

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

Leonardo VIVEROS MOLINA,

Petitioner,

v.

Todd BLANCHE, in his official capacity as Acting Attorney General of the United States;

Markwayne MULLIN, in his official capacity as Secretary of the Department of Homeland Security;

David J. VENTURELLA, in his official capacity as Acting Director of United States Immigration and Customs Enforcement;

David EASTERWOOD, in his official capacity as Acting Director, St. Paul Field Office, U.S. Immigration and Customs Enforcement;

Eric TOLLEFSON, in his official capacity as Sheriff of Kandiyohi County.

Respondents.

Case No.

**VERIFIED PETITION
FOR WRIT OF HABEAS
CORPUS PURSUANT
TO 28 U.S.C. § 2241**

INTRODUCTION

1. This case seeks the immediate release of Leonardo Viveros Molina from unlawful immigration detention by the Department of Homeland Security's ("DHS") U.S. Immigration and Customs Enforcement ("ICE"). ICE has been detaining Petitioner since at least May 11, 2026, at the Kandiyohi County Jail.

2. In light of the information and belief that ICE has rapidly moved individuals in its custody out of the District of Minnesota, this petition also requests that the Court's

Order to Show Cause immediately enjoin Respondents from moving Petitioner outside of the District of Minnesota. Ordering that relief in the Order to Show Cause is now a nearly universal practice in this District.

3. Petitioner is a citizen of Mexico who has resided in the United States for almost 25 years. Petitioner first entered the country when he was admitted by way of visa on September 5, 2001, in San Ysidro, California. Petitioner filed an I-918 Application for U-Visa with U.S. Citizenship and Immigration Services (“USCIS”) on May 18, 2021 based on Petitioner’s knowledge of, and cooperation with law enforcement regarding, violent crimes committed against his daughter. Petitioner received a Bona Fide Determination on May 23, 2024 which states that he “warrant[s] a favorable exercise of discretion to receive employment authorization and deferred action.” Ex. A to Declaration of Samantha Pauley (“Pauley Decl.”), USCIS Bona Fide Determination Notice dated May 23, 2024. Petitioner’s U-Visa application is still pending. Separately, Petitioner’s C10 Employment Authorization is valid until November 25, 2029.

4. On October 11, 2018, DHS detained and commenced removal proceedings against Petitioner when he was arrested on charges of domestic violence against his wife—charges that were precipitated by [REDACTED] [REDACTED] earlier that year. After initially denying bond, Immigration Judge (“IJ”) Sarah B. Mazzie granted Petitioner’s request to be released from custody under a bond of \$5,000 pursuant to 8 CFR § 236.1(c). Ex. B to Pauley Decl., Order of the Immigration Judge with Respect to Custody dated February 13, 2019. In order to be eligible for release under this

statute, Petitioner had to demonstrate that his “release would not pose a danger to property or persons” and that he “is likely to appear for any future proceeding[.]” 8 CFR 236.1(c)(8).

5. In the following years, Petitioner has continued to build a life for himself, his wife, and his two minor children in Minnesota while managing the enduring trauma resulting from his daughter’s death.

6. On May 11, 2026, Petitioner was at the Douglas County Jail for booking and to pay fines related to an arrest for driving under the influence when ICE arrested, detained, and transferred him to the Kandiyohi County Jail. On information and belief, federal agents arrested Petitioner without a judicial or administrative warrant and without probable cause.

7. Petitioner’s detention is unlawful for at least six reasons.

8. *First*, the government has no legitimate interest in detaining Petitioner when he is neither a flight risk nor a danger—the only two constitutionally permissible reasons for immigration detention. In February 2019, an IJ determined that Petitioner does not pose such a risk, and because Petitioner’s subsequent conduct in the United States has not invalidated this prior determination, Respondents cannot be said to have any legitimate basis for re-detention. Accordingly, his present detention violates his substantive due process rights, requiring his immediate release.

9. *Second*, due process requires that the government show, in a pre-deprivation hearing before a neutral adjudicator, materially changed circumstances before re-detaining Petitioner. When the government released Petitioner from its custody in February 2019, it determined he was neither a flight risk nor a danger to the community. Since then, nothing has changed to undermine that determination. On the contrary, support for that

determination has only strengthened. Petitioner's detention without any pre-deprivation process violates his procedural due process rights and this alone warrants his immediate release. Absent outright release, the Due Process Clause requires, at minimum, that this Court conduct an individualized review.

10. *Third*, Petitioner's warrantless re-arrest violates his Fourth Amendment rights, as well as statute and regulation, similarly mandating his release.

11. *Fourth*, Respondents' decision to re-detain Petitioner was arbitrary, capricious, an abuse of discretion, and contrary to constitutional right. As such, Respondents also violated the Administrative Procedure Act ("APA").

12. *Fifth*, Respondents' re-detention of Petitioner revoked a prior custody determination by government officials not authorized by law to make this determination in violation of the APA and in violation of the *Accardi* doctrine's requirement that agencies comply with their own regulations.

13. *Finally*, although Petitioner acknowledges that this argument is foreclosed by *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026), he nevertheless preserves the argument that the government's position that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is incorrect as a matter of statutory interpretation. Despite the holding in *Avila*, Petitioner nonetheless asserts this argument for purposes of preservation for appeal or in the event that *Avila* is vacated or abrogated by the en banc Eighth Circuit or Supreme Court—especially now that multiple circuits have reached a contrary conclusion. *See Barbosa da Cunha v. Freden*, ___ F. 4th ___, No. 25-3141, 2026 WL 1146044 (2d Cir. Apr. 28, 2026); *Hernandez Alvarez v. Warden*, ___ F.4th ___, Nos. 25-14065, 25-14075, 2026 WL

1243395 (11th Cir. May 6, 2026); *Lopez-Campos v. Raycraft*, Nos. 25-cv-12486, 25-cv-13073, 25-cv-12546, 25-cv-01090 (6th Cir. May 11, 2026).

14. For these reasons and as further explained below, Petitioner respectfully asks this Court to declare that his detention is unlawful, order his immediate release or alternatively hold a custody hearing at which the government must justify his detention, and enjoin Respondents from violating his rights in the future.

JURISDICTION & VENUE

15. 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”).

16. 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.

17. 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 Petitioner seeks to challenge his custody as a violation of the U.S. Constitution, laws, or treaties of the United States, jurisdiction is proper in this Court.

18. Venue lies in this District because it is the judicial district in which Petitioner is currently detained. Venue is also proper in this Court under 28 U.S.C. § 1391(b)(2), (e)(1)(A)-(B) because Respondents are employees, officers, and agencies of the United

States, because a respondent resides in this District, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

19. Petitioner, Leonardo Viveros Molina, has lived in the United States for nearly 25 years. Prior to his detention on or about May 11, 2026, he was residing in Landfall, Minnesota. Petitioner is currently detained at Kandiyohi County Jail. Petitioner is in the direct control of Respondents.

20. Respondent Todd Blanche is sued in his official capacity as the Acting U.S. Attorney General. As Acting Attorney General, he has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

21. Respondent Markwayne Mullin is sued in his 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 Mullin is Petitioner's ultimate legal custodian.

22. Respondent David J. Venturella is sued in his official capacity as Acting Director of ICE. As ICE's Acting Director, Respondent Venturella is a legal custodian of Petitioner.

23. Respondent David Easterwood is sued in his official capacity as Field Office Director of the St. 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 Petitioner. In his official capacity, Respondent Easterwood is a legal custodian of Petitioner.

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

REQUIREMENTS OF 28 U.S.C. § 2243

25. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless Petitioner 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.*

26. 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).

27. Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

EXHAUSTION OF LEGAL REMEDIES

28. 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).

29. It would be futile for Petitioner to seek a custody redetermination hearing before an IJ because of the Board of Immigration Appeals (“BIA”)’s 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)).

