

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

JOSE GOMEZ VELASQUEZ,

Petitioner,

v.

Pamela Bondi, Attorney General,

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

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

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

Eric Tollefson, Sheriff of Kandiyohi
County, Minnesota

Respondents.

Case No. 0:26 cv-1702

**VERIFIED PETITION FOR
WRIT OF
HABEAS CORPUS**

Expedited Handling Requested

INTRODUCTION

1. Petitioner, Mr. Jose Gomez Velasquez, (“Mr. Gomez Velasquez”), by and through the undersigned attorney hereby files this petition for a writ of habeas corpus and a complaint for declaratory and injunctive relief to require U.S. Immigration and Customs Enforcement (“ICE”) to release Mr. Gomez Velasquez from ICE detention, and in the meantime to enjoin Petitioner’s transfer to a facility outside of the District of Minnesota.

2. Mr. Gomez Velasquez's detention is an unlawful deprivation of his constitutional rights to substantive and procedural due process and a violation of the Immigration and Nationality Act ("INA") among other statutes and regulations.

JURISDICTION AND VENUE

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1361 (federal employee mandamus action); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 5 U.S.C. § 702 (waiver of sovereign immunity); and 28 U.S.C. § 2201 (Declaratory Judgment Act).

4. Federal question jurisdiction exists because Mr. Gomez Velasquez seeks to challenge his custody as a violation of the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

5. 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 the Department of Homeland Security ("DHS"). *Demore v. Kim*, 538 U.S. 510 516-17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-41 (2018); and *Nielsen v. Preap*, 139 S. Ct. 954, 961-63 (2019).

6. This Court has jurisdiction because Mr. Gomez Velasquez was apprehended within the State of Minnesota. Slip. Op. 2, *Sue H.*, No. 26-CV-416 (D. Minn. Jan. 20, 2026). Respondents' subsequent decision to remove Mr. Gomez Velasquez from the jurisdiction to frustrate his efforts to exercise his due process rights and to obtain habeas relief does not divest this Court of jurisdiction. *Id. See Jose V. Easterwood*, No. 26-CV-

597 (DSD/LIB), 2026 U.S. Dist. LEXIS 15375 at *3 (D. Minn. Jan. 28, 2026); *Jose A. v. Noem*, No. 26-CV-480 (JMB/ECW), 2026 WL 172524, at *2 (D. Minn. Jan. 22, 2026).

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2) and (e)(1)(A)-(B) because Respondents are employees, officers, and agencies of the United States, because a Respondent resides in this District, and because a substantial part of the events or omissions giving rise to the claims occurred in this District. Petitioner is a resident of Minnesota, was detained within the District of Minnesota, and on information and belief, remains detained within the District of Minnesota.

PARTIES

8. Petitioner is a citizen of Guatemala and a resident of St. Paul, Minnesota, who is, upon information and belief, currently being held at the Kandiyohi County Jail in Willmar, Minnesota. Petitioner is under the direct control of the respondents and has no scheduled release date.

9. 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. 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 Mr. Gomez Velasquez.

10. 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 8 U.S.C. § 1103(a), routinely transacts business in the District of Minnesota, supervises the Fort Snelling ICE

Field Office, and is legally responsible for pursuing Petitioner's detention and removal. As such, Respondent Noem is a legal custodian of Mr. Gomez Velasquez.

11. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Petitioner's detention.

12. Respondent David Easterwood is being sued in his official capacity as the Acting Field Office Director for the Fort Snelling Field Office for ICE within DHS. In that capacity, Field Director Easterwood has supervisory authority over the ICE agents responsible for detaining Mr. Gomez Velasquez.

13. Respondent Sheriff Eric Tollefson is being sued in his official capacity as the Sheriff responsible for the Kandiyohi County Jail. Because Petitioner is, on information and belief, detained in the Kandiyohi County Jail, Sheriff Tollefson has immediate day-to-day control over Petitioner.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

14. Petitioner is a resident of St. Paul, Minnesota and a citizen of Guatemala. He has lived in the United States for more than six years.

15. Mr. Gomez Velasquez entered the United States on or about January 8, 2020. On information and belief, Mr. Gomez Velasquez presented at the border, was detained and then released into the United States.

