

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

Moustapha Momuh Biyde,

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

Joel Brott, Sherburne County Sheriff.  
Respondents.

Case No. 26-cv-1800

**VERIFIED PETITION  
FOR WRIT OF  
HABEAS CORPUS**

Expedited Handling Requested

**INTRODUCTION**

1. Petitioner, Moustapha Momuh Biyde (“Petitioner” or “Mr. Momuh Biyde”) 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. Momuh Biyde from ICE detention or in the alternative to conduct a bond hearing comporting with Due Process, and in the meantime to enjoin Petitioner’s transfer to a facility outside of the District of Minnesota.

### **JURISDICTION AND VENUE**

2. 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, c. 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).

3. Federal question jurisdiction exists because Mr. Momuh Biyde seeks to challenge this custody as a violation of the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

4. 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*, 583 U.S. 281, 292-96 (2018); and *Nielsen v. Preap*, 586 U.S. 392, 401-04, 139 S. Ct. 954, 961-63 (2019).

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (e)(1)(B), because Mr. Momuh Biyde was arrested within the District of Minnesota and remains detained in the District of Minnesota.

6. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A), because Respondents are operating in this district.

### **PARTIES**

7. Petitioner is a citizen of Cameroon and a resident of New Brighton, Minnesota who is currently being held at the Sherburne County Jail in Elk River,

Minnesota. Petitioner is under the direct control of Respondents and has no scheduled release date.

8. 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. Momuh Biyde.

9. Respondent Kristi Noem is being sued in her official capacity as the Acting 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. Momuh Biyde.

10. 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.

11. 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. Momuh Biyde. The address for the Fort Snelling Field Office is 1 Federal Drive, Fort Snelling, Minnesota 55111.

12. Respondent Joel Brott is being sued in his official capacity as the Sheriff responsible for the Sherburne County Jail. Because Petitioner is detained in the Sherburne County Jail, Sheriff Brott has immediate day-to-day control over Petitioner.

**FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY**

13. Petitioner is a resident of New Brighton, Minnesota and a citizen of Cameroon, and has lived in the United States since approximately July of 2022.

14. When Mr. Momuh Biyde arrived in the United States, he was taken into immigration custody, at which time he applied for asylum. He was released from ICE custody after three months on an Order of Recognizance. Mr. Momuh Biyde's asylum application remains pending.

15. Mr. Momuh Biyde does not have a final order of removal. An immigration judge ordered him removed while he was detained in October 2025, but Petitioner filed a Notice of Appeal which remains pending with the Board of Immigration Appeals.

16. Mr. Momuh Biyde is married to a U.S. citizen. He works as a Certified Nursing Assistant for a military veterans' nursing home in St. Paul, pursuant to a work authorization that is valid until 2029.

17. Respondent ICE arrested Petitioner on or around July 18, 2025, immediately after he was released from the custody of the St. Louis County Jail following a Domestic Assault charge several days prior. This charge was subsequently dismissed, and Mr. Momuh Biyde was convicted of a misdemeanor for Disorderly Conduct.

18. ICE did not present a warrant or any other paperwork to Mr. Momuh Biyde when he was arrested in July 2025.

19. After his arrest, Petitioner was brought to the Kandiyohi County Jail, then transferred to the Crow Wing County Jail, and finally to the Sherburne County Jail, where he remains detained.

20. As of the filing of this Petition, Mr. Momuh Biyde has been in detention for nearly eight months.

21. Mr. Momuh Biyde previously filed a habeas action *pro se* challenging his detention based upon Respondents' violations of § 1226(a) of the Immigration and Nationality Act and the Due Process clause of the United States Constitution, requesting relief in the form of release or a bond hearing. U.S. District Judge Paul A. Magnuson denied that petition without prejudice, concluding that Mr. Momuh Biyde was subject to § 1225(b)(2) of the of the Immigration and Nationality Act, which mandates detention for individuals "seeking admission" into the country. *Bidy M. v. Kandiyohi County Jail et al.*, No. 25-cv-4791 (PAM/EMB) (D. Minn. Jan. 16, 2026), ECF No. 10. Judge Magnuson decided the case solely on the basis of § 1225 and did not reach Petitioner's § 1226(a) or Due Process claims.

