

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

**JOSE HUMBERTO GONZALEZ
HERNANDEZ,**

Petitioner,

vs.

**PAMELA JO BONDI, *in her official capacity
as Attorney General of the United States,***

**KRISTI NOEM, *in her official capacity as
Secretary of the Department of Homeland
Security,***

**TODD LYONS, *in his official capacity as
Acting Director of the United States
Immigration and Customs Enforcement,***

**DAVID EASTERWOOD, *in his official
capacity as Acting Director, Saint Paul Field
Office, U.S. Immigration and Customs
Enforcement,***

**ERIC TOLLEFSON, *in his official capacity
as Sheriff of Kandiyohi County;***

Respondent.

Case no. 0:26-cv-1738

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Jose Humberto Gonzalez Hernandez (“Petitioner” or “Gonzalez Hernandez”), by and through his undersigned counsel seeks emergency relief on his Verified Petition for Writ of Habeas Corpus (the “Petition”) and further states as follows:

2. On an emergency basis, Mr. Gonzalez Hernandez requests that the Court declare that his current detention violates the United States Constitution and statutory laws and order his immediate release.

3. Mr. Gonzalez Hernandez entered the United States from Mexico in February of 2023 without being inspected, admitted, or paroled by an immigration officer.

4. Since his arrival, Mr. Gonzalez Hernandez has established a stable and productive life in Minnesota. Before his unlawful detention, he resided at 1645 Marion Street, St. Paul, Minnesota, with his aunt and uncle.

5. Mr. Gonzalez Hernandez is a hardworking individual who has remained gainfully employed in the construction industry. He specialized in residential fencing throughout the St. Paul metropolitan area, demonstrating a consistent work ethic and a commitment to providing for himself while contributing to the local community.

6. On January 1, 2026, shortly after purchasing a money order to pay his rent, U.S. Immigration and Customs Enforcement (“ICE”) agents captured him, without a warrant, and immediately moved him against his will to the Kandiyohi County Jail in Wilmar, Minnesota.

7. Mr. Gonzalez Hernandez’s current detention is unlawful for five reasons.

8. *First*, the government has no legitimate interest in detaining Mr. Gonzalez Hernandez when he is neither a flight risk nor a danger—the only two constitutionally permissible reasons for immigration detention. Mr. Gonzalez Hernandez’s history in the United States demonstrates a lack of dangerousness as he has no criminal record and has been an industrious, law-abiding member of the St. Paul community, working in residential construction and fencing. Accordingly, Mr. Gonzalez Hernandez’s detention violates his substantive due process rights, requiring his immediate release.

9. *Second*, 8 U.S.C. § 1225(b)(2)(A) does not authorize Respondents to detain Mr. Gonzalez Hernandez. This District has repeatedly ruled that § 1225(b)(2)(A) applies to applicants “seeking admission,” not to individuals like Mr. Gonzalez Hernandez who have been living in the

United States for years. *See, e.g., Mahad S. v. Noem*, No. 26-CV-476 (JMB/JFD), 2026 WL 177860, at *2 (D. Minn. Jan. 22, 2026); *Ahmed M. v. Bondi*, No. 25-CV-4711 (ECT/SGE), 2026 WL 25627, at *2 (D. Minn. Jan. 5, 2026) (collecting cases). Because Mr. Gonzalez Hernandez was not detained at the border in 2023, but was instead arrested years later during a routine errand in St. Paul, Respondents cannot retroactively classify him as an “applicant for admission” or subject him to expedited-removal detention standards. Mr. Gonzalez Hernandez’s current detention is unlawful from its inception, in violation of the Immigration and Nationality Act (“INA”) and his procedural due process rights.

10. *Third*, Mr. Gonzalez Hernandez’s arrest, absent changed circumstances, violates the Administrative Procedures Act (“APA”).

11. *Fourth*, in balancing the factors set out in *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976), the Court should rule that Respondents’ detention of Mr. Gonzalez Hernandez violates his Fifth Amendment rights to procedural due process of law.

12. *Fifth*, Mr. Gonzalez Hernandez’s warrantless arrest violates his Fourth Amendment rights, as well as statute and regulation, similarly mandating his release. *Ahmed M.*, 2026 WL 25627, at *3 (“[I]t follows that absent a warrant a noncitizen may not be arrested and detained under section 1226(a).”) (citation omitted) (emphasis in original)).

