner's Behalf Pursuant to 28 U.S.C. § 2242**

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. I have discussed the events described in this Petition with Petitioner's family and reviewed relevant documents. 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/ David Wilson

Date: January 28, 2026