22. Petitioner filed a second petition after he had been transferred to a new facility. Petitioner again raised the § 1226(a) and Due Process claims that had not been addressed in Judge Magnuson's decision. The second petition was decided by U.S. District Judge Daniel M. Traynor, who denied the petition without prejudice the same day it was filed, on the sole basis that "Judge Magnuson [had] determined the legality

of [the] matter.” *Biye Mustapha Momuh v. Crow Wing County Jail et al.*, No. 26-cv-01131-DMT-SGE (D. Minn. Feb. 6, 2026), ECF No. 2. Petitioner notes that his name has been spelled incorrectly in different variations across his petitions, but confirms that the correct spelling is that contained within the case caption of the instant Petition.

23. Petitioner’s Due Process claim was not addressed by either Judge Magnuson or Judge Traynor in the prior petitions. Furthermore, the instant Petition raises three new claims: violation of the Fourth Amendment’s prohibition on unreasonable seizures; violation of the Immigration and Nationality Act, 8 U.S.C. § 1357(a)(2); and violation of the Administrative Procedure Act, 5 U.S.C. § 706. The instant Petition is also brought pursuant to a factual development that was not addressed by Judge Traynor’s opinion in the second petition: the subsequent dismissal of the Domestic Assault charge brought against Mr. Momuh Biye in July 2025.

24. Detaining Mr. Momuh Biye is an expensive and pointless endeavor. Mr. Momuh Biye 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.

25. Pending the adjudication of this Petition, Mr. Momuh Biye 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**

26. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The “Great Writ” has been referred to by the Supreme Court 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, 399-400 (1963). A petitioner may seek a writ of habeas corpus when their custody violates the U.S. Constitution or a federal law. 28 U.S.C. § 2241(c)(3). “Th[e] right [of habeas corpus] extends to those persons challenging the lawfulness of immigration-related detention.” *Deng Chol A. v. Barr*, 455 F. Supp. 3d 896, 900-01 (D. Minn. 2020) (citations omitted). A habeas petition should be granted if the petitioner proves by preponderance of evidence that detention is unlawful. *Aditya W. H. v. Trump*, 782 F. Supp. 3d 691, 703 (D. Minn. 2025); *see also Walker v. Johnston*, 312 U.S. 275, 286-87 (1941); *Bradin v. U.S. Prob. & Pretrial Servs.*, No. 22-3032, 2022 WL 1154622, at \*3 (D. Kan. Apr. 19, 2022) (collecting cases).

27. 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.

28. 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*, No. 5:25-cv-04048, 2025 WL 2712427 at \*3 (N.D. Iowa Sept. 23, 2025).

29. “[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).

30. Noncitizens who have “established connections” in the United States by virtue of living in the country for a substantial period acquire a liberty interest in being free from government detention without due process of law. *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020).

31. In July of 2025, Respondent 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. Regardless of which INA statutory provision Respondents rely upon as their basis for detaining Mr. Momuh Biyde, warrantless arrests are statutorily authorized only limited circumstances: (i) “to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation

made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens,” or (ii) “to arrest any alien in the United States, [(a)] if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation **and** [(b)] is likely to escape before a warrant can be obtained for his arrest . . . .” 8 U.S.C. § 1357(a)(2) (emphasis added); *see also* 8 C.F.R. §§ 287.3(a) & (d) and 287.8(c)(2)(i)-(ii). When considering a warrantless arrest by ICE, a person’s “arrest and continued detention is lawful only if officers acted within their statutory authority for affecting a warrantless arrest.” *Orellana v. Nobles Cnty.*, 230 F.Supp.3d 934, 945 (D. Minn. 2017); *see also Fernando C. C. v. Bondi*, No. 26-cv-1235 (D. Minn. Feb. 17, 2026), ECF No. 11 at 5 (a warrantless arrest under 8 U.S.C. § 1357(a)(2) is a threshold exception to arrest by warrant detention under any of 8 U.S.C. §§ 1225, 1226, or 1231).

