

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ELIZABETH MUNGUIA RIVERA;
A.E.P.M., a minor child; and I.A.P.M., a
minor child,

Petitioners,

v.

DAVID EASTERWOOD, in his official
capacity as Field Office Director, St. Paul
Field Office, U.S. Immigration and Customs
Enforcement, U.S. Immigration and Customs
Enforcement, TODD LYONS, in his official
capacity as Director of U.S. Immigration and
Customs Enforcement; KRISTI NOEM, in
her official capacity as Secretary of
Homeland Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; and U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT, and PAMELA BONDI, in
her official capacity as Attorney General of
the United States,

Respondents.

Case No. 0:26-cv-01405

**VERIFIED PETITION
FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

1. This case challenges the unlawful arrest and immigration detention of Elizabeth Munguia Rivera and her minor children, A.E.P.M. (14), and I.A.P.M. (8) (the "Petitioners"). Petitioners entered the United States on or about April 21, 2024, and presented to an immigration official at the border. After brief detention, the government found that Petitioners were neither a danger to the community nor a flight risk, and they were released on her own recognizance with a Notice to Appear for ordinary removal proceedings under 8 U.S.C. § 1229. Upon information and belief, Petitioners are eligible to seek adjustment of status pursuant to INA § 245(i) and

therefore may be eligible to apply for lawful permanent resident status. Petitioners and her children are not subject to a final order of removal.

2. Since Petitioners and her children came to the U.S., they have been living peacefully in Minnesota without incident, working, going to school, and engaging with their neighbors in the community. They have all complied with all orders regarding their immigration status.

3. Despite her prior release from immigration custody, on January 30, 2026, Respondents arrested and detained Petitioners and her children. During Ms. Munguia Rivera's regularly scheduled ISAP appointment, the ISAP case manager told her to return the next day with her children. She did so and they were all then arrested and detained. Upon information and belief, Respondents neither possessed nor presented to her a warrant of any kind, judicial or otherwise, to justify their detention.

4. Since the family's arrest, Petitioners has not appeared in ICE's Online Detainee Locator System, and her family has been unable to obtain information regarding her location despite repeated efforts. The family's immigration counsel attempted to locate and contact Petitioners through ERO but was not provided with any official point of contact or facility information. Instead, counsel was directed to place a call to an ICE contractor's personal cell phone number. During that call, counsel requested that the ICE agent disclose Petitioners' location. The agent refused, stating, "I can't tell you that," but indicated that Petitioners and her children were being held in an unidentified hotel.

5. Upon taking Petitioners' case on February 12, 2026, the undersigned counsel immediately attempted to locate and contact Petitioners but has been unsuccessful. Petitioners'

location is not appearing on the ICE Locator system online, it simply says “Call ICE for Details” with a phone number for the Dilley immigration Processing center.

6. Petitioners’ detention is an unlawful deprivation of constitutional due process rights, 4th Amendment rights, and a violation of the Immigration and Nationality Act (“INA”) among other statutes and regulations.

7. Courts recognize that where the location of the petitioner is not known at the time of filing, the district of confinement rule does not apply. *See Rumsfeld v. Padilla*, 542 U.S. 426, 450 n. 18 (2004) (“When . . . a prisoner is held in an undisclosed location by an unknown custodian, it is impossible to apply the immediate custodian and district of confinement rules.”); *Adriana M.Y.M. v. Easterwood*, No. 26-213 (JWB/JFD) 2026 U.S. Dist. LEXIS 13188, *5 (D. Minn. Jan. 25, 2026) (retaining jurisdiction based on the unknown custodian rule and noting its applicability to situations where “the petitioner’s location is unknown at the time of filing—such as when the petitioner is in transit—or where immigration authorities have not disclosed where the petitioner is being detained or by whom, and circumstances have prevented or precluded contact with counsel.”).

8. Venue is also proper in this district because Petitioners was apprehended in Minnesota. As held in *Sue H.*, “habeas jurisdiction attaches at the time of the Petitioners’ apprehension,” further stating that “jurisdiction is not defeated by any subsequent decision by Respondents to transfer Petitioners to another state.” Slip Op. 2, No. 26-cv-0416 (including an order requiring that a habeas petitioner transferred out of state be returned to Minnesota).