30. Additionally, the IJ does not have jurisdiction to review Petitioner’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

I. The Due Process Clause Imposes Substantive and Procedural Limits on Immigration Detention.

31. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)); accord *Trump v. J.G.G.*, 605 U.S. 670, 673 (2025); see also *Lopez v. Heinauer*, 332 F.3d 507, 512 (8th Cir. 2003) (“The Supreme Court has long recognized that deportable [noncitizens] are entitled to constitutional protections of due process.” (citing *Yamataya v. Fisher*, 189 U.S. 89, 100–01 (1903))).

32. While the immigration laws afford the government discretion over its decisions to arrest, detain, and revoke prior release decisions, those decisions are nonetheless constrained by the laws Congress has enacted and the requirements of the Constitution, including the Due Process Clause. See generally *Zadvydas*, 533 U.S. at 690.

33. Indeed, “[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. This fundamental due process protection applies to all noncitizens within the United States, including both deportable and inadmissible noncitizens. See *id.* at 693 (explaining procedural due process applies to all “persons” within the United States, including noncitizens, “whether their presence here is lawful, unlawful, temporary, or permanent”); *Plyler v. Doe*, 457 U.S. 202, 212 (1982).

34. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risk of danger to the community and prevent

flight. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. Thus, to withstand constitutional scrutiny, the nature and duration of immigration detention must be reasonably related to these purposes. Absent adequate procedural protections, substantive due process requires a “special justification” that “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690; accord, e.g., *Fernandez v. Lyons*, 2025 WL 2531539, at *4 (D. Neb. Sept. 3, 2025) (describing the standard for substantive due process violation).

35. Relatedly, even where detention is substantively justified, procedural due process protects noncitizens against deprivation of liberty without adequate notice and the opportunity to be heard. *A.A.R.P. v. Trump*, 605 U.S. 91, 95-96 (2025); *J.G.G.*, 604 U.S. at 673. Prior to detaining a noncitizen in civil immigration detention, even for a legitimate purpose, the government must provide and follow sufficient procedural protections. See *Yrysbaev v. Arnott*, No. 6:26-cv-3047, 2026 WL 395897, at *3 (W.D. Mo. Feb. 12, 2026) (“In the immigration context, the Constitution requires the government to afford notice of any action against [a noncitizen] and requires the opportunity for the [noncitizen] to be heard. The opportunity to be heard must be meaningful, that is, an opportunity granted at a meaningful time and in a meaningful manner.” (internal citations omitted)).

36. To evaluate whether civil immigration detention violates procedural due process, some courts apply the three-part balancing test in *Mathews v. Eldridge*, weighing (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.” 424 U.S. 319, 335 (1976); *see, e.g., Manuel G. v. Blanche*, No. 26-CV-2385 (SRN/ECW), 2026 WL 1256358, at *5 (D. Minn. May 7, 2026) (applying *Mathews*); *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *2 (S.D. Iowa Apr. 17, 2026) (ordering outright release under due process clause—*Mathews* framework—for someone previously released on order of recognizance); *Aleksei v. Warden*, No. 5:26-CV-05030-RAL, 2026 WL 1133615, at *1 (D.S.D. Apr. 27, 2026) (ordering outright release on due process grounds—*Mathews* framework—for individual previously granted humanitarian parole).

37. Importantly, although Congress has determined that some noncitizens are subject to “mandatory immigration detention” as explained below, those individuals nevertheless are “entitled to due process of law under the Fifth Amendment.” *Mark O. v. Blanche*, No. No. 26-cv-02448, Doc. 7 at 5 (D. Minn. May 18, 2026); *see also id.* at 7 (holding that *Banyee*, *Demore*, and *Thuraissigiam* “are inapposite” to Petitioner’s procedural due process claim); *Heriberto R.E. v. Blanche*, No. 26-cv-2227 (JWB/LIB), No. 12 at 6 (D. Minn. May 1, 2026) (“Due process does not turn on statutory classifications alone, such as treating a noncitizen as an applicant for admission. It depends on the nature of the deprivation and the circumstances in which it is imposed.”).

II. Detention Authority Under the Immigration and Nationality Act.

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

39. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in removal proceedings under 8 U.S.C. § 1229a who are “already in the country.” *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Section 1226(a) “sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of [a noncitizen] ‘pending a decision on whether the [noncitizen] is to be removed from the United States.’” *Id.* at 288 (quoting § 1226(a)). “To detain a noncitizen under § 1226(a), a warrant is required.” *Martha C.G.P. v. Blanche*, No. 26-cv-2308, 2026 WL 1329557, at *3 (D. Minn. May 13, 2026) (citing *Ahmed M. v. Bondi*, No. 25-cv-4711, 2026 WL 25627, at *3) (D. Minn. Jan. 5, 2026) (collecting cases)). It thus follows that, absent a warrant, a noncitizen may not be arrested and detained pursuant to this section. *Id.*

40. 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) and are placed in regular, rather an expedited, removal proceedings. Noncitizens subject to mandatory detention under § 1225 may not be released except “for urgent humanitarian reasons or significant public benefit” under the parole authority provided by 8 U.S.C. § 1182(d)(5)(A). *See id.* at 300; *see also Avila*, 170 F.4th at 1133, n.2 (recognizing “a narrow, discretionary exception to mandatory detention under § 1225(b)(2)(A)”).

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

42. This case concerns the detention provisions under §§1225(b) and 1226(a).

a. Statutory Text and Framework¹

43. The overall statutory framework of the Immigration and Nationality Act (“INA”) 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)).

44. 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).

45. Despite this history, the government has recently taken various steps to expand its use of mandatory detention under § 1225(b)(2).

b. Recent Federal Court Decisions²

46. The overwhelming majority of federal district courts to consider the issue have rejected Respondents’ new interpretation of the custody statutes and have instead

¹ Petitioner acknowledges that *Avila* forecloses this statutory argument but raises it for preservation purposes.

² To the degree these cases hold that § 1225(b)(2) cannot reach those detained in the interior of the country, they have been abrogated by *Avila* (if they arise from within the Eighth Circuit) or otherwise cannot currently be followed within the Eighth Circuit (if they arise from other courts).

found that § 1226—not § 1225(b)(2)—authorizes detention of noncitizens who entered without inspection and who were later apprehended in the interior of the country. *See 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). Prior to the Eighth Circuit’s decision in *Avila*, courts in this district repeatedly held the same. *See, e.g., Ahmed M.*, 2026 WL 25627, at *2.

47. Despite this overwhelming rejection of Respondents’ new policy in courts nationwide, a split panel of the Eighth Circuit has held that Respondents’ reinterpretation of its statutory detention authorities is correct. *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026). But for all the reasons explained above, and as explained in Judge Erickson’s well-reasoned dissent in *Avila*, that case was wrongly decided. *See Avila*, 170 F.4th at 1138–41 (Erickson, J., dissenting); *see also, e.g., Alberto N. v. Bondi*, No. 26-cv-1228, 2026 WL 412748 (D. Minn. Feb. 13, 2026) (before *Avila* was decided, acknowledging and rejecting *Buenrostro-Mendez*).

48. Regardless, *Avila* addresses only the statutory habeas claim. Accordingly, other claims for habeas relief are not foreclosed. *See, e.g., Manuel G. v. Blanche*, No. 26-CV-2385 (SRN/ECW), 2026 WL 1256358, at *3 (D. Minn. May 7, 2026) (“While *Avila* addressed a noncitizen’s statutory rights, it did not address his due process rights.”). Accordingly, several courts in the Eighth Circuit have granted post-*Avila* habeas petitions filed by unadmitted noncitizens challenging various forms of mandatory detention on procedural due process grounds. *See, e.g., Manuel G.*, 2026 WL 1256358, at *5; *Heriberto R.E. v. Blanche*, No. 26-cv-2227 (JWB/LIB), No. 12 at 8 (D. Minn. May 1, 2026); *David*

J.C.P. v. Blanche, No. 26-cv-2181 (DWF/ECW), 2026 WL 1102725, at *3 (D. Minn. Apr. 23, 2026); *Osman J.M.A. v. Blanche*, No. 26-cv-2123 (DWF/DJF), 2026 WL 1005056, at *3 (D. Minn. Apr. 14, 2026)).