33. As Mr. Momuh Biyde’s arrest occurred in the interior of the country, and not on the threshold of a border, only the second statutory (a)(2) authorization for warrantless arrest is relevant here, which requires “reason to believe”. The “reason to believe” requirement of 8 U.S.C. § 1357(a)(2) “means constitutionally required probable cause.” *United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010). That probable cause requirement applies individually to both the “in violation” and “likely to escape” prongs of § 1357(a)(2) warrantless arrests. That is because, “[a]s a general rule, it is not a crime for a removable [noncitizen] to remain present in the United States.” *Arizona v. United States*, 567 U.S. 387, 407 (2012) (citing *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984)).

34. Under the second prong of the second ground in § 1357(a)(2), a deportation agent has the power to arrest an alien without a warrant only if the deportation officer has reason to believe that the alien is likely to escape before a warrant can be obtained. And, under that second prong of § 1357(a)(2), ICE officers must make a “particularized assessment” of the likelihood of escaping—sufficient to conclude that the subject is likely to abscond before an arrest warrant can be obtained. *Orellana*, 230 F. Supp. 3d at 946 (for “detention under § 1357(a)(2) to be lawful, the Fourth Amendment demands a particularized assessment of [the subject]’s likelihood of escaping”); *accord, e.g., United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 889 (S.D. Ohio 2016); *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1006-07 (N.D. Ill. 2016); *Ramirez Ovando v. Noem*, \_\_\_ F.Supp.3d \_\_\_, No. 1:25-cv-03183, 2025 WL 3293467, at \*2 (D. Colo. Nov. 25, 2025) (“particularized inquiry” required that subject is likely to abscond); *see also Gunaydin v. Trump*, 784 F.Supp.3d 1175, 1187 (D. Minn. 2025) (noting need to consider “individualized or particularized facts” to deprive a person of rights). This means that the ICE agents must have had probable cause that they would have been unable to later detain the suspect after obtaining a warrant.

35. Courts have generally found that likelihood of escape is lower when the individual has resided in the country for a substantial period of time and has strong community ties. *See, e.g., 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) (no flight risk where noncitizen worked two jobs, owned a vehicle, and paid rent); *United States v. Kahn*, 324 F.Supp.2d 1177, 1186-87 (D. Colo. 2004); *United States v. Bautista-Ramos*, No. 18-CR-4066-

LTS, 2018 WL 5726236, at \*7 (N.D. Iowa Oct. 15, 2018) (no flight risk where ICE encountered noncitizen at his place of employment, “a place he routinely visited,” as opposed to anywhere near the border or heading in that direction); *United States v. Pacheco-Alvarez*, 227 F.Supp.3d 863, 890 (S.D. Ohio 2016) (no flight risk where noncitizen had a stable job, lived with his fiancé, and helped pay her rent and raise her two children).

36. The Fourth Amendment of the U.S. Constitution prohibits “unreasonable searches and seizures” and the Fifth Amendment prohibits deprivation of liberty without “due process of law[.]”

37. Warrantless arrest and detention constitute final agency actions under the APA. *See A.B.D. v. Wamsley*, No. 25-cv-02014, 2026 WL 178306 (D. Or. Jan. 22, 2026).

38. Although the decision on Petitioner’s first petition was dismissed and Judge Magnuson found that Mr. Momuh Biyde was subject to mandatory detention under § 1225 of the Immigration and Nationality Act, the majority of decisions in this district 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*, No. 25-cv-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Mayamu K. v. Bondi*, No. 25-cv-3035 (JWB/LIB), 2025 WL 3641819 (D. Minn. Oct. 20, 2025); *Khalid B.Q. v. Bondi*, No. 25-cv-4584 (JWB/DJF), ECF No. 10 (D. Minn. Dec. 18, 2025); *Xuseen A. v. Bondi*, No. 25-cv-4514 (JWB/DJF),