PARTIES

9. Petitioners are Mexican nationals who entered the United States on or around April 21, 2024, and have been residing in Burnsville, Minnesota.

10. IAPM is 8 years old and a Mexican national. IAPM is currently being detained alongside his mother. IAPM is prone to panic attacks. Upon information and belief, IAPM has not been provided access to appropriate medical care while in custody, including evaluation or treatment for his panic symptoms.

11. AEPM is 14 years old and a Mexican national. She is currently being detained alongside her mother. AEPM recently underwent foot surgery and has follow-up medical care scheduled in the near future related to that surgery. Upon information and belief, AEPM has not been provided access to necessary medical care while in custody, including post-operative follow-up and any related care.

12. Respondent David Easterwood is sued in his official capacity as Field Office Director, St. Paul Field Office, U.S. Immigration and Customs Enforcement. Respondent David Easterwood is the immediate legal custodian of Petitioners.

13. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioners.

14. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security ("DHS"), the agency tasked with enforcing immigration laws, Secretary Noem is Petitioners' ultimate legal custodian.

15. Respondent Pamela Bondi is sued in her official capacity as Attorney General of the United States. As Attorney General, Respondent Bondi oversees the immigration court system, including the immigration judges who conduct removal proceedings and bond hearings as her designees, and is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). She is legally responsible for administering of Petitioners' removal and bond proceedings, and as such, she is a legal custodian of Petitioners.

JURISDICTION AND VENUE

16. This Court has jurisdiction under the U.S. Constitution. U.S. Const. art. I § 9, cl. 2 (“The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require.”).

17. The Court also has jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (the All Writs Act); and 28 U.S.C. § 2241 (habeas corpus).

18. This Court has additional remedial authority under 28 U.S.C. §§ 2201-02 (the declaratory Judgment Act), to grant injunctive and declaratory relief.

19. Venue is proper in Minnesota, because at the time of filing, the Petitioners’ location and custodian were undisclosed and unknown, making it impossible to apply the immediate custodian and district-of-confinement rules. Courts recognize that where a petitioner is held in an undisclosed location by an unknown custodian, the district of confinement rule does not apply. See *Rumsfeld v. Padilla*, 542 U.S. 426, 450 n.18 (2004); *Adriana M.Y.M. v. Easterwood*, No. 26-213 (JWB/JFD), 2026 U.S. Dist. LEXIS 13188, *5 (D. Minn. Jan. 25, 2026). When asked about the location of Petitioners’ detention, a representative of the Respondents refused to provide that information.

20. Also, Petitioners were arrested within the State of Minnesota, conferring jurisdiction upon this Court. See *Sue H.*, No. 26-cv-416 (D. Minn. Jan. 20, 2026). This Court’s jurisdiction is not divested by any subsequent decision to move Petitioners from the jurisdiction to frustrate efforts to exercise due process rights and obtain habeas relief. *Id.*

21. Venue is proper in the District of Minnesota under 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a

substantial part of the events giving rise to these claims (Petitioners' initial arrest and detention) occurred in this District.

22. Administrative exhaustion is unnecessary because it would be futile: it is Respondents' position that noncitizens in Petitioners' situation are subject to mandatory detention without access to a bond hearing, so she has no meaningful administrative remedies to exhaust.

CAUSES OF ACTION

FIRST CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the US. Constitution Procedural Due Process

23. Petitioners repeat and re-allege the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

24. Even "[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner." *Salerno*, 481 U.S. at 746.

25. Courts use the three-factor *Mathews v. Eldridge* test to determine what process is due to noncitizens challenging detention. *See* 424 U.S. 319 (1976). The *Mathews* factors assess: (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." *Id.* at 335.

26. The first *Mathews* factor weighs heavily in Petitioners' favor. Petitioners have a strong liberty interest, given that they were *previously released from custody on their own recognizance* after presenting at the border.

27. The second *Mathews* factor also weighs in Petitioners' favor. Ms. Petitioners were previously released from detention after being found that they are neither a danger nor a flight risk. Moreover, their recent re-detention was without prior notice and a meaningful opportunity to respond.

28. The third factor also weighs in Petitioners' favor. Their unlawful detention imposes high fiscal and administrative burdens on Respondents, and the public interest is not served by continuing violations of the foundational constitutional rights in this country.