III. Regardless of Initial Detention Authority, the Immigration and Nationality Act, Accompanying Regulations, and Due Process Clause Demand Pre-Deprivation Process Prior to Re-Detention.

49. Even if a noncitizen is subject to mandatory detention under § 1225(b)(2), Respondents cannot arbitrarily re-detain a noncitizen previously released from immigration detention absent pre-deprivation process.

50. The source of DHS’s authority to release noncitizens from custody depends on which detention statute applies. Section 1222(c) is the most restrictive provision and authorizes release only when necessary under federal witness protection statutes. *See* 8 U.S.C. § 1226(c)(4). Section 1226(a) is broader in scope. Under § 1226(a), DHS can release noncitizens on bond, on their own recognizance (*i.e.*, “conditional parole”), or on humanitarian parole. *See* 8 U.S.C. §§ 1226(a)(2)(A)-(B); 8 C.F.R. § 236.1(8).

51. Regardless of the statutory vehicle for release, a DHS officer may not release a noncitizen unless the individual does not pose a risk of flight or danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8) (noncitizen must “demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding”); 8 C.F.R. § 212.5 (humanitarian parole available only when “the [noncitizens] present neither a security risk nor a risk of absconding”); 8 U.S.C. § 1226(c)(4) (permitting release of individual detained under § 1226(c) only when it is determined “that the [noncitizen] will not pose a danger to the

safety of other persons or of property and is likely to appear for any scheduled proceeding”); *see also Govea Perez v. South Texas ICE Processing Center*, No. SA-26-CA-02187-XR, 2026 WL 1078577, at *2 (W.D. Tex. Apr. 17, 2026) (“Release from initial detention ... can be granted only based on individualized findings that the noncitizen represents neither a flight risk nor a danger to the community.”).

52. Similarly, in deciding whether to release a noncitizen on bond or their own recognizance, IJs consider whether the individual poses a danger to the community and whether they are likely to appear for future proceedings. 8 C.F.R. § 1003.19(h)(3); *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006).

53. As a result, any “[r]elease” of a noncitizen “reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); *see also Mark O.*, No. 26-cv-02448, Doc. No. 7 at 15 (“[The fact remains that Petitioner was previously released, which ‘in and of itself reflects a determination that the individual is neither a flight risk nor a danger to the community[.]’” (quoting *Orlando R.V.V.*, No. 26-cv-1903, Doc. No. 11 (D. Minn. Apr. 28, 2026); *Govea Perez*, 2026 WL 1078577, at *2 (“[E]very noncitizen who has been paroled or released into the interior of the country has been found by a government official to pose neither a security risk nor a flight risk.”); *Alegria Palma*, No. 25-cv-1942 at *2, n.2 (noting that ICE respondents stated that “a determination that Petitioner was not a danger to the community or a flight risk . . . would be a consideration” prior to releasing him on his own recognizance)).

54. Statutory and regulatory provisions governing re-arrest also depend on the manner of release. Under the text of the INA and federal regulations, certain DHS officials “at any time may revoke a bond or [conditional] parole authorized under [§ 1226(a)], rearrest the [noncitizen] under the original warrant, and detain the [noncitizen].” 8 U.S.C. § 1226(b); *see* 8 C.F.R. § 236.1(c)(9). For decades, however, DHS has had a consistent policy and practice of re-detaining noncitizens in removal proceedings only when the individual circumstances related to their flight risk or danger to the community had materially changed. *See Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981) (holding that the government cannot re-arrest and re-detain a noncitizen released by an immigration judge on bond “absent a change of circumstance” warranting detention); *Saravia*, 280 F. Supp. 3d at 1197; Federal Defendants’ Supplemental Brief at 1, *Saravia v. Sessions*, No. 3:17-cv-03615-VC, (N.D. Cal. Nov. 3, 2017), Dkt. No. 90. (representing to a federal district court that the government historically arrested previously released noncitizens only after “a material change in circumstances” as to whether they are a flight risk or dangerous).

55. DHS has placed explicit limits on re-detention under 8 U.S.C. § 1226(b) by requiring authorization from a high-level official within the field office. By regulation, such revocations of release from custody may only be carried out in the “discretion of the district director, acting district director, deputy director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign).” 8 C.F.R. § 236.1(c)(9).

56. Additionally, despite “the breadth of [the] statutory language” in 8 U.S.C. § 1226(b), the federal government’s authority is subject to “an important implicit

limitation”: As reflected in its previous policy and practice, the government cannot lawfully re-detain someone without “a material change in circumstances.” *Saravia*, 280 F. Supp. 3d at 1197; *see also, e.g., Matter of Sugay*, 17 I. & N. Dec. at 640; *Doh H. v. Blanche*, No. 26-cv-02413, Doc. 8 at 8 (D. Minn. May 6, 2026) (recognizing the requirement that “officials invoking section 236.1(c)(9) [to re-detain a noncitizen] . . . make at least a showing of material changed circumstance before revoking release” and collecting cases from “numerous other courts around the country . . . conclud[ing] the same”); *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *8 (S.D. Iowa Apr. 17, 2026) (acknowledging “dozens of years of practice”).

57. This limitation means that a person who immigration authorities released on an order of recognizance cannot be re-detained “solely on the ground that he is subject to removal proceedings[,]” without some new, intervening cause. *Saravia*, 280 F. Supp. At 1196. Indeed, the Fourth Amendment, which also applies to seizures by immigration authorities, prohibits such re-arrests, which courts have long held could result in “harassment by continual rearrests.” *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971) (Stevens, J.) (prohibiting re-arrest without change in circumstances in criminal context); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal context to “limit” scope of immigration agents’ seizure authority).

58. This prohibition also derives from fundamental constitutional principles enshrined in the Due Process Clause of the Fifth Amendment. “The touchstone of due process is protection of the individual against arbitrary action of government,” *Wolff v.*

McDonnell, 418 U.S. 539, 558 (1974), including “the exercise of power without any reasonable justification in the service of a legitimate government objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). Due process requires that all forms of civil detention—including immigration detention—bear a “reasonable relation” to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 736 (1972).

59. As described *supra*, the Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen’s appearance at immigration proceedings (or, in the case of a removal order, at removal) and preventing danger to the community. *Zadvydas*, 533 U.S. at 690-92; *see Demore*, 538 U.S. at 519–20, 527–28, 531. It has also held that, in general, these purposes may not be assessed on a blanket or categorical basis. Instead, immigration custody decisions generally must be based on an “individualized determination” of flight risk and danger to the community. *See INS v. Nat’l Ctr. For Immigrants’ Rts., Inc.*, 502 U.S. 183, 194 (1991); *see also Zadvydas*, 533 U.S. at 690.

60. Moreover, individuals who are released from government custody have a protected liberty interest in remaining out of custody. The government’s decision to release an individual from custody creates “an implicit promise” that their liberty “will be revoked only if [they] fail[] to live up to the . . . conditions [of release].” *Morrissey*, 408 U.S. at 482.

61. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a parolee has in “his continued liberty.” 408 U.S. 481–82. The Court noted that, “subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with

family and friends and to form the other enduring attachments of normal life.” *Id.* at 482. The Court explained that “the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is valuable and must be seen as within the protections of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at 482.