ECF No. 16 (D. Minn. Dec. 19, 2025); *Vedat C. v. Bondi*, No. 25-cv-4642 (JWB/DJF), ECF No. 9 (D. Minn. Dec. 19, 2025); *see also, e.g., Lazaro M. B., v. Santacruz Jr.*, \_\_ F.Supp.3d \_\_, No. 5:25-cv-1873, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025) (issuing vacatur of unlawful DHS mandatory detention policy for a nationwide certified class); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 486-91 (S.D.N.Y. 2025). Moreover, in general, “Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority . . . .” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, \_\_\_, 144 S. Ct. 2244, 2273 (2024). Further, *Yajure Hurtado* is not entitled to deference under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). *See Afghan v. Noem*, No. 25-cv-0410, 2025 WL 3713732 at \*2 (D. Md. Dec. 23, 2025).

39. *Avila v. Bondi*, No. 25-3248 (8th Cir. docketed Nov. 10, 2025) is currently on appeal and involves an appeal by the government against a finding contrary to *Yajure Hurtado*.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **Fifth Amendment Due Process**

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

41. Mr. Momuh Biyde has due process rights as a resident of the United States. *Zadvydas*, 533 U.S. at 693.

42. Moreover, Mr. Momuh Biyde has “established connections” in the United States by virtue of having lived in the country for a substantial period of time—three years—prior to detention on or around July 21, 2025; the fact that he is married to a

U.S. citizen; and his employment as a Certified Nursing Assistant with work authorization valid until 2029. *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020).

43. Substantive due process prevents the government from engaging in conduct that “shocks the conscience,” *Rochin v. California*, 342 U.S. 165, 172 (1952), or interferes with rights “implicit in the concept of ordered liberty.” *Palko v. Connecticut*, 302 U. S. 319, 325-326 (1937). As a nation of immigrants, the United States since its founding has relied upon a rejection of arbitrary executive (or royal) action. While this country has an ignoble history of chattel slavery, which deprived many persons of rights, Constitutional amendments and caselaw since the Reconstruction era have long established important liberty rights for all people regardless of ethnicity. Noncitizens present in this country are entitled to substantive due process and are not *homo sacer* as in ancient Rome—someone outside the law and denied all legal protections.

44. Petitioner’s substantive due process rights have been violated due to the shocking deprivation of long-established rights to be free of warrantless arrest and indefinite detention. Such violations are in addition to procedural due process violations.

45. Regarding procedural due process, federal courts use the three-part test in *Mathews v. Eldridge* to determine whether civil detention violates a detainee’s Fifth Amendment rights. 424 U.S. 319 (1976). The Court considers: (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. “The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time.” *M.S.L. v. Bostock*, No. 25-cv-1204, 2025 WL 2430267, at \*8 (D. Or. Aug. 21, 2025) (citing *Mathews*, 424 U.S. at 348).

46. Here, all three *Mathews* factors favor the petitioner.

47. First, Mr. Momuh Biyde 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 (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. Momuh Biyde is wrongfully confined, a direct attack on Petitioner’s liberty interests.

48. Mr. Momuh Biyde has strong private liberty interests due to established connections in this country and state, and is not merely on the threshold of initial entry to the country. *See Jose Rogelio C. L. v. De Anda-Ybarra*, No. 26-CV-00249 (W.D. Tex. Feb. 9, 2026) ECF 7 (constitutional interest in liberty exists above and apart from the INA where there are established connections).

49. Mr. Momuh Biyde has a liberty interest in remaining out of custody on his conditions of release. When the government decides to release someone from custody,

they make an implicit promise that their liberty will be revoked only if she fails to follow her conditions of release. *See Young v. Harper*, 520 U.S. 143, 152 (1997) (concluding that someone on pre-parole conditional supervision has a liberty interest that entitled them to due process before re-incarceration); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (concluding the same for probation); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (concluding the same for parole).

50. Second, Mr. Momuh Biyde will continue to be deprived of this interest if the current procedure (detaining him without a legal basis) is followed. There is no rational explanation for detaining Mr. Momuh Biyde. Without an individualized determination establishing probable cause, detaining Mr. Momuh Biyde creates a substantial risk that he may be erroneously deprived of his liberty.