16. Upon information and belief, Mr. Gomez Velasquez is the beneficiary of a bona fide determination of his pending application for U-status (commonly referred to as

a “U-visa”). Due to a backlog with the statutory cap, Petitioner remains on the waitlist to receive his official approval notice of his pending application.

17. DHS has the authority under INA § 214(p)(6) to make a determination whether pending U petitions meet the bona fide application requirements and, after review of risks to national security and public safety and other factors, merit a favorable exercise of discretion necessary to grant “deferred action” of the U applicant while their case remains on the waitlist for final adjudication. See U.S. Citizenship and Immigration Services. Vol. 3 USCIC-PM Part C, Ch. 5 Bona Fide Determination Process (Dec. 22, 2025) (<https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5>).

18. Upon information and belief, DHS reviewed Petitioner’s application for U-status. DHS determined that his application meets the bona fide application requirements. DHS determined that Petitioner is not a risk to national security and public safety. DHS granted Petitioner a favorable exercise of discretion and granted deferred action. See 8 C.F.R. § 236.21(c)(1) (“Deferred action is an exercise of the Secretary’s broad authority to establish national immigration enforcement policies and priorities under 6 U.S.C. 202(5) and section 103 of the Act. It is a form of enforcement discretion not to pursue the removal of certain aliens for a limited period in the interest of ordering enforcement priorities in light of limitations on available resources, taking into account humanitarian considerations and administrative convenience. It furthers the administrability of the complex immigration system by permitting the Secretary to focus enforcement on higher priority targets.”).

19. On information and belief, Mr. Gomez Velasquez also has a pending application for asylum and other relief. He is not subject to a final order of removal.

20. On or about January 28, 2026, while in Minneapolis, Minnesota, Mr. Gomez Velasquez was arrested by multiple armed individuals, wearing masks and tactical vests. The individuals, presumed to be ICE agents, did not present a warrant, did not identify themselves, and did not explain why they were arresting Mr. Gomez Velasquez. They simply arrested him, placed him in an unmarked car, and drove away.

21. Upon information and belief, these agents did not have a warrant, reasonable suspicion or probable cause of criminal activity to justify his detention, and Petitioner's arrest was the result of racial profiling.

22. Upon information and belief, given the volume of people who were being detained by ICE in Minnesota, Respondents and/or their agents have failed or refused to comply with both orders by federal judges of this Court enjoining transfers of detained immigrants as well as their own internal regulations governing processing, documentation, and transportation of detained individuals. Since January 1, 2026, for example, ICE has violated at least "96 court orders ... in 74 cases." *Juan T.R. v. Noem, et al.*, Case No. 26-CV-0107 (PSJ/DLM). At least in some instances, ICE agents have admitted to transporting people by airplane before processing them for detention and without allowing attorneys to visit them. The ICE online detainee locator has become an increasingly unreliable way to locate detained immigrants, and it is becoming increasingly common that Respondents lose track of who is in their custody.

23. Upon information and belief, Mr. Gomez Velasquez is currently detained at the Kandiyohi County Jail, in Willmar, Minnesota. Earlier today, Mr. Gomez Velasquez's son received a call from Mr. Gomez Velasquez from the Kandiyohi County Jail.

24. As of approximately 8:21 PM on March 2, 2026, as shown in the following screen capture, when Mr. Gomez Velasquez's name or A-number and country of origin are entered into the ICE online detainee locator, the locator shows zero matching results:

Search Results: 0

Your search has returned zero (0) matching records. Please re-check the search terms you entered to ensure they are correct and try your query again. Please remember the system does not provide information for detainees under the age of 18.

If you conducted a name-based search, please remember that only exact matches to the name you entered will be returned. You may want to try searching any name or spelling variants used by the detainee.

If you conducted an A-Number search you may want to try conducting a name-based search instead.

If you are unable to find the detainee using the Online Detainee Locator System, please contact your [local field office](#).

For more information on the Missing Migrant Program please visit [link](#).

[BACK TO SEARCH >](#)

25. Detaining Mr. Gomez Velasquez is an expensive and pointless endeavor. Mr. Gomez Velasquez respectfully seeks the opportunity to return home and to continue following the legal processes set up by Congress and DHS for noncitizens to seek status in this country.