FACTUAL BACKGROUND

13. Petitioner, Mr. Gonzalez Hernandez, is a citizen of Mexico who has resided continuously in the United States for approximately three years.

14. In February 2023, Mr. Gonzalez Hernandez entered the United States from Mexico without inspection.

15. Unlike individuals who are apprehended and released at the border under specific conditions, Mr. Gonzalez Hernandez was never encountered, arrested, or processed by the Department of Homeland Security (“DHS”) at the time of his entry.

16. For the past three years, Mr. Gonzalez Hernandez has lived peacefully and productively in the St. Paul, Minnesota community, maintaining a stable residence and participating in the local workforce.

17. Until his recent arrest on January 1, 2026, the government had never deemed Mr. Gonzalez Hernandez a priority for enforcement or detention, nor had it ever alleged that he posed a flight risk or danger to the community.

18. Approximately six months prior to his 2023 entry, Mr. Gonzalez Hernandez attempted to enter the United States near Eagle Pass, Texas.

19. During that encounter, he was apprehended by border officials who processed him by taking his fingerprints. While Mr. Gonzalez Hernandez does not recall signing any official documents at that time, he was promptly returned to Mexico.

20. Since his 2023 entry, Mr. Gonzalez Hernandez has resided continuously and peaceably in the St. Paul, Minnesota community for approximately three years.

21. On the morning of January 1, 2026, at approximately 10:00 a.m., Mr. Gonzalez Hernandez was a passenger in a vehicle driven by his uncle. The two were traveling to a local market in St. Paul, a store catering to the Mexican community, to obtain a money order for their monthly rent. While at the location, community members alerted them that immigration officials were patrolling the immediate vicinity.

22. Upon departing the store, Mr. Gonzalez Hernandez and his uncle observed a vehicle that appeared to be conducting prolonged surveillance. The vehicle followed them for

approximately five minutes through multiple intersections and traffic lights. Believing the vehicle was operated by undercover law enforcement, and seeking to comply with any potential police action, the driver proactively pulled into a gasoline station to address the situation.

23. The moment the vehicle came to a stop, it was surrounded by four unmarked law enforcement vehicles, which blocked all paths of egress. Officers immediately approached and ordered the occupants to open the doors. Mr. Gonzalez Hernandez was then forcibly removed and placed under arrest. At no point during the encounter did the officers identify a legal basis for the stop, nor did they present a judicial warrant for Mr. Gonzalez Hernandez's arrest.

24. Critically, the officers did not even ask for the Petitioner's name, identity, or immigration status prior to the arrest. The seizure was conducted without any preliminary questioning or consensual encounter. Instead, the officers immediately proceeded to a warrantless search of Mr. Gonzalez Hernandez's person, seizing his cellular phone, his pockets' contents, and his wallet. This arrest was not based on individualized suspicion of a crime, but appears to have been an arbitrary seizure.

25. Following this unlawful arrest, Mr. Gonzalez Hernandez was transported to and booked into the Kandiyohi county jail, where he remains in custody.

26. When ICE arrested Mr. Gonzalez Hernandez, he was not actively seeking admission into the United States, because he was not presenting himself at a port of entry, submitting to an inspection before DHS, or otherwise actively appearing in any admission proceedings. ICE arrested Mr. Gonzalez Hernandez before he started he could pay his rent.

27. Mr. Gonzalez Hernandez has no documented criminal or arrest history in the United States.

JURISDICTION AND VENUE

28. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 (habeas corpus), and art. I, § 9, cl. 2 of the U.S. Constitution (“Suspension Clause”).

29. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, the Suspension Clause, and the Court’s inherent equitable powers.

30. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (“[T]he primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases.”). Because Mr. Gonzalez Hernandez seeks to challenge his custody as a violation of the United States Constitution, laws, or treaties of the United States, jurisdiction is proper in this Court.

31. Venue is proper in this District because a substantial part of the events or omissions giving rise to this Petition occurred in this District, including: (1) Mr. Gonzalez Hernandez was unlawfully arrested by one or more of DHS’s agents in this District; (2) Mr. Gonzalez Hernandez was detained at a gas station in St. Paul, which is located in this District; (3) Mr. Gonzalez Hernandez is currently physically detained within the jurisdiction of this District at Kandiyohi County Jail; and (4) the decisions regarding his continued detention and the denial of his liberty are being made by Respondents who oversee operations within this District

32. Venue is also proper in this District because Respondents are officers or employees of the United States or a federal agency, who acted in their official capacity or under the color of legal authority during all relevant times, and: (1) at least one of the Respondents resides in this District; and (2) a substantial part of the events or omissions giving rise to this Petition occurred in this District. 28 U.S.C. § 1391(e)(1).