29. Respondents violated procedural due process by re-detaining Petitioners without adequate procedural protection. This Court should order Petitioners' release without any restraints on liberty and prohibit any re-detention without proper pre-deprivation process.

SECOND CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Substantive Due Process

30. Petitioners repeat and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

31. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). And “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

32. Because “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception,” the government may imprison people as a preventive measure only within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

33. Immigration detention is civil detention and must “bear a reasonable relation to the purpose for which the individual was committed” so that it remains “nonpunitive in purpose and effect.” *Zadvydas*, 533 U.S. at 690 (citation modified); *see also Schall v. Martin*, 467 U.S. 253, 264-69 (1984) (finding detention must be a proportional—not excessive—response to a legitimate state objective).

34. Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk pending removal and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690-91.

35. To satisfy substantive due process under the Fifth Amendment, a noncitizen’s detention must be tied to flight risk or a danger to the community. *Zadvydas*, 533 U.S. at 690.

36. Neither purpose is served by Petitioners’ detention. Respondents have not and cannot make any claim that Petitioners presents a flight risk or a danger to the community. Petitioners were previously in their custody and released in May 2024, when they determined that they did *not* present either risk.

37. This is also borne out by the facts. Since Petitioners were released, they have lived a quiet life with no criminal record.

38. Because the government is not detaining Petitioners to serve legitimate interests in protecting against danger or flight risk, her detention violates substantive due process under the Fifth Amendment, and this Court should order her immediate release.

THIRD CLAIM

Violation of the Immigration and Nationality Act and Procedural Due Process

39. Petitioners repeat and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

40. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings. First, 8 U.S.C. § 1226 “authorizes the Government to detain certain noncitizens’ already in the country pending the outcome of removal proceedings.” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Individuals detained under Section 1226(a) are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). However, noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention under Section 1226(c). *See* 8 U.S.C. § 1226(c).

41. Second, the INA provides for brief mandatory detention of noncitizens with final orders of removal. *See* 8 U.S.C. § 1231.

42. Third, the INA also provides for mandatory detention of two groups of noncitizens encountered “at the Nation’s borders and ports of entry.” *Jennings*, 583 U.S. at 288. The first group consists, generally, of those who are subject to expedited removal for being apprehended upon arrival near the border or for being unable to show that they have been physically present in the United States for more than two years until a determination has been made as to whether they have a credible fear of persecution. 8 U.S.C. § 1225(b)(1).

43. The second group subject to mandatory detention consists of anyone alleged to be an “applicant for admission” who is “seeking admission” and whom an “examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A).

44. Respondents appear to claim that Petitioners are mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). But this statute does not apply to Petitioners, who were previously released from custody and have since then resided in this country without issue.

45. To the extent Respondents claim that Petitioners are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), they are incorrect. This statute does not apply to Petitioners.

46. Courts in this District and across the United States have overwhelmingly concluded that 8 U.S.C. § 1226, not § 1225(b)(2)(A), applies to noncitizens like Petitioners. *See, e.g., Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *13–14 (S.D.N.Y. Nov. 26, 2025) (tallying more than 350 cases reaching the same conclusion, and only 12 finding to the contrary). *See also Alex D.J. v. Bondi*, Case No. 26-490 (JWB/EMB) (Jan. 23, 2026); *Ahmed A v. Bondi*, Case No. 25-4776 (JWB/DJF) (Jan. 6, 2026); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1142–48, 1150–52 (D. Minn. 2025); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 968–970 (D. Minn. 2025); *Mayamu K. v. Bondi*, Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819, at *7–8 (D. Minn. Oct. 20, 2025); *R.E. v. Bondi*, No. 0:25-cv-3946-NEB, 2025 WL 3146312 (D. Minn. Nov. 4, 2025); *Herrera Avila v. Bondi*, No. 0:25-cv-3741 (JRT), 2025 WL 2976539 (D. Minn. Oct. 21, 2025).

