

Lucia Curiel, Esq.
The Law Office of Mark Kinzler, P.C.
PO Box 684309
Austin, TX 78768
(512) 402-7999
lucia@kinzlerimmigration.com
Attorney for Petitioner

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION**

JOSE MARIANO ROSALES,

Petitioner,

v.

MARCELLO VILLEGAS, Warden,
Bluebonnet Detention Facility;

MARKWAYNE MULLIN, Secretary of the U.S.
Department of Homeland Security; and

TODD BLANCHE, Attorney General
of the United States, in their official capacities,

Respondents.

Case No. 1:26-cv-00180

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Jose Mariano Rosales, is in the physical custody of Respondents at Bluebonnet Detention Facility in Anson, Texas. Petitioner was detained and released in November 2005 under DHS's discretionary detention authority under 8 U.S.C. § 1226. More than twenty years later, in February 2026, the Department of Homeland Security (DHS) while being a passenger in a car, followed, forced out of the vehicle and arrested Petitioner when he was on his way to work.
2. ICE proceeded to arrest Mr. Rosales without a warrant and without any change in circumstances since his prior release on his own recognizance. As a result of his unlawful seizure, Petitioner is now detained at Bluebonnet Detention Facility pursuant to 8 U.S.C. § 1225(b)(2)'s mandatory detention provisions. He now faces prolonged and potentially indefinite detention without any individualized determination of whether his confinement serves any legitimate governmental purpose.
3. On February 6, 2026, the Fifth Circuit Court of Appeals held in *Buenrostro-Mendez v. Bondi* that §1225(b)'s mandatory detention provisions may be applied to noncitizens who entered without inspection, regardless of whether they were apprehended at the border or years later in the interior. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). But *Buenrostro-Mendez* addressed only statutory construction—it did not examine any constitutional challenge to the mandatory detention provisions. *Id.* *Buenrostro-Mendez* therefore does not foreclose as-applied constitutional challenges.
4. The Constitution guarantees that the writ of habeas corpus is “available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004) (citing U.S. Const., Art. I, § 9, cl. 2). This includes

immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). The petitioner seeking habeas relief must demonstrate he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286, 61 S.Ct. 574, 85 L.Ed. 830 (1941).

5. When the application of 8 U.S.C. § 1225(b)(2) is examined in the context of Petitioner's specific circumstances; it is clear that his detention violates the Fifth Amendment's guarantee of due process. District courts across the nation, including numerous courts within this circuit and district, have found that such mandatory detention violates the Due Process Clause when applied to individuals like Petitioner. *See, e.g., Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *7 (W.D. Tex. Oct. 21, 2025); *Hassen v. Noem*, No. EP-26-CV-00048-DB (W.D. Tex. Feb. 9, 2026); *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668 (W.D. Tex. 2025).
6. The circumstances of Petitioner's warrantless arrest gives rise to an additional claim for relief under the Fourth Amendment, which prohibits unreasonable seizures. Petitioner was initially seized without any articulable basis. The stop was unlawfully extended without reasonable suspicion of unlawful presence. He was subsequently subjected to a formal warrantless arrest despite circumstances demonstrating he posed no flight risk. His arrest violated the Fourth Amendment, 8 U.S.C. § 1357(a)(2) and ICE's own nationwide arrest policy. His resulting detention is therefore unlawful.
7. Because Petitioner's detention violates the Fifth Amendment and the Fourth Amendment, this Court should grant the petition for a writ of habeas corpus and order Petitioner's immediate release. In the alternative, if the Court finds that some form of custody determination is warranted, the Court should order a bond hearing before a neutral

decisionmaker at which the Government bears the burden of proving by clear and convincing evidence that Petitioner poses a danger to the community or a flight risk.

JURISDICTION

8. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
11. Petitioner challenges the legality of his detention as a violation of constitutional law. These claims fall squarely within the habeas jurisdiction of federal district courts. None of the jurisdiction-stripping provisions found at 8 U.S.C. § 1252(a)(2)(A), § 1252(g), and § 1252(b)(9) apply. The Court “retain[s] jurisdiction to review [a noncitizen’s] detention insofar as that detention presents constitutional issues, such as those raised in a habeas petition.” *Oyelude v. Chertoff*, 125 F. App’x 543, 546 (5th Cir. 2005). The constitutionality of Petitioner’s detention is precisely the question presented here. *See also Hernandez-Fernandez v. Lyons*, 2025 WL 2976923, at *2-6 (W.D. Tex. Oct. 21, 2025) (holding that none of jurisdiction-stripping provisions found at 8 U.S.C. § 1252(a)(2)(A), § 1252(g) and § 1252(b)(9) apply.); *Lopez-Arevalo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *4 (W.D. Tex. Sept. 22, 2025) (rejecting government’s jurisdictional arguments); *Vieira v. De Anda-Ybarra*, No.

EP-25-CV-00432-DB, 2025 WL 2937880, at *2-4 (W.D. Tex. Oct. 16, 2025) (same).

VENUE

12. Venue is proper with this Court because Petitioner is detained at Bluebonnet Detention Facility in Anson, Texas, which is within the jurisdiction of this District.

REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to 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).

PARTIES

15. Petitioner, Jose Mariano Rosales, is a citizen of El Salvador, who has resided in the United States since approximately 1992. He is currently detained at the Bluebonnet Detention Facility in Anson, Texas. He is in the custody, and under the direct control, of Respondents and their agents.

16. Respondent Marcello Villegas is the Warden of the Bluebonnet Detention Facility and he has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S.

Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner.

17. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Mullin is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees the U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention / custody. Respondent Mullin is a legal custodian of Petitioner.