PARTIES

33. Mr. Gonzalez Hernandez has lived in the United States for approximately three years. Prior to his detention on or about January 1, 2026, he was residing in St. Paul, Minnesota. Mr. Gonzalez Hernandez is currently detained at the Kandiyohi County Jail.

34. Respondent Pamela Jo Bondi is sued in her official capacity as the U.S. Attorney General. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

35. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As head of the U.S. Department of Homeland Security, the federal agency tasked with enforcing immigration laws, Secretary Noem is Mr. Gonzalez Hernandez's ultimate legal custodian.

36. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. As ICE's Acting Director, Respondent Lyons is a legal custodian of Mr. Gonzalez Hernandez.

37. Respondent David Easterwood is sued in his official capacity as Field Office Director of the Saint Paul Field Office, Enforcement and Removal Operations, ICE. In that capacity, Field Office Director Easterwood has supervisory authority over the ICE agents responsible for detaining Mr. Gonzalez Hernandez.

38. Respondent Eric Tollefson is sued in his official capacity as Sheriff of Kandiyohi County. As Sheriff of Kandiyohi County, Respondent Tollefson oversees the Kandiyohi County Jail, the facility where Mr. Gonzalez Hernandez is presently detained and is therefore one of his legal custodians.

REQUIREMENTS OF 28 U.S.C. § 2243

39. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless Mr. Gonzalez Hernandez is not entitled to relief. 28 U.S.C. §

2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

40. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . 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) (citation omitted). “The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time.” *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978).

41. Due to the nature of this proceeding, Mr. Gonzalez Hernandez asks this Court to expedite proceedings in this case as necessary and practicable for justice.

EXHAUSTION OF LEGAL REMEDIES

42. Detained immigrants petitioning under 28 U.S.C. § 2241 et seq. 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; *see also Giron Reyes v. Lyons*, 801 F. Supp. 3d 797, 803 (N.D. Iowa 2025). Further administrative exhaustion is unnecessary in this case as it would be futile. *See, e.g., Eliseo A.A. v. Olson*, No. 25-3381 (JWB/DJF), 2025 WL 2886729, at *7 (D. Minn. Oct. 8, 2025).

43. It would be futile for Mr. Gonzalez Hernandez to seek a custody redetermination hearing before an Immigration Judge because of the Board of Immigration Appeals’ (“BIA”) recent decision holding that anyone who has entered the United States without inspection is now considered an “application for admission” who is “seeking admission” and therefore subject to the INA’s mandatory detention provision under 8 U.S.C. § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025); *see also Eliseo A.A.*, 2025 WL 2886729, at *7 (“[F]urther administrative review would be futile in light of the BIA’s recent decision in *Matter of*

Yajure Hurtado Where the agency has already adopted a definitive position, exhaustion serves no purpose.” (citation omitted)).

44. Additionally, the Immigration Judge does not have jurisdiction to review Mr. Gonzalez Hernandez’s claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies related to that claim. *See, e.g., Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (BIA 2020); *Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992). *Cf. Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (“[E]xhaustion would be a futile exercise because the agency does not have jurisdiction to review [the] claim.”).

LEGAL FRAMEWORK

45. The INA prescribes essentially three forms of detention for noncitizens in removal proceedings.

46. First, noncitizens detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a custody-redetermination hearing—also known as a bond hearing—unless they have been arrested, charged with, or convicted of certain crimes that subject them to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (providing that Immigration Judges may review custody determinations made by DHS), 1236.1(d) (providing the same).

47. Second, the INA provides for mandatory detention of noncitizens who are subject to expedited removal under 8 U.S.C. § 1225(b)(1), in addition to other recent arrivals who are deemed to be “seeking admission” to the United States under 8 U.S.C. § 1225(b)(2)(A).

48. Third, the INA authorizes detention of noncitizens who have received a final order of removal. 8 U.S.C. § 1231(a).

49. The detention provisions of the INA at 8 U.S.C. §§ 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 of the INA was most recently amended last year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

50. Following enactment of the IIRIRA, the U.S. Department of Justice’s Executive Office for Immigration Review (“EOIR”) drafted new regulations explaining that, in general, individuals who entered the United States without inspection were not considered detained pursuant to § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.”).