47. Petitioners’ current detention under 8 U.S.C. § 1225(b)(2)(A), violates both the INA and Petitioners’ procedural due process rights. As this renders their detention unlawful from its inception, she should be released. *See, e.g., Cardin Alvarez v. Rivas*, No. 25-cv-02943, 2025 WL 2898389, *22 (D. Ariz. Oct. 7, 2025), report and recommendation adopted in part, rejected in part on other grounds sub nom.; *Alvarez v. Rivas*, 2025 WL 2899092 (Oct. 10, 2025) (“The appropriate relief for an immigration detainee held in violation of their right to due process

is their immediate release from custody, and to be provided with relief returning them to status quo ante, i.e., the last uncontested status which preceded the pending controversy.”); *Quintero Campos v. Deleon*, No. 25-cv-10099, 2025 WL 3514120, at *2 (S.D.N.Y. Dec. 8, 2025) (collecting cases ordering immediate release); *Maldonado*, 2025 WL 2374411 at *12.

FOURTH CLAIM

Violation of the *Accardi* Doctrine

48. Petitioners repeat and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

49. Under the *Accardi* doctrine, Petitioners have a right to set aside agency actions that violate agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (“If Petitioners can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing”).

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

51. Upon information and belief, Petitioners have received no such custody determination. Under *Accardi*, Respondents’ actions must be set aside.

FIFTH CLAIM
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

52. Petitioners repeat and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

53. 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).

54. As a general matter, 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. 25-cv-03183, 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); *U.S. v. Williams*, No. 19-cr-325, 2020 WL 4228095 (D. Minn. May 13, 2020), report and recommendation adopted, 2020 WL 4226865 (July 23, 2020). 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 Gerstein*, 420 U.S. at 125. 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).

55. 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).

56. Petitioners’ warrantless detention occurred without probable cause that they were 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. 25-cv-3417, 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (collecting cases). At the moment of their seizure, Petitioners: (a) were living at a stable home address and (b) had been in the United States for almost 2 years building a life and ties to the community without issue. Until their detention, Petitioners were appearing for routine immigration proceedings. After being instructed to return to ISAP the following day with her children, and fully aware of the heightened enforcement environment during “Operation Metro Surge,” Ms. Munguia Rivera—despite extreme fear—complied with ICE’s instructions, brought her children as directed, and made no attempt to flee. Her conduct squarely undermines any assertion that there was probable cause to believe she would escape before a warrant could be obtained.

57. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Petitioners. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57; *see* Slip Op. 8–9, *Garrison v. Bondi*, No. 26-cv-00172, (D. Minn. Jan. 15, 2026), ECF No. 6. They have received

no such judicial determination, and we are not aware that the government is seeking such a determination.

58. Petitioners' re-detention after a prior release, without any new showing of probable cause, is also unconstitutional. When the government releases a person from detention, the purpose of their detention has been accomplished. *See Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020) ("It is axiomatic that seizures have purposes. When those purposes are spent, further seizure is unreasonable."). As a result, any probable cause justifying the prior arrest, if any, is extinguished.

59. Under the Fourth Amendment, the government cannot re-arrest someone without changed circumstances that amount to new probable cause. *See Carlson v. Landon*, 342 U.S. 524, 546-47 (1952) (holding that re-arrest for immigration detention required a new warrant after previous release from immigration detention on bail).

60. Respondents' warrantless re-arrest of Petitioners without changed circumstances, and their refusal to provide a prompt (or any) probable cause determination, violated the Fourth Amendment, the INA, and implementing regulations. Thus, this Court should order their release.

REMEDY

61. An available remedy for Respondents' unlawful conduct as outlined in this complaint is for Petitioners to be released.

62. Immigration detention is civil in nature, and as a result Congress must have expressly authorized it by statute, and the detention must be reasonably related to its statutory purpose. *Zadvydas v. Davis*, 533 U.S. 678, 687, 690 (2001) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Detention here serves no statutory purpose; there is no indication that Petitioners' detention was based on any facts that might indicate that Petitioners should be in

custody for any reason. Since § 1225(b)(2) does not apply to noncitizens who are in Petitioners' situation—who have been detained while residing within the United States, as opposed to those who are detained while in the process of physically entering the United States, the law that Respondents are using to detain Petitioners simply does not apply so as to authorize Petitioners' detention. *See Eliseo A.A. v. Olson*, Civ. No. 25-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Mayamu K. v. Bondi*, Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819 (D. Minn. Oct. 20, 2025); *Khalid B.Q. v. Bondi*, Civ. No. 25-4584 (JWB/DJF), Doc. No. 10 (D. Minn. Dec. 18, 2025); *Xuseen A. v. Bondi*, Civ. No. 25-4514 (JWB/DJF), Doc. No. 16 (D. Minn. Dec. 19, 2025); *Vedat C. v. Bondi*, Civ. No. 25-4642 (JWB/DJF), Doc. No. 9 (D. Minn. Dec. 19, 2025).