18. Respondent Todd Blanche is sued in his official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Blanche is a legal custodian of Petitioner.

STATEMENT OF FACTS

19. Petitioner is a 56-year-old native and citizen of El Salvador. He entered the United States without inspection near San Ysidro, California on or around July 1992. **Exh. A, Form I-862, Superseding Notice to Appear dated June 5, 2008.** He has resided continuously in the United States for over thirty three years and has built a life and a home. He has extensive family ties in the U.S., including his two U.S. citizen daughters, four U.S. citizen grandchildren, several U.S. citizen nieces and nephews, as well as his Legal Permanent Resident siblings. He has worked at Corey Construction as a roofer for approximately ten years. His company is holding his position open, waiting for him to return to work. Before this, he has been working in the same profession since he first

came to the United States. For the last nine years, he had lived at the same apartment, being in close proximity to his daughters to be able to provide care and support to them and his grandchildren. In 2001 Petitioner was arrested, which resulted in Assault Class A misdemeanor. Petitioner complied with all court requirements and in the more than two decades since, has had no subsequent criminal history.

20. On November 3, 2005, Mr. Rosales was apprehended by ICE and released on his own recognizance. **See Exh. B, Order of Release on Own Recognizance.** Mr. Rosales went into a military base for a job assignment. Since he did not have a valid Employment Authorization Document (“EAD”) at that time, he was detained. However, that same day, he was released on his own recognizance pursuant to 8 U.S.C. § 1226(a). *Id.* Additionally, that same day he was served with a Notice to Appear (“NTA”) charging him with inadmissibility under INA 212(a)(6)(A)(i). **See Exh. C, Form I-862, Notice to Appear dated November 3, 2005.** He was later served with a superseding NTA on June 5, 2008, with the same charge. **See Exh. A, Form I-862, Superseding Notice to Appear dated June 5, 2008.**

21. On February 6, 1996 Petitioner had filed his I-589, Application for Asylum and for Withholding of Removal, application with U.S. Citizenship and Immigration Services (“USCIS”). On February 22, 2005, he had an interview at the Houston Asylum Office. On June 5, 2008, his case was referred to the Immigration Court, the same day he was served with an NTA. On June 6, 2008, Mr. Rosales immigration proceedings commenced. On May 31, 2012, Mr. Rosales filed an application for relief from removal pursuant to 8 U.S.C. § 1229b(b)(1), Cancellation of Removal for Non-Lawful Permanent Residents with the Executive Office for Immigration Review (“EOIR”). **See Exh. D, Receipt for**

42B, Application of Cancellation of Removal for Non-Lawful Residents. On October 3, 2017, his removal proceedings were administratively closed. Upon re-detention, his proceedings were reopened. Nevertheless, his application remains pending. Since that date, Mr. Rosales has continued monitoring his case, renewing his Employment Authorization and driver's license, working, filing taxes, and supporting his family.

22. On February 27, 2026, Petitioner was apprehended by ICE under very different circumstances. At approximately 6:00 a.m., Mr. Rosales and several other co-workers were driving through Garland, Texas on their way to work. During the drive, unidentified vehicles began following them. One of the vehicles following them turned on their lights, another one pulled up in front of them, and another one got right next to them. They pressured them to stop by surrounding the vehicle. When they stopped, about eight men, with bullet proof vests with the letters "ICE" got out of the vehicle and began hitting the windows and doors of the vehicle, demanding for them to open the doors. They were afraid the men would break the windows, so they complied.

23. The agents did not identify themselves, ask any questions, or provide any reason for the stop. The agents simply said that they were being detained for being illegals in the country. They were handcuffed and told that as illegals they had no rights. Upon information and belief, only after being taken to the detention facility and Petitioner being insistent about being in possession of an EAD, did an agent question Petitioner about his status. He was asked if he had any illnesses, which he responded affirmatively. They also asked if he had any children and why he hadn't adjusted. At no point did any of the men present Petitioner with a warrant.

24. Petitioner's experience mirrors patterns observed and documented in Texas and across the country.¹

25. Petitioner has remained continuously detained since February 27, 2026 at Bluebonnet Detention Facility, where he has been denied an opportunity for a custody redetermination. **See Exh. E, ICE Detainee Locator Results.** Respondents have applied 8 U.S.C. § 1225(b)(2) categorically to anyone who entered without inspection — with no individualized assessment of whether Petitioner poses a flight risk or any danger to the community.

26. He is the backbone of his family and their main support system. His daughters rely on him for their daily needs. One of his daughters was born with a health condition that impaired her vision; as a result, she depends on him for transportation for herself and her