51. In the decades that followed the enactment of the IIRIRA, most noncitizens who entered the United States without inspection and who were thereafter detained and placed in standard removal proceedings under 8 U.S.C. § 1229a were considered eligible to seek release on bond and received bond hearings before an Immigration Judge unless their criminal history rendered them statutorily ineligible under 8 U.S.C. § 1226(c). This practice was consistent with many decades of prior practice, in which noncitizens who entered the United States, even without inspection, were entitled to a custody re-determination hearing before an Immigration Judge. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C.

§ 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that 8 U.S.C. § 1226(a) simply “restates” the detention authority previously found at 8 U.S.C. § 1252(a)).

52. In July 2025, however, DHS contravened this longstanding legal framework by beginning to assert that all individuals who entered the country without inspection should be considered to be “seeking admission” and therefore subject to the mandatory-detention provision of 8 U.S.C. § 1225(b)(2)(A). *See* U.S. Immigration and Customs Enforcement, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

53. On September 5, 2025, the BIA issued a precedential decision adopting DHS’s new interpretation of the detention provisions of the INA, departing from the plain language of the text of the INA, federal precedent, and long-standing regulations. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

54. In recent months, however, the overwhelming majority of federal courts to consider the issue have rejected Respondents’ new interpretation of the custody statutes and have instead found that § 1226—not § 1225(b)(2)(A)—authorizes detention of noncitizens who entered without inspection and who were later apprehended in the interior of the country. *Quintero Campos v. Deleon*, No. 25-CV-10099 (LJL), 2025 WL 3514120, at *2 (S.D.N.Y. Dec. 8, 2025) (collecting cases ordering immediate release from custody).

55. As discussed *supra*, the detention provisions at issue in this case were enacted as part of the IIRIRA in 1996. Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. After the enactment of the IIRIRA, EOIR issued regulations clarifying that

individuals who entered the country without inspection were not considered to be detained under § 1225(b)(2)(A), but rather under § 1226(a). *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

56. In 1997, after Congress amended the INA through the IIRIRA, EOIR and USCIS's predecessor agency, Immigration and Naturalization Services, issued an interim rule guiding interpretation and application of the IIRIRA. Specifically, under the heading "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. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before Immigration Judges under 8 U.S.C. § 1226 and its implementing regulations.

57. The overall statutory framework of the INA also clearly supports that § 1226 applies to individuals who have not been admitted and who entered without inspection. In 2025, Congress added new mandatory-detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) (codified in relevant part at 8 U.S.C. § 1226(c)(1)(E)).

58. By specifically referencing inadmissibility for entry without inspection as falling within 8 U.S.C. § 1182(a)(6)(A), Congress clearly expressed its will that such individuals are covered by § 1226(a) if they do not have the sort of criminal history identified in the Laken Riley Act. Accordingly, § 1226 plainly applies to noncitizens who entered without inspection and are later charged as inadmissible within the interior of the country, including those who never received an admission or parole.

59. The Supreme Court has explained that 8 U.S.C. § 1225(b) “applies primarily to aliens seeking entry into the United States,” and is generally imposed “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, 297 (2018). In contrast, § 1226 “authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings.” *Id.* at 289 (emphasis added).

60. Further, § 1225(b)(2) specifically applies only to those “seeking admission,” and the definitions provided at the implementing regulations state that an “[a]rriving alien” is one who is “coming or attempting to come into the United States at a port-of-entry.” 8 C.F.R. § 1.2. The use of the present progressive tense would exclude noncitizens like Mr. Gonzalez Hernandez who are initially apprehended in the interior of the country years after they had entered the country, as they cannot reasonably be considered to be actively “seeking admission” or “coming . . . into the United States” after years spent building a life here, as is the case for Mr. Gonzalez Hernandez. *Id.*; see *Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025) (citing the use of the present and present-progressive tenses to conclude that 8 U.S.C. § 1225(b)(2) does not apply to individuals apprehended in the interior); see also *Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (interpreting the language “is arriving” in 8 U.S.C. § 235(b)(1)(A)(i) and concluding that “[t]he use of the present progressive, like use of the present participle, denotes an ongoing process.”).