62. Accordingly, in the criminal context, the Supreme Court has repeatedly recognized that re-detention after some form of conditional release requires a pre-deprivation hearing. *See, e.g., Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*, 411 U.S. at 781–82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“[A] person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated.”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

63. Similarly, and following this Supreme Court guidance, numerous courts have concluded that these principles apply with at least equal force to people released from civil immigration detention because they too have a protected liberty interest in their ongoing freedom from confinement. *See Abdirashid H.M. v. Noem*, No. 25-4779 (JRT/EMB), 2026 WL 127698, at *4 (D. Minn. Jan 9, 2026) (“The Court joins several district courts around the country in recognizing the self-evident idea that an individual who has been released

from custody to live a productive life in the community obtains a protected interest in their ‘continued liberty.’”); *Singh v. Mullin*, No. C26-56-LTS-MAR, 2026 WL 1021846, at *4 (N.D. Iowa Apr. 15, 2026) (“[W]hen the Government decides to release an individual ... it creates an implicit promise . . . that their liberty ‘will be revoked only if they fail to live up to the conditions of release.’”) (internal citations omitted); *Yrysbaev v. Arnott*, No 6:26-cv-3047-MDH, 2026 WL 395897, at *3 (W.D. Mo. Feb. 12, 2026) (“When the government grants a [noncitizen] parole into the country, it creates a liberty interest intimately tied to freedom from imprisonment.”).

64. And the fact that the release “decision-making process involves discretion does not prevent an individual from having a protectable liberty interest.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (citing *Young v. Harper*, 520 U.S. 143, 150 (1997)); see also *Singh v. Warden of Golden State Annex Det. Facility*, No. 1:26-CV-1284 DJC CSK, 2026 WL 731053, at *4 (E.D. Cal. Mar. 16, 2026), *report and recommendation adopted sub nom. Singh v. Warden of the Golden State Annex Det. Facility*, No. 1:26-CV-1284 DJC CSK, 2026 WL 802319 (E.D. Cal. Mar. 23, 2026) (“Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute.”) (citing *Young*, 520 U.S. at 147–49).

65. Similarly, even in cases where release could have arguably been contrary to law, an individual acquires a protected liberty interest in their release. See *Govea Perez v. South Texas ICE Processing Center*, No. SA-26-CA-02187-XR, 2026 WL 1078577, at *9, n.10 (W.D. Tex. Apr. 17, 2026) (explaining that, even if a “noncitizen[] should never have

been released in the first place . . . even an erroneously conferred benefit can create a constitutionally protected property interest where there was reason to rely on it”); *see also Wolff v. McDonnell*, 418 U.S. 539, 558 (1974) (due process clause applies “even when the liberty itself is a . . . creation of the State”); *Hurd*, 864 F.3d at 692–93 (“The Due Process Clause may itself confer a procedurally protected liberty interest on someone living openly in society for years after what, unbeknownst to him, was his premature release from prison.”); *DeWitt v. Ventetoulo*, 6 F.3d 32, 34–35 (1st Cir.1993); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process supports the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the release was not his fault and he had appropriately adjusted to society, so it “would be inconsistent with fundamental principles of liberty and justice” to return him to prison) (cleaned up).

66. Thus, an individual subject to mandatory detention under 8 U.S.C. § 1225(b)(2) who is released—even if the government later argues that such release is contrary to the law requiring their detention—has a protected liberty interest in their continued release from detention. Importantly, the Eighth Circuit’s decision in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), does not change that analysis. In that case, the court considered the narrow question of whether the *length*—over “a year in a county jail”—of an individual’s mandatory detention under 8 U.S.C. § 1226(c) violated due process. *Banyee*, 115 F.4th at 931; *see also Singh v. Mullin*, No. C26-56-LTS-MAR, 2026 WL 1021846 (N.D. Iowa Apr. 15, 2026) (“*Banyee* simply reaffirmed that the *span* of a removal proceeding did not change the due process dimension of the [noncitizen]’s

detention.” (emphasis added)). In response to this question, the Eighth Circuit merely held that “[d]ue process imposes no time limit on detention pending deportation[.]” *Banyee*, 115 F.4th at 930 ; *id.* at 930–31 (“In [Mr. Banyee’s] view, the *lengthy* detention violated due process[.]” (emphasis added)); *id.* at 931 (“[W]e must . . . decide whether the *year-long* detention violated his rights[.]” (emphasis added)); *id.* at 932 (“[N]othing suggests that *length* determines legality.” (emphasis added)). As such, *Banyee* is inapposite to the issue of whether re-detention of someone previously released is lawful. *See, e.g., Mark O.*, No. No. 26-cv-02448, Doc. 7 at 7 (holding that *Banyee*, *Demore*, and *Thuraissigiam* “are inapposite” to Petitioner’s procedural due process claim); *Orlando R.V.V. v. Blanche*, No. 26-cv-1903, Doc. No. 11 (MJD/SGE) (D. Minn. Apr. 28, 2026) (“The *Banyee* court’s analysis is rooted in detention under § 1226(c), and its reliance on Supreme Court precedent reinforces that limited scope.”); *Axel J.M.C. v. Stanski*, No. 26-cv-2281 (JRT/EMB), 2016 WL 1171344, at *3 (D. Minn. Apr. 29, 2026) (finding that unlike the statutory framework in *Banyee*, “Respondents’ purported basis for detention is § 1225(b)(2)(A), a different provision only recently interpreted by the Government to permit mandatory detention.”); *Manuel G. v. Blanche*, No. 26-cv-2385, 2026 WL 1256358, at *4 (D. Minn. May 7, 2026) (“Respondents’ purported basis for [Petitioner’s] detention is § 1225(b)(2)(A), not § 1226(c), which distinguishes this case from *Banyee* and *Demore*.”).

67. Based on the protected liberty interests an individual has in their prior release, numerous courts have therefore concluded that it is a violation of procedural due process to re-detain an individual without notice, evidentiary findings, or an opportunity to be heard. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (“An

essential principle of due process is that a deprivation of life, liberty, or property be *preceded* by notice and opportunity for hearing appropriate to the nature of the case.”) (internal quotation marks and citation omitted) (emphasis added); *see also Feisal O. v. Noem*, No. 26-CV-81 (JMB/EMB), 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026) (“[T]he redetention of a person previously ordered released under section 1226—without Respondents first formally revoking that order of release or following any procedures prior to making a decision that conflicts with an order of release—violates due process.”); *Singh v. Warden of Golden State Annex Det. Facility*, No. 1:26-CV-1284 DJC CSK, 2026 WL 731053, at *4 (E.D. Cal. Mar. 16, 2026), *report and recommendation adopted sub nom. Singh v. Warden of the Golden State Annex Det. Facility*, No. 1:26-CV-1284 DJC CSK, 2026 WL 802319 (E.D. Cal. Mar. 23, 2026) (“Petitioner has a liberty interest in not being incarcerated after prior release without pre-custodial hearing or notice.”); *Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) (“Respondent violated the Fifth Amendment’s Due Process Clause by revoking her parole and subjecting her to detention without notice, evidentiary findings, or an opportunity to be heard.”); *see also Hurd*, 864 F.3d at 683 (citing *Young*, 520 U.S. at 152) (holding that re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon*, 411 U.S. at 782 (holding the same, in context of probation); *Morrissey*, 408 U.S. 471 (holding the same, in context of parole).

FACTUAL ALLEGATIONS

68. Petitioner is a citizen of Mexico, a resident of Landfall, Minnesota, and has resided in the United States since September 2001.

69. Petitioner is a husband and father of two minor children. Petitioner is the primary provider for his family through his employment at a landscaping company. He has a rich network of friends and family in his community, is attentive to the needs of his children, and gets along very well with his co-workers

70. [REDACTED]

[REDACTED] Petitioner suffers from mental health issues including Major Depressive Disorder and Post-Traumatic Stress Disorder. Petitioner also suffers from high blood pressure and seizures—conditions that are exacerbated by stress and for which he takes medication.

71. Following an incident triggered by his daughter's death, in October 2018 Petitioner was arrested on a domestic violence charge, pled guilty, and was detained by ICE. Petitioner had a bond hearing on November 6, 2018 after which his request for release on bond was initially denied but was later granted on February 13, 2019. To grant his request for release, the IJ was required to determine that he was not a flight risk nor danger to society.