51. There was no legitimate basis for ICE agents to arrest Petitioner without a previously prepared warrant. ICE had no indication that Mr. Momuh Biyde would have left his established city of residence before a warrant could have been obtained. For one, he was not in the process of traveling to or across a border. He also has strong local community ties: Mr. Momuh Biyde is married to a U.S. citizen, and he has worked for three years at a nursing home for elderly veterans—indeed, his work authorization does not expire until 2029.

52. Lastly, the Government has no legitimate interest in refusing to follow its own rules. Mr. Momuh Biyde poses no safety threats to the community, as confirmed by dismissal of the charge that had been pending at the time of his first petition. Releasing Petitioner, or at a minimum holding a bond hearing, would in fact *save* the

government the resources and expense of continued imprisonment—as well as prosecutorial and judicial resources expended addressing over and over again conduct this Court and others have found illegal or unconstitutional.

53. The placement of Mr. Momuh Biyde in detention pending the resolution of ongoing immigration proceedings violates his constitutional rights to due process guaranteed in the Fifth Amendment.

## **COUNT TWO**

### **Fourth Amendment Unreasonable Seizure**

54. Petitioner realleges and incorporates by reference each and every allegation contained above.

55. Whether a warrantless arrest was constitutionally valid depends upon whether, at the moment the arrest was made, the officers had probable cause to make it—“whether, at that moment, the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense.” *Beck v. Ohio*, 379 U.S. 89, 91 (1964). To determine whether an officer had probable cause, the Court “examine[s] the events leading up to the arrest and then decide[s] whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause.” *Dist. of Columbia v. Wesby*, \_\_\_ U.S. \_\_\_, 138 S.Ct. 577, 586 (2018) (quoting *Maryland v. Pringle*, 540 U.S. 366, 371 (2003)). There need only be a “probability or substantial chance of criminal activity, rather than an actual showing of criminal activity.” *United States v. Mendoza*, 421 F.3d

663, 667 (8th Cir.2005); *see also United States v. Amaya*, 52 F.3d 172, 174 (8th Cir.1995) (totality of the circumstances); *United States v. Morgan*, 997 F.2d 433, 435 (8th Cir.1993) (court may consider collective knowledge).

56. A warrantless arrest in a civil immigration context that exceeds statutory authority under 8 U.S.C. § 1357(a)(2) is an unreasonable seizure under the Fourth Amendment, where such a warrantless arrest is premised only on immigration status and not the provisions of § 1357(a)(4) or (5).

57. Applicable statutory authority for Respondents “to arrest any alien in the United States” “without warrant” necessitates establishing that, at the time of arrest, the arresting officer(s) had “reason to believe that the alien so arrested is” both (i) “in the United States in violation of any such law or regulation” regulating the admission, exclusion, expulsion, or removal of aliens, **and** (ii) “is likely to escape before a warrant can be obtained for his arrest.”

58. Unless a particularized inquiry is performed to establish probable cause for each and every requirement for warrantless arrest pursuant to 8 U.S.C. § 1357(a)(2), there is a Fourth Amendment violation. *Orellana*, 230 F.Supp.3d at 946.

59. The warrantless arrest of Mr. Momuh Biyde and subsequent placement in detention pending the resolution of ongoing immigration proceedings, despite established connections and a lack of a likelihood of escape by evading detention, violates Mr. Momuh Biyde’s constitutional rights against unreasonable seizure guaranteed in the Fourth Amendment.

**COUNT THREE**

**Immigration and Nationality Act, 8 U.S.C. § 1357(a)(2)**

60. Petitioner realleges and incorporates by reference each and every allegation contained above.

61. Respondents have exceeded authority to make a warrantless arrest of Mr. Momuh Biyde under 8 U.S.C. § 1357(a)(2) because the arresting ICE agents lacked “reason to believe that the alien so arrested is” both (i) “in the United States in violation of any such law or regulation” regulating the admission, exclusion, expulsion, or removal of aliens and (ii) “is likely to escape before a warrant can be obtained for his arrest . . .” at the time of Mr. Momuh Biyde’s warrantless arrest.