¹ Investigative reporting and civil rights litigation have documented ICE agents conducting suspicionless stops targeting Latino drivers based on physical appearance, accent, and Hispanic-sounding vehicle registration names, with agents in some operations working under arrest quotas. *See e.g.* NewsChannel 5, 'Guilty Until Proven Innocent?' Video from Nashville THP/ICE Stops Revives Questions of Racial Profiling (Feb. 2026), <https://www.newschannel5.com/news/newschannel5-investigates/guilty-until-proven-innocent-video-from-nashville-thp-ice-stops-revives-questions-of-racial-profiling> (documenting over 50 hours of footage from a joint THP/ICE operation showing officers questioning drivers about birthplace based on perceived accent and stopping drivers for minor pretextual traffic violations); Axios, *ICE Accused of Racial Profiling in Detentions of Latino U.S. Citizens* (July 9, 2025), <https://www.axios.com/2025/07/09/ice-us-citizens-detention-racial-profiling> (reporting multiple instances where ICE agents stopped and detained Latino individuals, including U.S. citizens, based on physical appearance); ACLU, *Hussen v. Noem*, No. [x] (D. Minn. filed Jan. 2026), Complaint available at <https://assets.aclu.org/live/uploads/2026/01/COMPLAINT-HUSSEN-v.-NOEM-1.pdf> (class action alleging ICE and CBP agents arrested Minnesotans without warrants or probable cause solely based on perceived Latino or Somali ethnicity); Am. Immigration Council, *How ICE Went Rogue: Analysis of the Legal Authorities Governing ICE* (Feb. 2026), <https://www.americanimmigrationcouncil.org/fact-sheet/ice-cbp-legal-analysis/> (documenting that in areas where local law enforcement cooperates with ICE, including Texas, pretextual vehicle stops based on apparent race and ethnicity have become routine); ABC News 4, *ICE Operation in North Charleston Raises Racial Profiling and Community Concerns* (Nov. 6, 2025), <https://abcnews4.com/news/local/ice-operation-north-charleston-racial-profiling-community-distrust-concern-immigration-customs-enforcement-schp-south-carolina-highway-patrol-287g-sled> ("One eyewitness told CSO she watched SLED seem to pull over "exclusively Latino-appearing drivers" before ICE would reportedly move in with unmarked vehicles."); The Guardian, *U.S. Citizens Report Racial Profiling by ICE* (Jan. 22, 2026), <https://www.theguardian.com/us-news/2026/jan/22/us-citizens-racial-profiling-ice>; *U.S. Citizens in Minnesota Share Disturbing Encounters with ICE Agents*, Sahan Journal (Jan. 14, 2026), <https://sahanjournal.com/immigration/ice-racial-profiling-minnesota-citizens-detained/> (reporting that community defense attorney Anna Hall stated "the tactic of 'target brown person first, ask citizenship later' has really increased dramatically," and that U.S. citizens of color were stopped, detained, punched, and held without probable cause solely based on appearance); The Times, *I was detained by ICE — even though I'm 100% Native American* (Feb. 2026), <https://www.thetimes.com/us/news-today/article/how-many-native-americans-have-been-detained-by-ice-mpj36hhtz>

four minor children. He would drive his grandchildren to and from school and assist his daughter with essential tasks including grocery shopping and other necessary activities. The absence of her father has placed a significant hardship on her. Additionally, his other daughter suffered an accident in 2018 that left her legally blind from the right eye. As a result, she can no longer safely drive at night. Her father has taken on the responsibility to drive her at nighttime to ensure her safety. His absence is severely impacting their daily lives and responsibilities.

LEGAL FRAMEWORK

27. On February 6, 2026, the Fifth Circuit Court of Appeals held in *Buenrostro-Mendez v. Bondi* that §1225(b)'s mandatory detention provisions may be applied to noncitizens who entered without inspection, regardless of whether they were apprehended at the border or years later in the interior. No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). But *Buenrostro-Mendez* addressed only statutory construction—it did not examine any constitutional challenge to § 1225(b)(2). *Id.*

THE APPLICATION OF 1225(b)(2) TO PETITIONER VIOLATES DUE PROCESS

28. “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.” *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Supreme Court has repeatedly affirmed that “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987); *see also Foucha*, 504 U.S. at 80, 112 S.Ct. 1780 (“We have always been careful not to minimize the importance and fundamental nature of the individual's right to liberty.”). For

this reason, “civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protections.” *Addington v. Texas*, 441 U.S. 418, 425 (emphasis added).

29. While “detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process...the fact that some detention is permissible does not change the fact that a detainee suffers significant liberty deprivations.” *Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021) (citing *Demore*, 538 U.S. at 522). “Moreover, the government’s exercise of its power to detain immigrants pending removal ‘is subject to important constitutional limitations.’” *Id.* at 28-29 (citing *Zadvydas*, 533 U.S. at 695). “That is because due process “applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 29 (citing *Zadvydas*, 533 U.S. at 693 and *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (explaining that due process “protects every [person]...Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection”)).
30. In the immigration detention context, due process requires that immigration detention “‘bear[] a reasonable relation to the purpose for which the individual was committed.’” *Demore v. Kim*, 538 U.S. 510, 527 (2003) (quoting *Zadvydas*, 533 U.S. at 690). Specifically, immigration detention must be reasonably related to the government’s goals of preventing flight and protecting the community from harm, and be accompanied by adequate procedural protections to ensure that those goals are being served. *See Zadvydas*, 533 U.S. at 690-91.

31. “To determine whether a civil detention violates a detainee’s due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).” *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). Those factors are: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335, 96 S.Ct. 893.

32. Across the country, District Courts— including all four Texas District Courts— have repeatedly sustained as-applied due process challenges to § 1225(b)(2) on facts closely analogous to Petitioner’s. In Texas alone, these include:² *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *7 (W.D. Tex. Oct. 16, 2025) (**Briones, D.**) (“In sum, Section 1225(b)(2) as applied to Petitioner violates his Fifth Amendment Due Process rights.”); *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *3 (W.D. Tex. Oct. 21, 2025) (**Cardone, K.**) (“the Court does not reach the statutory interpretation question because, assuming without finding that the Government’s new interpretation is correct, Gonzalez Martinez is entitled to due process and succeeds in his as-applied challenge.”); *Ortega-Aguirre v. Noem*, No. 4:25-CV-04332, 2025 WL

² Numerous District Courts in other states have also sustained as-applied due process challenges to § 1225(b)(2) in cases involving long-term residents. *See, e.g., Diaz v. Kaiser*, No. 25-CV-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025) (finding detention without bond violates due process and collecting California cases reaching the same result); *Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (adopting magistrate’s finding that § 1225(b)(2) violated due process and ordering immediate release); *Duran Avalos v. Bondi*, No. C25-4063-LTS-KEM, 2025 WL 3530162, at *4 (N.D. Iowa Dec. 9, 2025) (“his continued detention without the opportunity to post bond violates his substantive due process rights”); *Sanchez Alvarez v. Noem*, No. 1:25-CV-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025). A comprehensive accounting of such decisions would occupy multiple additional pages.