72. In 2021, Petitioner filed an I-918 Application for U-Visa with USCIS based on Petitioner's knowledge of, and cooperation with law enforcement regarding, the violent crimes committed against his daughter. Petitioner received a Bona Fide Determination on May 23, 2024 which stated that he "warrant[s] a favorable exercise of discretion to receive employment authorization and deferred action." Ex. A.

73. On May 11, 2026, Petitioner was at the Douglas County Jail for booking and to pay fines related to an arrest for driving under the influence. While Petitioner was making an effort to comply with law enforcement directives, ICE arrested, detained, and transferred him to the Kandiyohi County Jail. On information and belief, federal agents arrested Petitioner without a judicial or administrative warrant and without probable cause.

74. Petitioner has now been detained at Kandiyohi County Jail for over a month, struggling with heightened mental health challenges and unable to work to support his family.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Fifth Amendment Due Process Clause Substantive Due Process

75. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

76. 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); *see also, e.g., Mark O.*, No. 26-cv-02448, Doc. 7 at *5 (“[T]he Court feels it necessary to acknowledge both [sic] that Petitioner is entitled to due process of law under the Fifth Amendment.”). 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.

77. 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)).

78. 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).

79. 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.

80. 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.

81. Neither purpose is served by Petitioner’s detention. Respondents have not made any claim that Petitioner presents a flight risk or a danger to the community. When Petitioner was previously released from detention in February 2019, the IJ came to precisely the opposite conclusion—that he did not present any risk of flight or danger. *See* 8 U.S.C. § 1226(c)(4) (permitting release of individual detained under § 1226(c) only when it is determined “that the [noncitizen] will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding”); 8 C.F.R.

§§ 236.1(c)(8), 1236.1(c)(8) (noncitizen must “demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding”); *see also Mark O.*, No. 26-cv-02448, Doc. No. 7 at 15 (“[The fact remains that Petitioner was previously released, which ‘in and of itself reflects a determination that the individual is neither a flight risk nor a danger to the community[.]’” (quoting *Orlando R. V.V.*, No. 26-cv-1903, Doc. No. 11 (D. Minn. Apr. 28, 2026); *Govea Perez*, 2026 WL 1078577, at *2 (“[E]very noncitizen who has been paroled or released into the interior of the country has been found by a government official to pose neither a security risk nor a flight risk.”); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)).

82. Since then, Petitioner’s ties to this country have only grown stronger. He has built his, and his family’s, entire life here. *See Osorio-Martinez v. Att’y Gen. United States of Am.*, 893 F.3d 153, 173-75 (3d Cir. 2018). Petitioner has a deep network of friends and family in Minnesota. Petitioner is active in his children’s lives and works diligently to make sure they have everything they need. To provide for his wife and young children, he works for a landscaping company where he gets along well with his coworkers doing impactful work in his community.

83. Because the government is not detaining Petitioner 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 TWO
Violation of the Fifth Amendment Due Process Clause
Procedural Due Process, Re-Detention without Process

84. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

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

86. The government’s infringement on Petitioner’s liberty interest triggers a right to contest that infringement, for example, through a hearing before the right is deprived. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569–70 (1972). The essence of procedural due process is that a person risking a serious loss have “an opportunity to be heard . . . at a meaningful time and in a meaningful manner.” *Yrysbaev v. Arnott*, 2026 WL 395897, at *3 (citation omitted).

87. Some courts use the three-factor *Mathews v. Eldridge* test to determine what process is due to noncitizens challenging detention. *See Mathews v. Eldridge*, 424 U.S. 319 (1976). The *Mathews* factors assess: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

88. The first *Mathews* factor weighs heavily in Petitioner’s favor. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690. “[I]t is axiomatic that ‘the interest in being free from physical detention’ is ‘the most elemental of liberty interests.’” *Abdirashid H.M.*, 2026 WL 127698, at *4 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)).

89. Petitioner has a particularly strong liberty interest in light of his prior release. *Id.* at *4; *Yrysbaev*, 2026 WL 395897, at *3. “[O]nce the government opts to provide a liberty interest, it cannot arbitrarily revoke that interest without due process of law.” *Muse v. Mullin*, No. 26-cv-4024, 2026 WL 1008532, at *4 (N.D. Iowa Apr. 14, 2026); *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *7 (S.D. Iowa Apr. 17, 2026) (finding “[t]he first *Mathews* factor . . . weighs heavily in Petitioner’s favor” where the government re-detained him “after previously having allowed him to live and work in the community”). As such, courts in this district and across the Eighth Circuit have repeatedly found that noncitizens released by DHS on parole or on their own recognizance have a substantial private interest in being out of custody and that detention denies them that liberty interest. *See, e.g., Mark O.*, No. 26-cv-02448, Doc. 7 (finding a protected liberty interest for someone paroled into the United States, even after that parole had expired); *Orlando R.V.V. v. Blanche*, No. 0:26-cv-01903, Doc. 11, at 13-23 (D. Minn. Apr. 28, 2026) (same); *Aleksei v. Warden*, No. 5:26-CV-05030-RAL, 2026 WL 1133615, at *1 (D.S.D. Apr. 27, 2026); *Osman J.M.A. v. Blanche*, No. CV 26-2123 (DWF/DJF), 2026 WL 1005056, at *3 (D. Minn. Apr. 14, 2026) (same for release on recognizance); *Sandhu v.*

Mullin, No. 7:26CV5009, 2026 WL 1146643, at *2 (D. Neb. Apr. 28, 2026) (same); *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *2 (S.D. Iowa Apr. 17, 2026) (same). This liberty interest stands regardless of whether Petitioner’s detention under 8 U.S.C. § 1225(b)(2) is mandatory. *See Hurd*, 864 F.3d at 692–93 (“The Due Process Clause may itself confer a procedurally protected liberty interest on someone living openly in society for years after what, unbeknownst to him, was his premature release from prison.”); *DeWitt*, 6 F.3d at 34–35; *Johnson*, 682 F.2d at 873 (noting that due process supports the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the release was not his fault and he had appropriately adjusted to society, so it would be “inconsistent with fundamental principles of liberty and justice” to return him to prison) (cleaned up)).

90. In addition, the length of time—seven years—that Petitioner relied on this protected expectation of continued liberty “elevate[s] and underscore[s] [Petitioner’s] liberty interest.” *Singh v. Warden*, 2026 WL 731053, at *5, *report and recommendation adopted sub nom. Singh v. Warden*, 2026 WL 802319 (noting the liberty interest of petition release for over three and a half years); *see also Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1030–33 (N.D. Cal. 2025) (holding that noncitizens on conditional release “possess an interest in their continued liberty, which grows over time, and a due process right to a hearing before being re-detained” (emphasis added)); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1033 (N.D. Cal. 2025) (finding that, in the past five years, petitioner developed “extensive relations of support and interdependence” that “underscore the high stakes of [his] liberty”).

91. The second *Mathews* factor also weighs in Petitioner’s favor. Petitioner was previously released from detention after being found that he is neither a danger nor a flight risk. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8) (noncitizen must “demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding”); 8 U.S.C. § 1226(c)(4) (permitting release of individual detained under § 1226(c) only when it is determined “that the [noncitizen] will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.”); *see also, e.g., Mark O.*, No. 26-cv-02448, Doc. No. 7 at 15 (“[The fact remains that Petitioner was previously released, which ‘in and of itself reflects a determination that the individual is neither a flight risk nor a danger to the community[.]’” (quoting *Orlando R. V.V.*, No. 26-cv-1903, Doc. No. 11 (D. Minn. Apr. 28, 2026))). His re-detention—without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond—make the risk of erroneous deprivation of liberty not just high, but certain. *See, e.g., Aleksei M.*, 2026 WL 1133615, *6 (noting “[o]ther district courts have characterized the risk of erroneous deprivation as ‘severe’ when ‘Respondents are proposing *no procedure at all*’” (quoting *Abbas*, No. 4:26-cv-00132, at 12 (emphasis in original))); *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1188 (D. Minn. 2025) (noting that lack of consideration of “individualized or particularized facts . . . increases the potential for erroneous deprivation of individuals’ private rights”); *Selvin Adonay E.M.*, 2025 WL 3157839, at *9 (finding the second factor weighed in a petitioner’s favor when the government took the position detention was mandatory without individualized review).