63. When a habeas petitioner's detention is without legal basis, the typical remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the "typical remedy" for "unlawful executive detention"). Respondents will no doubt argue, as they have in similar cases before this Court, that if the Court rules that Petitioners should have been detained pursuant to § 1226, instead of § 1225, then the remedy is a bond hearing as opposed to outright release. *See, e.g., Ahmed A.* Civ. No. 25-4776, Doc. No. 9. at 9-10. However, this Court rejected this argument, saying that:

[A] bond hearing presupposes lawful detention authority under § 1226. Where that authority has not been invoked or established, ordering a bond hearing would treat the absence of statutory authority as a mere procedural irregularity rather than a substantive defect ... 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.
Id. at Doc. No. 10 at 6.

64. Nor here would § 1226(a) have supported a lawful detention in the first instance. Detention under § 1226(a) would require a warrant issued by the Attorney General. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 961 (D. Minn. 2025). To put this plainly: "absent a warrant a

noncitizen may not be arrested and detained under section 1226(a).” *See also Ahmed M. v. Bondi et al.*, 2026 WL 25627, *3 (D. Minn. Jan. 5, 2026) (quoting *Chogllo Chafila v. Scott*, --- F. Supp. 3d ---, No. 2:25-cv-00437-SDN, 2025 WL 2688541, at *11 (D. Me. Sept. 21, 2025)). Upon information and belief, Respondents had no such warrant.

65. Here, where detention is unlawfully based on 8 U.S.C. 1225(b)(2), which does not apply to Petitioners, release is an appropriate remedy.

REQUEST FOR ORDER TO SHOW CAUSE

61. Within three days, unless good cause for a delay is shown, “[a] court, justice or judge entering a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

The Undersigned Attorneys, on behalf of Petitioners, respectfully requests that the Court issue an Order to Show Cause directing Respondents to file a return within three days of the Court’s order, showing cause, if any, why a writ of habeas corpus should not be granted.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests that this Court:

- (a) Assume jurisdiction over this matter;
- (b) Enjoin Respondents from transferring Petitioners out of the District of Minnesota pending the duration of these proceedings, or transport Petitioners back to Minnesota if she is moved out of state;
- (c) Declare that Petitioners’ arrest and detention violates the Due Process Clause of the Fifth Amendment; the Fourth Amendment; and the INA and implementing regulations; and the *Accardi* doctrine;

- (d) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioners from custody without restraints on her liberty beyond those that existed prior to her unlawful re-detention;
- (e) Order that Respondents cannot re-detain Petitioners without notice and a pre-deprivation hearing before this Court where the government bears the burden of justifying any re-detention by clear and convincing evidence;
- (f) If the Court sees fit to order Petitioners' release, include conditions to ensure Petitioners' safety, including that release be: (1) inside the State of Minnesota; (2) at a safe time and place communicated in advance to counsel; and (3) with all of Petitioners' personal effects in Respondents' possession, such as driver's license, immigration papers, passport, cell phone, and keys;
- (g) Enjoin Respondents from implementing any condition of release, including ICE's "Alternatives to Detention" measures, which include ankle monitors, body-worn GPS, telephonic tracking, or use of the SmartLINK Mobile Application;
- (h) Retain jurisdiction over this matter to decide any future motion for an award of reasonable attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, Local Rule 54.3(a), and on any other basis justified under law; and
- (i) Grant any other and further relief that this Court may deem just and proper.

Date: February 12, 2026

Respectfully Submitted,

/s/ Lyndsey Marcelino Schalkwyk

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

I am submitting this verification on behalf of Petitioners because I am Petitioners' attorney. I have discussed the factual assertions in this petition with Petitioner's family and friends, who are also acting on Petitioners' behalf and who I understand to have personal knowledge of the facts alleged herein. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioners' detention status, are true and correct to the best of my knowledge.

Date: February 12, 2026

/s/ Lyndsey Marcelino Schalkwyk

Lyndsey M Schalkwyk