3684697, at *3 (S.D. Tex. Oct. 10, 2025) (**Bennet, A.**) (“Here, the Court finds that Petitioner is likely to prevail on the merits of his due process claim because he ‘has been detained since August of 2025 without any individualized assessment of flight risk or dangerousness.’”); *Cruz-Reyes v. Bondi*, 5:26-CV-60, 2026 WL 332315, at *3 (S.D. Tex. Feb. 3, 2026) (**Saldaña, D.**) (“The imposition of mandatory detention under § 1225(b)(2) on Mr. Cruz Reyes, a long-term resident who was arrested in the interior of the United States...violates the most basic principles of due process.”); *Cordova v. Noem*, No. 3:26-CV-97-K-BN, 2026 WL 218938, at *3 (N.D. Tex. Jan. 28, 2026) (**Kinkeade, E.**) (“the Court holds that denying Petitioner a bond hearing under § 1225(b)(2) deprives him of procedural due process protections under the Fifth Amendment.”); *Camacho-Gutierrez v. Thompson*, No. 5:25-CV-01876-MA, 2026 WL 195758, at *5 (W.D. Tex. Jan. 16, 2026) (**Alvarez, M.**) (“the Court finds that Petitioner's detention without any notice or an individualized assessment deprives her of the constitutional right to procedural due process”); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *10 (W.D. Tex. Oct. 21, 2025) (**Pulliam, J.**) (“the Court finds that detaining him without any individualized assessment of his flight risk and dangerousness deprives him of his constitutional right to procedural due process.”); *Blanco v. Bondi*, No. 5-25-CV-01412-FB-RBF, 2025 WL 3908488, at *6 (W.D. Tex. Dec. 30, 2025), report and recommendation adopted sub nom. *Betancourt Blanco v. Bondi*, No. SA-25-CV-01412-FB, 2026 WL 78204 (W.D. Tex. Jan. 9, 2026) (**Biery, F.**) (finding that government’s position “is troubling and stands in considerable tension with fundamental due process guarantees.”); *George v. Noem*, No. 3:25-CV-2935-S-BW, 2025 WL 3852946, at *4 (N.D. Tex. Dec. 19, 2025), report and recommendation adopted, No.

3:25-CV-02935-S-BW, 2026 WL 30829 (N.D. Tex. Jan. 5, 2026) (Gren Scholer, K.) (“detaining Villantes George without a bond hearing violates his Fifth Amendment rights.”).

33. Most notably, even after *Buenrostro-Mendez*, the Western District of Texas has continued to grant habeas relief on Due Process grounds. *Hassen v. Noem*, No. EP-26-CV-00048-DB, at 4, n.1 (W.D. Tex. Feb. 9, 2026) (Briones, D.); *Aguila v. Warden*, EP-26-CV-241-KC at 3-4 (W.D. Tex. Feb. 9, 2026) (Cardone, K.); *Bonilla Chicas v. Warden*, 5:26-cv-00131, 2026 WL 539475 (S.D. Tex. Feb. 20, 2026) (Saldana, D.); *Ochoa v. Vergara*, No. 1:26-CV-266-RP, 2026 WL 482211 (W.D. Tex. Feb. 20, 2026) (Pittman, R.); *Montufar v. Thompson*, No. 5:26-cv-00422-FB (W.D. Tex. Feb. 24, 2026) (Biery, F.); *Rodriguez v. Warden Randy Tate*, No. CV 4:26-650, 2026 WL 517983 (S.D. Tex. Feb. 25, 2026) (Hanks Jr., G.); *Campos-Perez v. Thompson*, No. 5:26-cv-00249-XR (W.D. Tex. Feb. 26, 2026) (Rodriguez, X.); *Alvarez-Rico v. Noem*, No. 4:26-CV-00729, 2026 WL 522322 (S.D. Tex. Feb. 25, 2026) (Ellison, K.); *Meliki v. Lyons*, No. 5:26-CV-0140-JKP, 2026 WL 690011 (W.D. Tex. Mar. 2, 2026) (Pulliam, J.); *Pruna v. Thompson*, No. 5:26-cv-00366-OLG (W.D. Tex. Mar. 4, 2026) (Garcia, O.); *Aldana-Barreira v. Bondi*, No. 1:26-cv-00436-DAE (W.D. Tex. Mar. 12, 2026) (Ezra, D.).

ALL THREE MATHEWS FACTORS WEIGH IN PETITIONER’S FAVOR

34. First, “Respondents fail to contend with the liberty interests created by the fact that the Petitioner[] in this case [was] released on recognizance prior to the manifestation of this interpretation.” *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *9 (W.D. Tex. Oct. 21, 2025) (citations omitted). Courts have held that once

released from immigration custody, noncitizens acquire a “protectable liberty interest in remaining out of custody on bond.” *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 686 (W.D. Tex. 2025) (citation omitted) (collecting cases). “Because he spent nearly [twenty-one years] at liberty in the United States, [Petitioner] possesses a cognizable interest in his freedom from detention.” *Id.* This interest “deserves great weight and gravity.” *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *6 (W.D. Tex. Oct. 16, 2025) (citations omitted). *See also Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (Aliens “who have once passed through our gates, even illegally,” are afforded the full panoply of procedural due process protections, and “may be expelled only after proceedings conforming to traditional standards of fairness.”).