92. The third factor favors Petitioner as well. Respondents' interest in detaining Petitioner without a hearing is low, and the burden on Respondents to refrain from re-detaining him unless and until he is provided with a hearing that comports with due process is "minimal." *See Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *6 (E.D. Cal. March 3, 2025). Their administrative burden is low, given that the government conducts bond and bail hearings every day as a matter of course. Their fiscal burden is also low, particularly in relation to the high cost of detention. *Idle H. v. Bondi*, No., 2026 WL 266462, at *7 (D. Minn. Feb. 2, 2026) (noting the "staggering" costs of immigration detention); *see also Rodriguez Vega*, 2026 WL 482906, at *6 ("[L]imiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from [unnecessarily] expending substantial resources." (citation omitted)). Unnecessary detention also "imposes substantial societal costs," such as "reduced economic contributions and tax payments by detained immigrants," as well as the separation of individuals from their families and communities. *Rodriguez Vega*, 2026 WL 482906, at *6 (citation omitted). Finally, unlawful detention and violation of noncitizens' constitutional rights disserves the public interest; rather, the government's interest lies in ensuring the Constitution is followed and that the procedural due process rights of noncitizens such as the Petitioners/Plaintiffs in this case are upheld. In any event, detention with *no* process is wholly unnecessary to allow Respondents to detain those who truly pose a legitimate risk of flight or danger. *Ochoa v. Vergara*, No. 1:26-cv-266, 2026 WL 482211, at *3 (W.D. Tex. Feb. 20, 2026). Releasing Petitioner and requiring the government to provide a pre-deprivation hearing before detaining him stands

to save the government money and effort wasted on erroneous detention. Under the framework outlined in *Mathews*, ordering a bond hearing is required under the Due Process Clause for an individual previously released on bond. *Alicia N.F.C. v. Blanche*, No. CV 26-145 (DWF/JFD), 2026 WL 1005079, at *3 (D. Minn. Apr. 14, 2026) (“the state court judge recently determined that Petitioner was not a danger. Respondents may now believe she poses a threat, and they can argue that to the immigration judge. Further, Petitioner was released previously on bond. The government cannot revoke the bond without due process. . . . The Court finds that requiring a bond hearing will balance the interests of Petitioner and Respondents.”).

93. Respondents violated procedural due process by re-detaining Petitioner without adequate procedural protections *before* the deprivation of his liberty. *See, e.g., Aleksei v. Warden*, No. 5:26-CV-05030-RAL, 2026 WL 1133615, at *1 (D.S.D. Apr. 27, 2026) (finding re-detention of noncitizen previously granted humanitarian parole violated his procedural due process rights); *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *2 (S.D. Iowa Apr. 17, 2026) (same for noncitizen previously released on order of recognizance); *Ermekov v. Mullin*, No. C26-41-LTS-KEM, 2026 WL 1046766, at *3 (N.D. Iowa Apr. 17, 2026) (ordering outright release to the same position prior to detention, as required under due process clause—but declining to apply *Mathews* framework—for someone previously released on order of recognizance); *Feisal O. v. Noem*, 2026 WL 92857, at *3 (concluding that the redetention of a person previously ordered released without any pre-redetention process violated the Due Process Clause); *Selvin Adonay E.M.*, 2025 WL 3157839, at *8-10 (similar); *Abdirashid H.M.*, 2026 WL 127698, at *4-5

(similar). Ordering outright release for an individual previously released on order of recognizance despite being subject to Section 1226(c) is proper. *Don H. v. Blanche*, No. 0:26-cv-02413, 2026 WL ____ (D. Minn. May 6, 2026) (“*Mathews* requires DHS officials invoking section 236.1(c)(9) to make at least a showing of material changed circumstance before revoking release.”); see also *Yohan A.G. v. Warden*, No. 2:26-CV-0997 (LK), 2026 WL 1162705, at *5 (W.D. Wash. Apr. 29, 2026) (providing that DHS requires a showing of changed circumstances before revoking release under section 236.1(c)(9), and citing November 2025 DHS brief setting forth same). Therefore, this Court should order Petitioner’s release without any restraints on his liberty and prohibit any re-detention absent pre-deprivation process. *Feisal O.*, 2026 WL 92857, at *3 (ordering release on that basis); see also *Mahad S. v. Noem*, 2026 WL 177860, at *3; *Ochoa v. Vergara*, 2026 WL 482211, at *3 (collecting cases finding mandatory detention violated procedural due process and ordering release as the appropriate remedy). As such, Petitioner’s detention is unlawful, and his release is warranted. See *Sandhu v. Mullin*, No. 7:26CV5009, 2026 WL 1146643, at *2 (D. Neb. Apr. 28, 2026); *Aleksei v. Warden*, No. 5:26-CV-05030-RAL, 2026 WL 1133615, at *1 (D.S.D. Apr. 27, 2026); *Dharamnir Singh v. Mullin*, No. C26-00053-LTS-KEM, 2026 WL 1078710, at *1 (N.D. Iowa Apr. 20, 2026); *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *2 (S.D. Iowa Apr. 17, 2026); *Ermekov v. Mullin*, No. C26-41-LTS-KEM, 2026 WL 1046766, at *3 (N.D. Iowa Apr. 17, 2026).

COUNT THREE
Violation of the Fourth Amendment, 8 U.S.C. § 1357(a)(2),
and 8 C.F.R. § 287.3(d)

Unlawful Arrest

94. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

95. 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).

96. 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 circumstances. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

97. There is a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407-08 (2012). The INA thus provides immigration

agents with only limited authority to conduct warrantless arrests. 8 U.S.C. § 1357(a)(2). Specifically, an officer must have probable cause to believe the person is violating the immigration laws *and* that the person “is likely to escape before a warrant can be obtained,” *i.e.*, is a flight risk *Id.*; *see also Ramirez Ovando*, 2025 WL 3293467, at *2. Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

98. Even where a noncitizen is “subject to mandatory detention under 8 U.S.C. § 1225(b)(2), federal immigration officials must still comply with 8 U.S.C. § 1357(a)(2).” *Martha C.G.P. v. Blanche*, No. CV 26-2308 (DWF/JFD), 2026 WL 1329577, at *3 (D. Minn. May 13, 2026) (internal citations omitted); *see also, e.g., Wilson L.L. v. Blanche*, No. CV 26-2475 (JRT/EMB), 2026 WL 1283186, at *2 (D. Minn. May 11, 2026) (“Because Respondents have not shown that Petitioner was likely to escape, they failed to comply with 8 U.S.C. § 1357—the requirement for arresting a noncitizen without a warrant. Respondents therefore improperly arrested and detained Petitioner under 8 U.S.C. § 1225(b)(2).”).

99. Only where circumstances permit a warrantless arrest as outlined in 8 U.S.C. § 1357(a)(2) do the regulations at 8 C.F.R. § 287.3 come into play. *See* 8 C.F.R. 287.3(a) (regulating noncitizens “arrested without a warrant of arrest *under the authority contained in [8 U.S.C. § 1357(a)(2)]*” (emphasis added)).