61. In light of the foregoing, Mr. Gonzalez Hernandez’s detention is both statutorily unauthorized and constitutionally infirm. Having established a stable and productive life in St. Paul for three years, he cannot be categorized as an “arriving alien” or an individual “seeking admission” under § 1225(b)(2).

62. Furthermore, because his arrest was conducted without a warrant, without reasonable suspicion, and without a basic inquiry into his identity, his ongoing confinement constitutes an arbitrary deprivation of liberty. Because Mr. Gonzalez Hernandez is neither a danger to the community nor a flight risk, his continued detention serves no legitimate civil purpose. Accordingly, Petitioner respectfully requests that this Court grant the Writ of Habeas Corpus and order his immediate release from the Kandiyohi County Jail.

CLAIMS FOR RELIEF

COUNT I

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

63. Mr. Gonzalez Hernandez repeats and re-alleges the allegations' contained in all preceding paragraphs of this Petition as if fully set forth herein.

64. 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*, 533 U.S. at 693; *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.

65. 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)).

66. 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) (stating that detention must be a proportional—not excessive—response to a legitimate state objective).

67. 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.

68. 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.

69. Neither purpose is served by Mr. Gonzalez Hernandez's detention. Respondents have not made any claim that Mr. Gonzalez Hernandez presents a flight risk or a danger to the community. Nor could they. Mr. Gonzalez Hernandez has no documented criminal history. Unlike individuals who are apprehended at the border and released under specific conditions, Mr. Gonzalez Hernandez has lived as a law-abiding member of the St. Paul community since February 2023. He established a stable residence at 1645 Marion Street, was gainfully employed in residential construction and fencing, and has maintained close ties with his family in Minnesota.

70. In other words, Mr. Gonzalez Hernandez's roots in the United States, specifically in Minnesota, have only become stronger since February 2023. *See Osorio-Martinez v. Att'y Gen. United States of Am.*, 893 F.3d 153, 173–75 (3d Cir. 2018). Prolonged residence weighs against flight risk: "Courts have also 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). *See also Martinez Segovia v. Bondi*, No. 26-CV-00474, slip op. at 8 (D. Minn. Jan. 25, 2026) (granting habeas relief and ordering immediate release for a petitioner who entered without inspection, noting that where the

government failed to establish a flight risk or danger, continued detention lacked a legitimate civil purpose); *Hassan v. Bondi*, No. 26-CV-00417, slip op. at 5 (D. Minn. Feb. 2, 2026) (emphasizing that the government must provide an individualized basis for detention rather than relying on “general assertions of enforcement authority.”).

71. Because the government is not detaining Mr. Gonzalez Hernandez 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 his immediate release.

COUNT II

Violation of the Immigration and Nationality Act and Procedural Due Process

72. Mr. Gonzalez Hernandez repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

73. 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 § 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). But noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention under § 1226(c). *See* 8 U.S.C. § 1226(c).

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

75. 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).

76. 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).

77. Respondents will likely claim that Mr. Gonzalez Hernandez is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). But courts across the United States have overwhelmingly concluded that noncitizens like Mr. Gonzalez Hernandez who entered the United States without inspection and are detained by ICE for removal proceedings while they are residing in the United States are not detained under § 1225(b)(2)(A). 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 going the other way). This Court has concluded the same time and time again. *Ahmed M.*, 2026 WL 25627, at *1 (D. Minn. Jan. 5, 2026) (“Every judge in this District to have addressed this question . . . has decided that § 1226(a)’s discretionary regime applies in cases like this, where Petitioner has been in the country for some time and where his detention did not occur in connection with an attempt or request to enter the United States.”).

78. Mr. Gonzalez Hernandez’s arrest in St. Paul, thousands of miles from the border and years after his entry, is the exact type of interior enforcement that necessitates § 1226(a) protections.

79. Accordingly, Mr. Gonzalez Hernandez’s current detention under 8 U.S.C. § 1225(b)(2)(A) violates both the INA and Mr. Gonzalez Hernandez’s procedural due process rights.

As this renders Mr. Gonzalez Hernandez's detention unlawful from its inception, he should be released.