35. In this case, Petitioner has spent at least 21 years at liberty in the United States; he too possesses a cognizable interest in his freedom from detention.

36. Second, the First Circuit examined at length the risk of erroneous deprivation in *Hernandez-Lara*. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 28-31 (1st Cir. 2021). There, the First Circuit concluded that bond hearings that placed the burden on the detained noncitizen inherently carried a high risk of error for five reasons: (1) detainees are not provided counsel and often cannot obtain counsel; (2) detainees experience great difficulty obtaining evidence; (3) detainees often lack full proficiency in English; (4) immigration law and procedures and judge preferences are likely much better known to government representatives than to detainees; and (5) the inherent difficulty in proving a negative. *Id.* The Court explained that the case before it “evidences how the allocation of the burden of proof can affect the likelihood of such error. With a record of employment,

family relations, a settled place in the community, and no arrests, Hernandez would seem to have been a good candidate for conditional release on bail.” *Id.* at 31. Yet she was denied bond. The Court concluded that due process required that the burden be placed on the government in § 1226(a) bond proceedings.

37. If the risk of erroneous deprivation is already high in a standard § 1226(a) bond hearing — where the detainee at least has an opportunity to be heard — then the risk must be exponentially greater under § 1225(b)(2), which deprives Petitioner of any opportunity whatsoever to contest the reasonableness of his continued detention. “The risk lies in the automatic continued deprivation of liberty for a noncitizen who has already been determined to not be a flight risk nor a danger to the community, and has lived in the United States for a prolonged period of time, especially where there are no facts in the record to reflect material changes in Petitioner’s dangerousness or flight risk.” *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *7 (W.D. Tex. Oct. 16, 2025). Accordingly, this factor strongly favors Petitioner and compels Court intervention that can actually address the risk of error.

38. On the final factor, the Government’s only conceivable countervailing interest is its generalized interest in enforcing the INA as it interprets it. “Of course, the Government has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community.” *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 687 (W.D. Tex. 2025). But these interests do not justify indefinite detention without any individualized assessment of whether Petitioner actually poses a flight risk or danger. *Id.* To the extent the Government asserts an interest in avoiding “the incremental cost resulting from the increased number of hearings,” that argument is unavailing: “such

costs cannot be terribly burdensome, given Respondents' concession that the Government conducted them for decades until its reinterpretation of the law earlier this year." *Id.* (citations omitted). The third *Mathews* factor therefore weighs in Petitioner's favor.

39. Applied to Petitioner's circumstances, the *Mathews* analysis compels relief. Petitioner has resided in the United States for thirty-four years, is steadily employed, has extensive familial and community ties, and has never failed to appear before any court or government agency. Under these circumstances, the Government cannot demonstrate that continued mandatory detention without any individualized assessment serves its interests in preventing flight or protecting the community.

PETITIONER'S SEIZURE VIOLATES THE FOURTH AMENDMENT

40. The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. This protection extends to all persons in the United States, regardless of immigration status. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975) ("[T]he Fourth Amendment . . . applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest."). The Constitution, as well as the INA and implementing regulations, provide fundamental limits on DHS authority in multiple respects, including the requirements governing civil immigration arrests and investigatory stops.

41. Petitioner's seizure violated the Fourth Amendment in two independently sufficient respects: (1) the stop lacked any articulable basis and was unlawful from its inception; (2) Petitioner was formally arrested without a warrant and without probable cause that he was likely to escape.

42. Officers making civil immigration arrests must have an administrative warrant. *Arizona v. United States*, 567 U.S. 387, 408 (2012). *See also* 8 C.F.R. § 287.8(c)(2)(ii) (“A warrant of arrest *shall* be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained.”) (emphasis added).

43. An I-200 administrative warrant can only be issued “[a]t the time of issuance of the [NTA], or at any time thereafter”—not before. 8 C.F.R. § 236.1(b)(1)³; *See also Castanon Nava v. Dep’t of Homeland Sec.*, No. 18-CV-3757, 2025 WL 2842146, at *12-17 (N.D. Ill. Oct. 7, 2025) (holding that absent concurrent or prior issuance of NTA, ICE was not permitted to issue Form I-200 administrative warrant concurrent to arrest of collateral persons); *Id.* at 23 (also finding that the ICE had implemented a policy of issuing defective I-200 warrants in the field for the express purpose of avoiding its obligation under § 1357(a)(2) and the Consent Decree.) *See also Castanon-Nava v. U.S. Dep’t of Homeland Sec.*, 161 F.4th 1048, 1059, n. 9 (7th Cir. 2025) (concluding that the district court’s factual finding regarding the policy is supported by the record and is not clearly erroneous.”); *Id.* at 1059, n. 10. (though the Court could not remedy such conduct on a class-wide basis, “[o]f course, an individual arrested pursuant to a field-issued I-200 warrant can challenge the validity of the warrant in federal court on an individual basis (for example, in a habeas proceeding.”)

44. “If no federal warrant has been issued, those officers have more limited authority.” *Arizona*, 567 U.S. 387, 408 (2012). 8 U.S.C. § 1357(a) permits designated immigration officers to make warrantless arrests *only* where “an alien is entering or attempting to

³ *See* 8 C.F.R. § 236.1(b)(1) (specifying that an administrative warrant of arrest can be issued “[a]t the time of issuance of the [NTA], or at any time thereafter,” not before)

enter the United States [in the officer's presence or view]" or "if [the officer] has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2). The law "is clear that, to comport with the Fourth Amendment, the "reason to believe" standard for a civil immigration arrest under the INA is "the equivalent of probable cause.'" *Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. CV 25-3417 (BAH), 2025 WL 3465518, at *26 (D.D.C. Dec. 2, 2025) (citations omitted).