100. Petitioner’s warrantless arrest occurred without probable cause that he was a flight risk. An individualized determination of probable cause is required—one’s classification as a noncitizen present without admission does not, on its own, give reason to believe that they are “likely to escape before a warrant can be obtained[.]” 8 U.S.C. §

1375(a)(2); *see also* *Jefferson G.H.L. v. Blanche*, No. CV 26-2344 (JRT/ECW), 2026 WL 1229623, at *3 (D. Minn. May 5, 2026) (“Just because a noncitizen is unlawfully present in the United States does not mean that he or she is likely to escape.”); *Ruben D.A.G.*, Civ. No. 26-2041, slip op. at 8 (“Anyone without a lawful presence does not immediately present a likelihood of escape merely by being a noncitizen.”). In contrast, “[c]ourts 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, Petitioner had been in the United States for almost 25 years and built strong ties to his community. Moreover, Petitioner was arrested by ICE while complying with his legal obligations related to a prior arrest. He fully complied with the ICE officers and did not disobey or flee. Therefore, no officer could have probable cause that Petitioner was likely to escape before a warrant could be obtained.

101. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Petitioner. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. He received no such judicial determination, yet his detention continued well beyond 48 hours, rendering it presumptively unconstitutional.

102. Because Respondents failed to establish probable cause for Petitioner’s warrantless arrest under 8 U.S.C. § 1357(a)(2), the regulations outlined in 8 C.F.R. § 287.3 are inapplicable. Even so, *arguendo*, these regulations require a noncitizen arrested without

a warrant 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, Petitioner has received no such custody determination.

103. In addition, Respondents violated Petitioner’s Fourth Amendment right against unreasonable seizure. Under the Fourth Amendment, the government cannot re-arrest someone without changed circumstances that amount to *new* probable cause. *See Carlson v. Landon*, 342 U.S. 524, 546–47 (1952) (holding that re-arrest for immigration detention required a new warrant after previous release from immigration detention on bail). When the government releases a person from detention, the purpose of their detention has been accomplished. *See Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020) (“It is axiomatic that seizures have purposes. When those purposes are spent, further seizure is unreasonable.”). As a result, any probable cause justifying the prior arrest, if any, is extinguished. Thus, Petitioner’s re-detention after a prior release, without any new showing of probable cause, was also unconstitutional.

104. Respondents’ warrantless re-arrest of Petitioner without changed circumstances, and their refusal to provide a prompt (or any) probable cause determination, violated the Fourth Amendment, the INA, and implementing regulations. Thus, this Court should order his release, as no post-detention process can cure this violation. *See, e.g.,*

Wilson L.L. v. Blanche, No. 26-cv-2475 (JRT/EMB), 2026 WL 1283186, at *2 (D. Minn. May 11, 2026) (ordering immediate release where the I-200 “was not served on Petitioner until after his arrest and detention”) (citing *Francisco M.A.*, 2026 WL 1229701, at *1–2).

COUNT FOUR
Violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)

105. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

106. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions” that are (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to constitutional right, power, privilege or immunity; (c) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, or (d) without obstruction of procedures required by law. 5 U.S.C. § 706(2). In order to be reviewable under the APA, the challenged action must constitute a final agency action, which includes “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13). Final agency action is arbitrary and capricious if the agency fails to “articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (internal citations omitted). Courts may not consider an agency’s “impermissible post hoc rationalizations.” *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020) (internal citations omitted).

107. Although the INA purports to authorize DHS to revoke a parole “at any time,” DHS has long applied the rule promulgated by the BIA in *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) in the context of parole revocation—that DHS requires a showing of a “material change in circumstances” before re-detaining noncitizens it previously released on parole. *See Saravia*, 280 F. Supp. 1168. Regardless, “[e]ven when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute.” *Vilela*, 2025 WL 3101334, at *3.

108. DHS’s decisions to re-detain Petitioner constitutes reviewable final agency action because the re-detentions mark the “consummation” of the DHS’s decision-making process on the question of Petitioner’s custody, and it is an action “by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1977) (internal citations omitted). Indeed, the “practical and legal effects of the agency action” are that Petitioner has been deprived of his liberty with no end in sight. *Or. Natural Desert Ass’n v. U.S. Forest Service*, 465 F.3d 977, 982 (9th Cir. 2006).

109. DHS’s decision to re-detain Petitioner was an abuse of discretion and contrary to law where it departed from its policy and practice of requiring a “material change in circumstances” before re-detaining noncitizens it had originally released on parole. *See Saravia*, 280 F. Supp. 3d at 1187. The decisions were also arbitrary and capricious in violation of the APA where the agency failed to contemporaneously—or ever—articulate any flight-risk or danger-based justifications for those decisions. *Motor*

Vehicle Mfrs. Ass'n of U.S., 463 U.S. at 42–43; *Regents*, 591 U.S. at 21. And as described *supra*, the decisions were also contrary to constitutional right.

110. As such, DHS's decision to re-detain Petitioner was in violation of the APA. Such action must be set aside, and release ordered.

COUNT FIVE
Violation of the Administrative Procedure Act,
5 U.S.C. § 706(2)(A) – *Accardi Doctrine*
Unlawful Failure to Follow/Effective Rescission of 8 C.F.R. § 236.1(c)(9);
8 C.F.R. § 1236.1(c)(9)

111. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

112. Under the *Accardi* doctrine, federal agencies are required to follow their own binding regulations, and failure to do so renders resulting agency action unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). The *Accardi* doctrine is particularly important “[w]here the rights of individuals are affected,” and it gives rise to a claim against an agency “even where the internal procedures are possibly more rigorous than otherwise would be required” by statute. *Morton*, 415 U.S. at 235. *Accardi* thus applies with full force in immigration proceedings and is enforceable through habeas corpus where regulatory violations result in detention.

113. DHS regulations implementing 8 U.S.C. § 1226(b) authorize revocation of release from custody under the statute only in the “discretion of the district director, acting district director, deputy director, assistant director for investigations, assistant director for detention and deportation, or officer in charge (except foreign).” 8 C.F.R. §§ 236.1(c)(9),

1236.1(c)(9); *see also Sandhu v. Mullin*, No. 7:26CV5009, 2026 WL 1146643, at *4 (D. Neb. Apr. 28, 2026) (“[A]s the regulation shows, that discretion [to revoke parole] must be exercised by *someone*. Here, there is no evidence a ‘district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge’ exercised discretion to revoke Sandhu’s conditional parole.” (emphasis in original) (citing 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9))).

114. The re-detention of Petitioner revoked a prior custody determination by government officials not authorized by law to make this determination in violation of the APA and in violation of the *Accardi* doctrine’s requirement that agencies comply with their own regulations.

COUNT SIX
Violation of the Immigration and Nationality Act
(Argument Presented for Preservation Purposes Only)

115. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

116. Petitioner should not be subject to mandatory detention under § 1225(b)(2) if that statutory provision is correctly understood. Petitioner acknowledges that this argument is presently foreclosed by *Avila*. 170 F.4th 1128. Petitioner nonetheless advances the argument to preserve it for appeal or in the event that *Avila* is vacated or abrogated by the en banc Eighth Circuit or Supreme Court.

117. Respondents claim that Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). But courts across the United States have overwhelmingly concluded that

noncitizens like Petitioner 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). Courts in this district have concluded the same time and time again. *See, e.g., 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 the 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.”), *abrogated by Avila*, 2026 WL 819258 (8th Cir. Mar. 25, 2026).

118. Accordingly, Petitioner’s current detention under 8 U.S.C. § 1225(b)(2)(A) violates both the INA and Petitioner’s procedural due process rights. As this renders his detention unlawful from its inception, he should be released.

REMEDY

119. The appropriate remedy for Respondents’ unlawful conduct is Petitioner’s immediate release.

120. 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”).

121. In line with these principles, district courts have found the test set out in *Mathews* to require pre-deprivation hearings *prior* to civil re-detention in cases like

Petitioner's. *See, e.g., Abbas*, 2026 WL 1079292, at *8 (“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.” (quoting *Bonilla Chicas*, 2026 WL 539475, at *12)); *Singh v. Warden*, 2026 WL 731053, at *5–6, *report and recommendation adopted sub nom. Singh v. Warden*, 2026 WL 802319 (applying *Mathews* factors to find pre-deprivation hearing required prior to re-detaining an individual.); *Diaz*, 2025 WL 1676854, at *3 (finding that “the three factors relevant to the due process inquiry set out in *Mathews* ... support requiring a pre-deprivation hearing”); *see also Enriquez Reyes*, No. 32025 WL 4481119, at *5 (noting a “due process right to a hearing” for a noncitizen detained by a Border Patrol agent, released on her own recognizance, granted parole, and then arbitrary re-detained by ICE).