26. Pending the adjudication of this Petition, Mr. Gomez Velasquez further seeks an order restraining the Respondents from transferring Petitioner to a location outside of the State of Minnesota, so that the jurisdiction of this Court is not impeded, and so that Petitioner remains accessible to legal counsel and loved ones.

STANDARD OF LAW

27. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The “Great Writ” has been referred to by US Courts as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). A petitioner may seek a writ of habeas corpus when their custody violates the US Constitution or a federal law. 28 U.S.C. § 22441(c)(3), which should be granted if the petitioner meets their burden of proof—a preponderance of evidence. *Aditya W. H. v. Trump*, 782 F. Supp. 3d 691, 703 (D. Minn. 2025).

28. Detained noncitizens petitioning under 28 U.S.C. § 2241 face no statutory exhaustion requirements. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025). Nor is a judicially imposed prudential exhaustion requirement appropriate where, as here: time is of the essence, facts are largely undisputed, and the parties’ disagreement is based on a legal conclusion. *Id.* at 967-68.

29. Other courts in the Eighth Circuit have similarly declined to require prudential exhaustion when evaluating a detained noncitizen’s habeas corpus petition under similar circumstances—to address a question of statutory interpretation that does not require developing a factual record, and where the agency is demonstrably unlikely to reverse its course. *Giron Reyes v. Lyons*, 2025 WL 2712427 at *3 (N.D. Iowa Sept. 23, 2025).

30. “[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).

31. In July of 2025, DHS began ignoring the decades-long consensus of how 8 U.S.C. § 1225(b)(2) should be interpreted, which the Board of Immigration Appeals (“BIA”) articulated in a subsequent ruling. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025). Respondents suddenly claim that individuals who have been residing within the United States—sometimes for decades—are somehow metaphorically “seeking admission,” simply because they may have pending claims for asylum or other forms of status.

32. However, this Court and the majority around the country have made clear that 8 U.S.C. § 1225(b)(2) only authorizes detention for noncitizens who are at the border seeking physical entry at the time of detention, not those whose detention is discretionary and governed by 8 U.S.C. § 1226(a). *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).

33. Here, Petitioner was apprehended within the United States, not at a border while seeking entry. Moreover, when Petitioner entered the country, over six years ago, he

was taken into, then released from immigration custody. Nothing in the alleged facts indicates there is any basis for re-detaining Petitioner.

34. Respondents wrongly assert 8 U.S.C. § 1225(b)(2) as a basis for detaining Mr. Gomez Velasquez without a hearing, when instead any detention could only be pursuant to 8 U.S.C. 1226(a), which would require additional procedural protections, including a warrant and which here the Respondents are not purporting to invoke.

CLAIMS FOR RELIEF

FIRST CLAIM

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

35. Petitioner realleges and incorporates by reference the allegations contained above.

36. 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. *See 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.

37. 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)).

38. 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).

39. 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.

40. 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.

41. Neither purpose is served by Mr. Gomez Velasquez’s detention. There is no basis to conclude that Mr. Gomez Velasquez presents a flight risk or a danger to the community. To the contrary, DHS determined that Mr. Gomez Velasquez did not present a risk to public safety when it granted him deferred action. There is no indication that Respondents have reevaluated that determination, or that they would have cause to make such a reevaluation. Indeed, with the grant of deferred action, Mr. Gomez Velasquez has even stronger incentive to present for any immigration proceedings, as he waits to receive his U-visa and pursues his pending asylum application.

42. Because the government is not detaining Mr. Gomez Velasquez to serve legitimate interests in protecting against danger or flight risk, his detention violates

substantive due process under the Fifth Amendment, and this Court should order immediate release.

SECOND CLAIM

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

43. Mr. Gomez Velasquez repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

44. The Fifth Amendment's Due Process Clause forbids the government to “depriv[e]” any “person . . . of . . . liberty . . . without due process of law.” U.S. CONST. Amend V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690. Thus, 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.