45. In making warrantless arrests, ICE is bound not only by statute and the Fourth Amendment, but also by its national policy adopted pursuant to settlement agreement in *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.). In 2021, pursuant to a settlement, ICE issued a nationwide "Broadcast Statement of Policy," setting out how ICE officers are to conduct warrantless arrests in a manner consistent with 8 U.S.C. § 1357(a)(2). Specifically, the policy provided, in relevant part, that: (1) to make a warrantless arrest, an ICE officer is required "to have probable cause that an individual is in the United States in violation of U.S. immigration laws *and* probable cause that the individual is likely to escape before a warrant can be obtained for the arrest"; (2) when determining "likelihood of escape," an officer "must consider" the totality of the circumstances known to them before the arrest; (3) relevant factors include whether the officer can "determine the individual's identity, knowledge of that individual's prior escapes or evasions of immigration authorities, attempted flight from an ICE Officer, ties to the community (such as a family, home, or employment) or lack thereof, or other specific circumstances" weighing in favor or against flight risk; and (4) "mere presence within the United States in violation of U.S. immigration law is not, by

itself, sufficient to conclude that an alien is likely to escape before a warrant for arrest can be obtained.”⁴

46. Turning to “immigration stops,” the Fourth Amendment prohibition against unreasonable “seizures” permits immigration agents to stop individuals only after identifying “specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that [the persons stopped are noncitizens] who may be illegally in the country.” *United States v. Brignoni-Ponce*, 422 U.S. 873, 884, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975). *See also* 8 C.F.R. § 287.8(b)(2) (allowing officer to “briefly detain” a noncitizen for questioning if the officer “has a reasonable suspicion, based on specific articulable facts” that the noncitizen is engaged in an offense or is unlawfully in the United States). Information obtained from an officer’s lawful questioning “may provide the basis for a subsequent arrest.” 8 C.F.R. § 287.8(b)(3). Race or apparent ethnicity, standing alone, cannot form the basis for reasonable suspicion. *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975). Because probable cause is a more demanding standard than reasonable suspicion, race or apparent ethnicity, standing alone, is also necessarily insufficient to form the basis for probable cause.

47. In this case, Petitioner was never questioned regarding his actions. Petitioner was never provided any pretense for why he was being stopped or taken. Because Respondents did not have probable cause or reasonable suspicion, the detention violated the Fourth Amendment. The only plausible reasonable explanation for why Petitioner was followed and then eventually questioned and detained was his racial profile.

⁴ *See Castanon Nava Settlement Agreement*, Appendix A (Broadcast Statement of Policy) at 17-19, available at: https://immigrantjustice.org/wp-content/uploads/2025/05/Castanon-Nava_Final-Settlement-Agreement_Feb2022-1.pdf

48. Because Respondents only detained Petitioner because of his race, they did not have reasonable suspicion, and the detention violated the Fourth Amendment.

49. Additionally, Petitioner was arrested without a warrant, despite officers' lack of probable cause to believe that Petitioner was both unlawfully present in the United States **and** likely to escape before a warrant could be obtained. Prior to his arrest, he resided in the U.S. for approximately thirty four years, was gainfully employed, and has no prior history of prior escapes or attempted flight from authorities. The circumstances of his warrantless arrest mirror nationwide practices that multiple District Courts have found violate the Fourth Amendment and the INA.⁵ His circumstances plainly would not meet the probable cause standard to justify a warrantless arrest.⁶ As a result, his detention violates the Fourth Amendment, the INA, and implementing regulations.

50. ICE's arrest of Petitioner also violated its own nationwide policy governing warrantless arrests — the Broadcast Statement of Policy adopted pursuant to the *Castañon Nava* settlement agreement. *See supra* ¶47. That policy requires officers to have probable cause that an individual is likely to escape before making a warrantless arrest, and mandates consideration of the totality of the circumstances — including community ties, family, employment, and whether the individual's identity can be determined. *See Castanon Nava Settlement Agreement*, Appendix A at 17-19. Here, Petitioner was a thirty four-year resident with a fixed address, a stable job, and family in the United States. He had no

⁵ *See e.g. Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. CV 25-3417 (BAH), 2025 WL 3465518 (D.D.C. Dec. 2, 2025) (unlawful warrantless arrests in DC); *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467 (D. Colo. Nov. 25, 2025) (unlawful warrantless arrests in Colorado); *M-J-M-A- v. HERMOSILLO*, No. 6:25-CV-02011-MTK, 2026 WL 303612 (D. Or. Feb. 4, 2026) (unlawful warrantless arrests in Oregon); *Castanon Nava v. Dep't of Homeland Sec.*, No. 18-CV-3757, 2025 WL 2842146 (N.D. Ill. Oct. 7, 2025) (unlawful warrantless arrests in Illinois, Indiana, Wisconsin, Missouri, Kentucky, and Kansas)

⁶ Courts have made this finding when analyzing the warrantless arrest of similarly situated persons. *See e.g. Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467 (D. Colo. Nov. 25, 2025); *Castanon Nava v. Dep't of Homeland Sec.*, No. 18-CV-3757, 2025 WL 2842146 (N.D. Ill. Oct. 7, 2025).

history of flight, and was not attempting to resist or flee at the time of his arrest. Officers made no apparent inquiry into any of these circumstances before arresting him. The arrest was made in plain disregard of the policy's requirements.