COUNT III

Violation of the Administrative Procedures Act

80. Mr. Gonzalez Hernandez repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

81. With limited exceptions, judicial review under the APA is available for "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Judicial review is available to any "person suffering legal wrong because of [the] agency action, or adversely affected or aggrieved by [such] action." *Id.* § 702. As relevant here, the APA requires courts to "hold unlawful and set aside agency action" if they find such action to be "arbitrary [or] capricious"; "contrary to constitutional right"; or "in excess of statutory jurisdiction, authority, or limitations." *Id.* § 706(2)(A)–(C).

82. There is no other adequate remedy available to Mr. Gonzalez Hernandez than review of the actions of ICE to capture and detain him indefinitely, because of which he has plainly been adversely affected and aggrieved.

83. Respondents' warrantless seizure and detention of Mr. Gonzalez Hernandez are arbitrary and capricious, contrary to his constitutional rights, and in excess of the authority and limitations on the Respondent agencies.

84. Specifically, Respondents violated the APA by departing from decades of established agency procedure which treats individuals apprehended in the interior, who have established lives and no criminal records, as eligible for individualized bond determinations under 8 U.S.C. § 1226(a). This sudden shift to a "no-bond" policy for established residents like Mr.

Gonzalez Hernandez constitutes an arbitrary and capricious change in agency position without reasoned justification.

85. Furthermore, as noted in *B.D.A.A. v. Bostock*, 2025 WL 3484912, at *7 (D. Or. Dec. 4, 2025), ICE officers must satisfy a two-prong test to establish probable cause for a warrantless arrest: (1) unlawful presence and (2) a likelihood of flight. Respondents' failure to establish any specific flight risk or danger prior to the arrest of Mr. Gonzalez Hernandez who was simply running an errand in St. Paul violates INA arrest procedures and, by extension, the APA.

86. Because Mr. Gonzalez Hernandez has lived peaceably in Minnesota for three years without being deemed an enforcement priority, his sudden, warrantless arrest and detention without a showing of "changed circumstances" or a new threat to the community is a "legal wrong" under 5 U.S.C. § 702.

COUNT IV

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

87. Mr. Gonzalez Hernandez repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

88. The Court should apply the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), which applies to procedural due process claims under the Fifth Amendment. The Court balances three factors: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail.

89. Respondents' warrantless seizure and detention of Mr. Gonzalez Hernandez without notice or an opportunity to be heard infringes on his most fundamental liberty interest: the

right to be free from physical restraint. Mr. Gonzalez Hernandez is currently detained at the Kandiyohi County Jail, miles away from his home and support network in St. Paul. He is forcibly separated from his residence at 1645 Marion Street, his local family members, and his livelihood in the residential construction industry.

90. The risk of erroneous deprivation here is extremely high. Respondents provided Mr. Gonzalez Hernandez with no notice or ability to defend himself before a neutral decision-maker. Instead, ICE agents surrounded his vehicle at a gas station during a routine errand, failed to present a warrant, and did not even inquire as to his name or identity before placing him under arrest. Without a bond hearing or judicial oversight, there is no mechanism to prevent the arbitrary and erroneous imprisonment of individuals who, like Mr. Gonzalez Hernandez, pose no threat to society.

91. The government has no legitimate interest in the suspicionless detention of Mr. Gonzalez Hernandez. Because he has lived peaceably in Minnesota for three years without a single arrest or criminal conviction, the government cannot argue that his detention is necessary to protect the public. Furthermore, his consistent three-year residence in St. Paul demonstrate that he is not a flight risk. Any fiscal or administrative burden of providing a bond hearing is negligible compared to the profound deprivation of his liberty.

92. Because Respondents' detention of Mr. Gonzalez Hernandez violates the Fifth Amendment, the Court should order his immediate release.

COUNT V

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

93. Mr. Gonzalez Hernandez repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

94. 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).

95. 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. 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.* 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).

96. 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. *See* 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).

97. Mr. Gonzalez Hernandez's warrantless arrest occurred without individualized probable cause. "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 his seizure, ICE agents had not even established Petitioner's identity, having failed to ask for his name or immigration status prior to surrounding his vehicle with four unmarked units and placing him in restraints. Furthermore, Mr. Gonzalez Hernandez was not a flight risk; he had resided in the United States for approximately three years and built strong ties to the St. Paul community. He was engaged in a routine, lawful errand – purchasing a money order for rent – and did not attempt to flee or disobey the officers. No reasonable officer could have had probable cause that he was "likely to escape" before a warrant could be obtained.

98. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination. Mr. Gonzalez Hernandez received no such determination, yet his detention at the Kandiyohi County Jail has continued well beyond 48 hours, rendering it presumptively unconstitutional.

99. 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). 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, Mr. Gonzalez Hernandez has received no such custody determination.

100. Respondents' warrantless arrest of Mr. Gonzalez Hernandez, 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 immediate release, along with his personal property that was also unlawfully seized.

REMEDY

101. Mr. Gonzalez Hernandez repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

102. The appropriate remedy for Respondents' unlawful conduct is Mr. Gonzalez Hernandez's immediate release.

103. 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*, 533 U.S. at 687, 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

104. When a 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").

105. To the extent that Respondents may argue, as they have in similar cases before this Court, that the appropriate remedy here is a bond hearing as opposed to outright release, this Court has squarely rejected that argument. *See, e.g., Juan R. v. Bondi*, No. 26-CV-252 (SRN/DTS), 2026 WL 125255, at *3 (D. Minn. Jan. 16, 2026) ("[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 power as a mere procedural irregularity rather than a substantive defect." (citation omitted)).

106. 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. *See, e.g., Joaquin Q. L. v. Bondi*, No. 26-cv-233 (LMP/DTS), 2026 WL 161333, at *2-3 (D. Minn. Jan. 21, 2026) (collecting cases); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 961 (D. Minn 2025). Upon information and belief, Respondents arrested Mr. Gonzalez Hernandez without any such warrant, rendering his current confinement at the Kandiyohi County Jail unlawful from its inception.

Petitioner further requests that this Court exercise its equitable power to enjoin Respondents from transferring Mr. Gonzalez Hernandez out of the jurisdiction of the District of Minnesota during the pendency of these proceedings. As a long-term resident of St. Paul with local counsel and family support in the area, any transfer to a remote facility would cause irreparable harm by severing Petitioner's access to his legal representatives and evidence necessary to challenge his detention. Such a transfer would effectively moot this Court's jurisdiction and violate Petitioner's Procedural Due Process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, Jose Humberto Gonzalez Hernandez respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Immediately issue an Order to Show Cause declaring:
 - a. Respondents have misclassified Mr. Gonzalez Hernandez's detention under 8 U.S.C. § 1225(b)(2)(A);
 - b. Respondents cannot detain Mr. Gonzalez Hernandez under 8 U.S.C. § 1226(a) because they did not have a warrant when they arrested him;
 - c. Respondents have violated Mr. Gonzalez Hernandez's rights under the APA, and the Fourth and Fifth Amendments of the United States Constitution;

- d. Respondents are enjoined from removing, transferring, or otherwise facilitating the transfer of Mr. Gonzalez Hernandez out of the District of Minnesota until the Court issues a final order on this Petition;
- e. Respondents must immediately and humanely return Mr. Gonzalez Hernandez to St. Paul.
- f. Return all of Mr. Gonzalez Hernandez's property including, but not limited to, all identification materials, documents of any kind, his phone, wallet, and keys.
- g. Respondents must show cause within three days as to why this Petition should not be granted.

3. Issue a Writ of Habeas Corpus declaring that Mr. Gonzalez Hernandez's detention by Respondents is unlawful and ordering Respondents, and any person in concert with them, to release Mr. Gonzalez Hernandez from custody within twenty-four hours of this Court's order;

4. 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, as amended, 28 U.S.C. § 2412, Local Rule 54.3(a), and on any other basis justified under law;

5. In the alternative, should the Court not order Mr. Gonzalez Hernandez's immediate release, Petitioner requests that the Court order Respondents to provide an individualized bond hearing before an Immigration Judge within three (3) days, where the burden of proof is on the government to justify continued detention by clear and convincing evidence; and

6. Grant Mr. Gonzalez Hernandez any further relief that this Court deems to be just and proper.

Dated: March 4, 2026

/s/ Michael Congiu

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Pro Bono Attorneys for Petitioner
Jose Humberto Gonzalez Hernandez

VERIFICATION

I am submitting this verification on behalf of Petitioner Mr. Gonzalez Hernandez, because I am one of Mr. Gonzalez Hernandez's attorneys. My co-workers and I have exercised reasonable diligence in investigating the factual assertions in this Petition for Writ of Habeas Corpus. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Gonzalez Hernandez's detention status, are true and correct to the best of my knowledge.

Dated: March 4, 2026

/s/ Michael G. Congiu

Michael G. Congiu