45. Federal courts use the three-part test in *Mathews v. Eldridge* to determine whether civil detention violates a detainee’s due process rights. 424 U.S. 319 (1976). The elements of this test are: (1) the private interest that the official action affects; (2) the risk that the procedures used will result in an erroneous deprivation of the private interest, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest in following the existing procedures, both in achieving their objectives and in the potential burdens of an alternate procedure. *Id.* at 335.

46. Here, all three factors favor Petitioner.

47. First, Mr. Gomez Velasquez has a significant private interest at stake. A person's interest in freedom from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004); see also *Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491 ("Freedom 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."). Mr. Gomez Velasquez is wrongfully confined, a direct attack on Petitioner's liberty interests.

48. Second, Mr. Gomez Velasquez will continue to be deprived of this interest if the current procedure (detaining Mr. Gomez Velasquez without a legal basis) is followed. There is no rational explanation for detaining Mr. Gomez Velasquez. Respondents' purported basis for detaining people who, like Petitioner, were arrested while residing in the United States, under 8 U.S.C. 1225(b)(2) has been rejected time and time again in this court. See *Ahmed A v. Bondi*, Case No. 25-4776 (JWB/DJF) (January 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).

49. Lastly, the Government has no legitimate interest in refusing to follow its own rules. Mr. Gomez Velasquez petitioned USCIS for lawful status based on his experience as a victim of a crime and his assistance to law enforcement in the investigation of that crime. Respondents, through designated authority in USCIS, reviewed his petition,

reviewed his criminal and other discretionary history, and determined that his application meets the bona fide requirements and merits favorable discretion in granting him lawful status. As of August 8, 2023, it has been ICE's policy to "refrain from taking enforcement action against the applicant or petitioner until USCIS makes a... negative bona fide determination ...for pending U visa petitions."¹ Upon information and belief, Mr. Gomez Velasquez has received no documentation or notice from Respondents as to the change in determination (if any exist) to his pending application.

50. Releasing Petitioner would in fact *save* the government the resources and expense of continued imprisonment. Petitioner's 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.

51. Respondents violated procedural due process by detaining Mr. Gomez Velasquez without adequate procedural protections. This Court should order Mr. Gomez Velasquez's release without any restraints on his liberty and prohibit any re-detention without proper pre-deprivation process.

THIRD CLAIM

Violation of the Immigration and Nationality Act,

52. 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

¹ Available at: <https://www.ice.gov/factsheets/using-victim-centered-approach-with-victims>.

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).

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

54. 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).

55. 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).

56. Respondents may claim that Mr. Gomez Velasquez is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). But this statute does not apply to Mr. Gomez Velasquez, who entered the U.S. over six years ago and was apprehended while residing in Minnesota.

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

58. 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 Mr. Gomez Velasquez. *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).

59. Mr. Gomez Velasquez’s current detention under 8 U.S.C. § 1225(b)(2)(A), violates INA.

FOURTH 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

60. Mr. Gomez Velasquez repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

61. 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).

62. 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).

63. 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).

64. Mr. Gomez Velasquez’s warrantless detention occurred without probable cause that he was 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 his seizure, Mr. Gomez Velasquez: (a) was living at a stable home address and (b) had been in the United States for almost 27 years building a life and ties to his community without issue. Until his detention, Mr. Gomez Velasquez, upon information and belief, when he was arrested, despite extreme fear and aggression, he fully complied with the ICE officers and did not attempt to flee. His actions contradict any assertion that there was probable cause that he was likely to escape before a warrant could be obtained.

65. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Mr. Gomez Velasquez. *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. He has received no such judicial determination and we are not aware that the government is seeking such a determination.

66. Mr. Gomez Velasquez’s 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.

67. 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).

68. Respondents’ warrantless re-arrest of Mr. Gomez Velasquez 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 his release.

FIFTH CLAIM

Violation of the Administrative Procedure Act, 5 U.S.C. § 706

69. Mr. Gomez Velasquez re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

70. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

71. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

72. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens could properly be detained under § 1226(a), but would then be eligible for release on bond unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

73. Nonetheless, the Board has adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.

74. Respondents through its recent administrative decision failed to articulate any reasoned explanations for new interpretation of the Act. The Board's decision represents a change in the agencies' policies and positions that negates the plain language of the Act, the will of Congress, and decades of administrative precedent.