51. Notably, the circumstances of his warrantless arrest mirror nationwide practices that multiple District Courts have found violate the Fourth Amendment and the INA. *See e.g. Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. CV 25-3417 (BAH), 2025 WL 3465518 (D.D.C. Dec. 2, 2025) (unlawful warrantless arrests in DC); *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467 (D. Colo. Nov. 25, 2025) (unlawful warrantless arrests in Colorado); *M-J-M-A- v. HERMOSILLO*, No. 6:25-CV-02011-MTK, 2026 WL 303612 (D. Or. Feb. 4, 2026) (unlawful warrantless arrests in Oregon); *Castanon Nava v. Dep't of Homeland Sec.*, No. 18-CV-3757, 2025 WL 2842146 (N.D. Ill. Oct. 7, 2025) (unlawful warrantless arrests in Illinois, Indiana, Wisconsin, Missouri, Kentucky, and Kansas).

52. In sum, on multiple grounds, his detention violates the Fourth Amendment, the INA, and implementing regulations. An arrest in violation of the Fourth Amendment is grounds for habeas relief. *See Alberto C.M. v. Noem*, No. 26-CV-380 (DWF/SGE), 2026 WL 184530, at *2 (D. Minn. Jan. 23, 2026) (finding warrant invalid where the I-200 “was not issued until after his arrest and initial detention” and ordering immediate release) and *Victor O. v. Bondi*, No. 26-CV-1122 (ECT/LIB), (where a warrant shows a signature dated February 7, 2026, when the petitioner’s detention was on February 5, 2026).

53. The Fifth Circuit has recognized that an agency's failure to follow its own regulations constitutes a denial of due process where “the regulation is required by the constitution or a statute.” *Arzanipour v. I.N.S.*, 866 F.2d 743, 746 (5th Cir. 1989); *see also Retana Leyva*

v. Barr, 838 F. App'x 13, 19 (5th Cir. 2020) (per curiam) (unpub.) (same). Here, the Broadcast Statement of Policy implements 8 U.S.C. § 1357(a)(2) — a statutory provision that constrains the government's authority to make warrantless arrests. Because the policy gives operational content to a statutory requirement, ICE's failure to comply with it constitutes an independent due process violation that reinforces Petitioner's Fourth Amendment claim.

AVAILABLE REMEDIES

54. “Habeas is at its core a remedy for unlawful executive detention. The typical remedy for such detention is, of course, release.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008). Petitioner submits that immediate release is the most appropriate remedy for the violations of the Fifth Amendment’s right to due process and the Fourth Amendment prohibitions against unreasonable seizures. “In recent months, courts across the country have ordered the release of detainees in similar situations.” *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (**given that the government’s repeated use of unlawful detention policies across the country, causing petitioners to “sit in jail waiting for a judicial decision,” the court would order immediate release instead of causing additional delay through a bond hearing**). (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025).

55. Courts across Texas have also ordered immediate release, even after *Buenrostro-Mendez*, on due process grounds. See e.g. *Ochoa v. Vergara*, No. 1:26-CV-266-RP, 2026 WL 482211 (W.D. Tex. Feb. 20, 2026); *Bonilla Chicas v. Warden*, 5:26-cv-00131, 2026 WL 539475 (S.D. Tex. Feb. 20, 2026); *Rodriguez v. Warden Randy Tate*, No. CV 4:26-650, 2026 WL 517983 (S.D. Tex. Feb. 25, 2026); *Campos-Perez v. Thompson*, No.

5:26-cv-00249-XR (W.D. Tex. Feb. 26, 2026); *Meliki v. Lyons*, No. 5:26-CV-0140-JKP, 2026 WL 690011 (W.D. Tex. Mar. 2, 2026); *Pruna v. Thompson*, No. 5:26-cv-00366-OLG (W.D. Tex. Mar. 4, 2026) (Garcia, O.); *Aldana-Barreira v. Bondi*, No. 1:26-cv-00436-DAE (W.D. Tex. Mar. 12, 2026) (Ezra, D.).

56. Petitioner respectfully urges this Court to consider the thoughtful reasoning of S.D. Tex. Judge Diana Saldaña, who has moved from ordering bond hearings to ordering immediate release as the appropriate remedy. *See Cruz-Reyes v. Bondi*, 5:26-CV-60, 2026 WL 332315 (S.D. Tex. Feb. 3, 2026). Judge Saldaña identified three factors supporting immediate release on due process grounds. **First**, she emphasized that the "opportunity for [an] initial [pre-deprivation] determination is imperative." *Cruz-Reyes*, 5:26-CV-60, 2026 WL 332315 at *6. "Because Petitioner was entitled to notice and an individualized assessment before being redetained by ICE, a post-deprivation hearing would not remedy the core constitutional violation that has occurred." *Bonilla Chicas*, 5:26-cv-00131, at 24-25. A post-deprivation "hearing is no substitute for the requirement that ICE engage in a 'deliberative process prior to, or contemporaneous with,' the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Gonzalez v. Joyce*, 2025 WL 2961626, at *5 (S.D.N.Y. Oct. 19, 2025) (citations omitted). *See also Valdez v. Joyce*, 803 F. Supp. 3d 213, 219 (S.D.N.Y. 2025) (ordering immediate release based on the violation of petitioner's due process rights); *Kumar v. Wamsley*, 2026 WL 251798, at *6 (W.D. Wash. Jan. 30, 2026) (same); *Faqeri v. Scott*, 2026 WL 194475, at *5 (W.D. Wash. Jan. 26, 2026) (same). **Second**, she recognized the significant human cost already borne by the petitioner and his family, including impaired ability to earn a living and support his family. *Cruz-Reyes*, 5:26-CV-60, 2026 WL 332315 at *6. **Third**, she noted

that the petitioner had previously been released on his own recognizance based on a finding that he posed no flight risk or danger, and that there was "no evidence before the Court that circumstances have changed." *Id.* Each of these factors applies with equal force here.