62. The warrantless arrest of Mr. Momuh Biyde and subsequent placement in detention pending the resolution of ongoing immigration proceedings, despite established connections and a lack of a likelihood of escape, violated 8 U.S.C. § 1357(a)(2).

**COUNT FOUR**

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

63. Mr. Momuh Biyde re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

64. 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).

65. 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).

66. The application of 8 U.S.C. § 1357(a)(2) to Mr. Momuh Biyde is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

### **REMEDY**

67. 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”).

68. First and foremost, a custody determination in this case has already been made. Petitioner was detained near the border upon his arrival into the United States, and was released after a three-month detention. In that intervening time, no facts appear to indicate that this initial determination to release Petitioner was somehow insufficient, or that Petitioner’s circumstances or actions have changed so as to now warrant indefinite re-detention. There is no legal basis for Respondents to attempt to reinstate mandatory detention, following a prior mandatory detention just by recharacterizing a previously released noncitizen as an applicant for admission. *See, e.g., Jose J.O.E.*, 797 F. Supp. 3d at 969-70. To the extent that Mr. Momuh Biyde’s charge for Domestic Assault motivated his re-arrest in July 2025, this charge has been dismissed since the time that his first two petitions were decided. Respondents have not demonstrated (and cannot demonstrate) that Mr. Momuh Biyde’s existing conviction for Disorderly

Conduct justifies his continued detention for nearly eight months as of this petition, particularly in the absence of a final removal order.

69. Immigration detention is civil in nature, and any detention by Respondents must be reasonably related to the statutory purpose of the Congressionally-granted authority upon which Respondents rely. *Zadvydas*, 533 U.S. at 687, 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Detention here serves no statutory purpose, and there is no indication that Petitioner's detention was based on any individualized assessment of facts that might indicate that Petitioner should be in custody for some reason.

70. Petitioner has a significant liberty interest in not being subject to unreasonable seizure and a significant interest in not being deprived of liberty without due process of law. The absence of an individualized probable cause assessment at the time of warrantless arrest deprives Mr. Momuh Biyde of constitutional rights and exceeds statutory authority granted to Respondents.

71. The emergence of seemingly retro-active and/or insufficiently filed or served administrative warrants appears to be a new tactic by the Respondents—*post-hoc* rationalization at best, and potential fabrication at worst.

72. Warrants are now occasionally being offered, replete with inconsistencies, errors, incompletions, redactions of material contents (like signatures), and illegalities. These warrants are sometimes introduced as unverified attachments to Respondents' briefs, *e.g.*, *Victor O. v. Bondi*, No. 26-1122 (ECT/LIB), 2026 WL 392428, and sometimes as attachments to affidavits of Assistant U.S. Attorneys, but without an

affidavit from anyone with (or even a reference to the source of) personal knowledge as to the creation or service of the warrant or its factual basis. These warrants are facially insufficient.

73. Further, even if Respondents produce an administrative warrant issued after Petitioner's warrantless arrest, the typical contents of such warrants are insufficient to provide competent evidence to show why, at a minimum, the arresting agents had probable cause to believe, at the time of warrantless arrest, that Petitioner was "likely to escape" before a warrant could be obtained. Therefore, outright release remains the appropriate remedy.

#### **REQUEST FOR ORDER TO SHOW CAUSE**

74. 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.

75. 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.

76. 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. Momuh Biyde 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 at least two (2) hours prior to release; and

- (c) With all of Petitioner's personal effects in Respondents' possession, such as driver's license, immigration papers, passport, mobile 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) Declare that Petitioner's arrest exceeded Respondents' authority;
- (8) 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
- (9) Grant any other and further relief that this Court may deem just and proper.

Date: March 10, 2026

/s/ Emily E. E. Curran  
Emily E. E. Curran  
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*Attorney for Petitioner*

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

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. I have discussed the factual assertions in this petition with Petitioner and with his wife, 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: Mar. 10, 2026

/s/Emily E. E. Curran  
Emily E. E. Curran