75. The application of § 1225(b)(2) to Mr. Gomez Velasquez is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

REMEDY

76. 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").

77. 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 Petitioner's detention was based on any facts that might justify holding Petitioner in custody.

78. Since § 1225(b)(2) does not apply to noncitizens who are in Petitioner's 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 Petitioner simply does not authorize Petitioner's 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).

79. Respondents will no doubt argue, as they have in similar cases before this Court, that if the Court rules that Petitioner 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.

80. Nor does § 1226(a) provide a lawful basis for Petitioner's current detention. 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)).

81. This Court should similarly reject Respondents' argument and order immediate release as the appropriate remedy in this case.² As Judge Eric C. Tostrud recently explained in a related case, "[s]ection 1226 provides that '[o]n a warrant issued by the Attorney General, an alien may be arrested and detained.'" *See Ahmed M. v. Bondi et al.*, No. 25-CV-4711 (ECT/SGE), 2026 WL 25627, at *7 (D. Minn. Jan. 5, 2026). As Judge Tostrud correctly concluded, the issuance of a warrant is a necessary prerequisite to even discretionary detention under § 1226(a). *See id.* In *Ahmed M.*, like here, the petitioner was rearrested without any warrant. Thus, *Ahmed M.*'s detention was unlawful and release was the appropriate remedy, rather than continued illegal detention and a subsequent bond hearing. *See also Juan S.R. v. Bondi*, No. 26-cv-05 (PJS/LIB) (Order, January 12, 2026) (holding the same).

² While Petitioner maintains that his immediate release is the appropriate legal remedy for his unlawful detention, should this Court disagree, Petitioner maintains and renews his request for a bond hearing in the alternative.

82. Petitioner's detention is similarly unlawful. Petitioner was and remains detained based on an incorrect, atextual application of 8 U.S.C. § 1225. Nor was there any warrant to justify Petitioner's detention under 8 U.S.C. § 1226. Release from this unlawful detention is the appropriate remedy here.

REQUEST FOR ORDER TO SHOW CAUSE

83. 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.

84. Petitioner 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.

85. Petitioner respectfully requests that an Order to Show Cause directs Respondents, should they offer a warrant in this case, to provide sufficient details to establish the validity of this warrant, such as: (1) the name, title, training, and qualifications of the officer who issued the warrant; (2) the time and place at which the warrant was issued; (3) the evidence the issuing officer relied upon in making his determination that an arrest was warranted in this case, including any existing Notice to Appear; (4) the name, title, training and qualifications of the agent who served the warrant upon Petitioner; (5) the time, place, and manner by which the warrant was served upon Petitioner; and (6)

whether the warrant was created specifically in response to or in anticipation of this habeas corpus petition.

PRAYER FOR RELIEF

WHEREFORE, Mr. Gomez Velasquez prays that this Court grant the following relief;

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Respondents from transferring Petitioner out of the District of Minnesota pending the duration of these proceedings, or transport Petitioner back to Minnesota if he is moved out of state;
- (3) Order Respondents to show cause as to why Petitioner should not be released immediately, without conditions, or in the alternative afforded a bond hearing;
- (4) Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;
- (5) If the Court sees fit to order Petitioner's release, include conditions to ensure Petitioner's safety, including that release be:
 - (a) Inside the State of Minnesota;
 - (b) At a safe time and place communicated in advance to counsel; and
 - (c) With all of Petitioner's personal effects in Respondents' possession, such as driver's license, immigration papers, passport, cell phone, and keys;

- (6) 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;
- (7) 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
- (8) Grant any other and further relief that this Court may deem just and proper.

Date: March 3, 2026

Respectfully Submitted,

/s/ Lyndsey Marcelino Schalkwyk

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Pro Bono Attorneys 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. My investigators and I have discussed the factual assertions in this petition with Petitioner's son, who is also acting on Petitioner's 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 Petitioner's detention status, are true and correct to the best of my knowledge.

Date: March 2, 2026

/s/ Lyndsey Marcelino Schalkwyk
Lyndsey Marcelino Schalkwyk