57. In the alternative, if the Court determines that some custody determination is warranted, the Court should order a bond hearing, *but with additional safeguards*. **First**, the Government should bear the burden of proving by clear and convincing evidence that Petitioner poses a danger to the community or is a flight risk to "[reflect] the concern that '[b]ecause the alien's potential loss of liberty is so severe ... he should not have to share the risk of error equally.'" *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 688 (W.D. Tex. 2025) (also noting that "as of 2020, the 'vast majority'—an 'overwhelming consensus'—of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk"). This is also consistent with the Supreme Court's civil detention jurisprudence, where it has always required the government to bear the burden of proof. *Addington v. Texas*, 441 U.S. 418, 433 (1979) (holding that in civil commitment proceedings, the government's burden of proof must be "equal to or greater than the 'clear and convincing' standard" to meet due process guarantees.) **Second**, the Court should require the immigration judge to set forth with specificity the factual and legal bases for any danger or flight risk determination. **Third**, the Court should retain jurisdiction to review the immigration judge bond decision to ensure compliance with the court's order and due process. **Fourth**, the Court should prohibit the government from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) because courts

have ruled that their application violates the procedural due process rights of noncitizens granted bond. *See, e.g., Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521, at *8 (S.D. Tex. Nov. 14, 2025).

COUNT ONE

Violation of Fifth Amendment Right to Due Process

58. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
59. The government may not deprive a person of life, liberty, or property 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 the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).
60. Petitioner has a fundamental interest in liberty and being free from official restraint.
61. The government’s mandatory detention of Petitioner without the opportunity to request a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to Due Process pursuant to the Fifth Amendment.

COUNT TWO

Violation of the Fourth Amendment — Unreasonable Seizure

62. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
63. The Fourth Amendment to the United States Constitution protects all persons within the United States — regardless of immigration status — from unreasonable searches and seizures. U.S. Const. amend. IV; *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975).

64. Petitioner was seized by immigration officers without reasonable, articulable suspicion of criminal activity or unlawful immigration status. On information and belief, Petitioner was detained on the basis of his race and apparent ethnicity, which cannot — standing alone — form the basis for reasonable suspicion. *Brignoni-Ponce*, 422 U.S. at 886-87.
65. Petitioner was subsequently arrested without a judicial or administrative warrant. Under 8 U.S.C. § 1357(a)(2), a warrantless immigration arrest requires probable cause that the individual is in the United States in violation of immigration law and that the individual is likely to escape before a warrant can be obtained. Petitioner's thirty-four year residence, stable employment, family ties to the United States and absence of prior flight demonstrate he posed no risk of escape. Officers lacked probable cause to justify his warrantless arrest.
66. On information and belief, Petitioner's I-200 administrative warrant was not issued concurrently with or subsequent to the issuance of a Notice to Appear, as required by 8 C.F.R. § 236.1(b)(1). An I-200 generated after Petitioner's arrest renders it invalid as a basis for his continued detention. *See Alberto C.M. v. Noem*, No. 26-CV-380 (DWF/SGE), 2026 WL 184530, at *2 (D. Minn. Jan. 23, 2026) (finding warrant invalid where I-200 "was not issued until after his arrest and initial detention" and ordering immediate release).
67. Petitioner's arrest in violation of the Fourth Amendment, the Immigration and Nationality Act, and implementing regulations renders his continued detention unlawful. An arrest that violates the Fourth Amendment is grounds for habeas relief, including release from custody.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter and maintain jurisdiction to the extent necessary to ensure Respondents' compliance with any order this Court may issue;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (3) Declare that the refusal to allow Petitioners a bond redetermination hearing before an immigration judge violates the Due Process clause of the Fifth Amendment, and that Petitioner's seizure and arrest violated the Fourth Amendment;
- (4) Declare that Petitioner's warrantless arrest violated the Fourth Amendment and 8 U.S.C. § 1357(a)(2), and order that Petitioner be released from the unlawful custody resulting from that arrest;
- (5) Issue a Writ of Habeas Corpus requiring that Respondents immediately release the Petitioner, or, in the alternative, order a custody redetermination hearing in which the government bears the burden of showing that Petitioner is a flight risk or a danger to the community by clear and convincing evidence;
- (6) Maintain jurisdiction over the Petitioner until the Respondents have properly complied with any Orders of this Court.
- (7) Order further relief as this Court deems just and appropriate.

Respectfully submitted,

/s/ Lucia Curiel

Lucia Curiel, Esq.

The Law Office of Mark Kinzler, P.C.

PO Box 684309

Austin, TX 78768

(512) 402-7999

lucia@kinzlerimmigration.com
Attorney for Petitioner

Dated: April 16, 2026

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Jose Mariano Rosales, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 16th day of April, 2026.

/s/ Lucia Curiel
Lucia Curiel, Esq.
Attorney for Petitioner

CERTIFICATE OF SERVICE

Rosales v. Villegas, et. al
Case No. 1:26-cv-00180

I hereby certify that on April 16, 2026, I mailed by United States Postal Service the Verified Petition for Writ of Habeas Corpus by certified mail to the following:

Stephanie Rico
Civil Process Clerk Office of the United States Attorney for the Western District
of Texas
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216-5597

Marcello Villegas, Warden
Bluebonnet Detention Facility
400 E 2nd St.,
Anson, TX 79501

Secretary of Homeland Security Markwayne Mullin
2707 Martin Luther King Jr., Ave., SE
Washington, DC 20528-0485

U.S. Attorney General Todd Blanche
950 Pennsylvania Ave NW
Washington, DC 20530

The above respondents were also named in the CM/ECF habeas corpus filing with the Western District of Texas court

/s/ Lucia Curiel