122. Where a pre-deprivation hearing was due, as in Petitioner's case, post-deprivation “bond hearings are ‘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.’” *Govea Perez*, 2026 WL 1078577, at *13 (quoting *Cruz-Reyes v. Bondi*, --- F.Supp.3d ---, 2026 WL 332315, at *5 (S.D. Tex. Feb. 3, 2026) (quotation marks omitted)). “The suggestion that government agents may sweep up any person they wish without consideration of dangerousness or flight risk, so long as the person will, at some unknown future date, be allowed to ask some other official for his or her release, offends the ordered system of liberty that is the pillar

of the Fifth Amendment.” *Gonzalez v. Joyce*, No. 25 Civ. 8250 (AT), 2025 WL 2961626, at *5 (S.D.N.Y. Oct. 19, 2025). 125.

123. As such, where a noncitizen is re-detained absent any pre-deprivation process, courts have concluded that outright release—not post-deprivation process—is required. *See, e.g., Abbas*, 2026 WL, at 13; *Villanueva v. Mullin*, No. 1:26-CV-849-RP, 2026 WL 1045719, at *5 (W.D. Tex. Apr. 15, 2026) (“In recent months, courts across the country have ordered the release of detainees in similar situations.” (citation omitted) (collecting cases)); *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13–14 (W.D. Tex. Oct. 2, 2025) (collecting cases and finding that “immediate release appropriately remedies Respondents’ violation of [Petitioner’s] due process rights through her continued detention.”); *Aleksei M. v. Warden, Lawrence Cnty. Jail*, No. 5:26-CV-05030-RAL, 2026 WL 1133615, at *7 (D.S.D. Apr. 27, 2026); *Dharamnir Singh v. Mullin*, No. C26-00053-LTS-KEM, 2026 WL 1078710, at *1 (N.D. Iowa Apr. 20, 2026) (ordering outright release to the same position prior to detention, as required under due process clause for noncitizen previously released on order of recognizance); *Feisal O.*, 2026 WL 92857, at *3 (ordering immediate release where respondents re-detained a non-citizen previously released without “following any procedures prior to making [that] decision”); *Singh v. Mullin*, 2026 WL 1021846, at *4 (ordering respondents “to release Singh immediately, subject to those conditions (if any) with which he was required to comply immediately prior to his re-detention”); *Singh v. Warden*, 2026 WL 731053, at *7, *report and recommendation adopted sub nom. Singh v. Warden*, 2026 WL 802319 (ordering immediate release for individual re-detained with no procedural due process after release

on recognizance); *Alegria Palma*, No. 25-cv-1942, ECF No. 14 at *8 (same); *Bonilla Chicas*, 2026 WL 539475, at *11-12 (“[A] post-deprivation bond hearing cannot cure the core violation of Mr. Bonilla Chica’s due process rights that occurred when he was unlawfully redetained under a mandatory detention provision without any individualized determination of the need for detention.”); *Ismahan M.*, No. 26-cv-1418, ECF 10 at 6 (D. Minn. Feb. 20, 2026) (similar); *Yrsybaev*, 2026 WL 395897 at *5 (ordering immediate release following unlawfully revoked parole); *Juan C.R.R.*, 2026 WL 752462, at *3 (recognizing “appropriate cure for a deprivation of due process is to provide Petitioner with the process he is owed” and ordering immediate release).

124. Additionally, where a noncitizen is arrested and detained without a valid warrant, the appropriate remedy is immediate release. *See Ruben D.A.G. v. Blanche*, No. 26-02041 (MJD/DJF), slip op. at 5 (D. Minn. Apr. 20, 2026) (ordered outright release for an individual who entered on a visa waiver program, stayed past the expiration of his legal status, and was subsequently arrested without being served a warrant prior to his arrest); *Elfego H. v. Blanche*, No. 26-CV-2257 (JMB/EMB) (D. Minn. Apr. 25, 2026) (“Elfego H. has shown that ICE’s detention of him on March 25, 2026, violated the law because ICE did not comply with its own regulations under § 287.8 and § 1357(a)(2). Respondents’ failure to conduct a warrantless arrest in accordance with these requirements means that Elfego H.’s initial arrest was unlawful, and as a result he is entitled to release.”); *see also Martha C.G.P.*, 2026 WL 1329577, at *3 (“The remedy for a warrantless arrest is immediate release.”); *Wilson L.L.*, 2026 WL 1283186, at *3 (ordering immediate release on these grounds and citing multiple supporting cases from the District of Minnesota).

Respondents must comply with 8 U.S.C. 1347 when effectuating all noncitizen arrests—even those subject to mandatory detention under 8 U.S.C. 1225(b)(2). *See, e.g., Martha C.G.P.*, 2026 WL 1329577, at *3; *Wilson L.L.*, 2026 WL 1283186, at *3; *Francisco M.A.*, 2026 WL 1229701, at *3. Thus, Petitioner’s detention under this section is unlawful. 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 in a manner that complies with the INA and associated regulations. *See, e.g., Hector J.A.S.*, 2026 WL 1243500, at *2; *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 served no such warrant on Petitioner.

125. *Alternatively*, should this Court decline to order outright release, it should order Respondents to release Petitioner immediately unless they provide a bond hearing before a neutral adjudicator at which Respondents will bear the burden of justifying Petitioner’s continued detention by clear and convincing evidence of dangerousness or flight risk. *See, e.g., Lopez-Arevelo*, 801 F. Supp. 3d at 688 (describing “consensus” that “courts granting immigration detainees’ habeas petitions” and opting to order bond hearings “have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk”); *Martinez v. Noem*, No. 25-cv-430-KC, 2025 WL 2965859, at *5 (W.D. Tex., Oct. 21, 2025) (ordering “a bond hearing before an IJ, at which the Government shall bear the burden of justifying, by clear and convincing evidence of dangerousness and flight risk, [Petitioner]’s continued detention”

where Petitioner was detained for the first time by ICE without due process after living in the country for many years).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court:

1. Assume jurisdiction over this matter;
2. Immediately issue an Order to Show Cause:
 - a. Enjoining Respondents and individuals acting in concert with Respondents from removing Petitioner or transferring Petitioner outside of this District pending adjudication of this petition;
 - b. Requiring Respondents to show cause within **three days** as to why this petition should not be granted;
3. Issue a writ of habeas corpus declaring that Petitioner's detention is unlawful and ordering Respondents to release Petitioner from custody within 24 hours of this Court's order;
4. *In the alternative*, issue a writ of habeas corpus declaring the Petitioner's detention is unlawful and ordering Respondents to release Petitioner immediately unless they provide a custody hearing before a neutral adjudicator within five days at which Respondents will bear the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk;
5. Order that upon Petitioner's release, Respondents must return to Petitioners any personal property, including personal identification documents and employment authorization documents;

6. Enjoin Respondents and individuals acting in concert with Respondents from re-detaining Petitioner without a pre-deprivation hearing before a neutral adjudicator where the government bears the burden of justifying Petitioner's re-detention by clear and convincing evidence;
7. Retain jurisdiction over this matter to decide any future motion for an award of reasonable attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, Local Rule 54.3(a), and on any other basis justified under law; and
8. Grant Petitioner any further relief that this Court deems to be just and proper.

Respectfully submitted,

Dated: June 15, 2026

/s/ Samantha C. Pauley

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Pro Bono Counsel for Petitioner

VERIFICATION

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. My investigators and I have discussed the factual assertions in this petition with Petitioner's family and Petitioner's immigration attorney, who are 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.

Executed this 15th day of June, 2026.

/s/ Samantha Pauley
Samantha Pauley
Ballard Spahr LLP