

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

Jose Roberto HERNANDEZ VIDAL,

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;

Joel BROTT, in his official capacity as Sheriff of
SHERBURNE County,

Respondents.

Case No. 26-cv-3406

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

INTRODUCTION

1. This case seeks the immediate release of Jose Roberto HERNANDEZ VIDAL 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 March 16, 2026, at Sherburne County Jail.

2. In light of the information and belief that ICE is/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 ("OSC") immediately enjoin Respondents from moving Petitioner outside of the District of Minnesota. Ordering that relief in the OSC is now a nearly universal practice in this District.

3. Petitioner is a citizen of Mexico who has resided in the United States for more than 30 years after entering without inspection in April of 1996. He applied for a U Visa on or about November 9, 2014, which was approved January 3, 2019. (*See* Hartman Decl., Ex. 1, I-213 at 3.) His U Visa has not been extended. (*See id.*) DHS placed Petitioner in removal proceedings the same day he was taken into custody—March 16, 2026. Those proceedings are presently pending with an individual hearing set for July 27, 2026. Petitioner also has a pending application for asylum which was filed on March 25, 2026.

4. On information and belief, ICE arrested Petitioner without a valid arrest warrant. Mr. Hernandez Vidal was detained by ICE upon his conditional release from the Dakota County Jail, where he had been held for a failure to appear related to an alleged traffic violation and an alleged motor vehicle registration violation.

5. Mr. Hernandez Vidal's detention is unlawful for at least three reasons.

6. *First*, the government has no legitimate interest in detaining Mr. Hernandez Vidal when he is neither a flight risk nor a danger—the only two constitutionally permissible reasons for immigration detention. Accordingly, his present detention violates his substantive due process rights, requiring his immediate release.

7. *Second*, procedural due process requires the opportunity to be heard at a meaningful time and in a meaningful manner when the government imposes constraints on a person's liberty. Procedural due process applies to all "persons" within the United States,

including noncitizens, “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The government has deprived Mr. Hernandez Vidal of his liberty without any procedural protections in place to ensure that his detention is justified, in violation of his procedural due process rights. On this count alone, at minimum, this Court should order an individualized review of Mr. Hernandez Vidal’s detention at an immigration bond hearing where the *government* bears the burden of justifying Mr. Hernandez Vidal’s detention. *See Pedro O. v. Garland*, 543 F. Supp. 3d 733, 744 (D. Minn. 2021) (concluding that, where a petitioner’s detention violates due process, as per *Mathews* the petitioner “is entitled to a bond hearing in immigration court at which the Government must justify [the] detention[] ... show[ing] by clear and convincing evidence that Pedro poses either a risk of flight or a risk of danger to the community”).

8. *Third*, Mr. Hernandez Vidal’s arrest and detention by ICE prior to any issuance of a warrant, constitutes a warrantless arrest and violates his Fourth Amendment rights, as well as statute and regulation, similarly mandating his release. *See, e.g., Francisco M.A. v. Blanche*, No. CV 26-2032 (JRT/EMB), 2026 WL 1229701, at *2 (D. Minn. May 5, 2026).

9. For these reasons and as further explained below, Mr. Hernandez Vidal respectfully asks this Court to declare that his detention is unlawful, order his immediate release. *See Munaf v. Geren*, 553 U.S. 674, 693 (2008) (“Habeas is at its core a remedy for unlawful executive detention,” for which “[t]he typical remedy is, of course, release.”). Alternatively, absent outright release, the Due Process Clause requires, at a minimum, that

this Court order an individualized review of Mr. Hernandez Vidal's detention at an immigration bond hearing where the government bears the burden of justifying Mr. Hernandez Vidal's detention. *See Pedro O. v. Garland*, 543 F. Supp. 3d 733, 744 (D. Minn. 2021) (concluding that, where a petitioner's detention violates due process, as per *Mathews* the petitioner "is entitled to a bond hearing in immigration court at which the Government must justify [the] detention[] ... show[ing] by clear and convincing evidence that Pedro poses either a risk of flight or a risk of danger to the community"); *see also, e.g., Matamoros Rodriguez v. Woodbury County Jail*, No. C26-4041-LTS-MAR, 2026 WL 1735035, at *4 (N.D. Iowa June 16, 2026) (ordering bond hearing in which the government bears the burden of proof of showing dangerousness or flight risk by clear and convincing evidence).

JURISDICTION & VENUE

10. 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").

11. 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.

12. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) ("[T]he primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases."). Because Mr. Hernandez Vidal

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.

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

PARTIES

14. Petitioner, Jose Roberto Hernandez Vidal, has lived in the United States for more than 30 years. Prior to his detention on or about March 14, 2026, he was residing in Minneapolis, Minnesota. Petitioner is currently detained at Sherburne County Jail. Mr. Hernandez Vidal is in the direct control of Respondents.

15. 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.

16. 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 Mr. Hernandez Vidal's ultimate legal custodian.

17. 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 Mr. Hernandez Vidal.

18. 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 Mr. Hernandez Vidal. In his official capacity, Respondent Easterwood is a legal custodian of Mr. Hernandez Vidal.

19. Respondent Joel Brott is sued in his official capacity as Sheriff of Sherburne County. As Sheriff of Sherburne County, Respondent Joel Brott oversees Sherburne County Jail, the facility where Petitioner is presently detained and is therefore one of his legal custodians.

REQUIREMENTS OF 28 U.S.C. § 2243

20. 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.*

21. 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).

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

EXHAUSTION OF LEGAL REMEDIES

23. 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).

24. It would be futile for Petitioner to seek a custody redetermination hearing before an Immigration Judge (“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)).

25. 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. Detention Authority Under the Immigration and Nationality Act.

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

27. *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.*

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

29. *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 arriving noncitizens who are deemed to be “seeking admission” to the United States under 8 U.S.C. § 1225(b)(2). *See Avila v. Bondi*, 170 F.4th 1128, 1135–36 (8th Cir. 2026) (holding that all applicants for admission are necessarily “seeking admission” and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)).

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

31. This case concerns Respondents’ detention authority under 8 U.S.C. § 1225(b)(2). *See Avila*, 170 F.4th at 1135–36.¹

¹ Petitioner maintains, for preservation purposes only, that *Avila* was wrongly decided, and the interpretation adopted by the majority of circuit courts on this issue is instead correct. *See Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026); *Hernandez Alvarez v. Warden*, 175 F.4th 1258 (11th Cir. 2026); *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026); *Santillan Quiroz v. Mullin*, No. 26-6019 (10th Cir. June 30, 2026).

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

32. “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))).

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*); *Orlando R.V.V. v. Blanche*, 0:26-cv-01903, Doc. 11, at 13-23 (D. Minn. Apr. 28, 2026) (same); *David J.C.P. v. Blanche*, No. CV 26-

2181 (DWF/ECW), 2026 WL 1102725, at *2 (D. Minn. Apr. 23, 2026) (same); *Selvin Adonay E.M. v. Noem*, No. 25-cv-3975, 2026 WL 3157839, at *8 (D. Minn. Nov. 12, 2025) (same); *Abdirashid*, 2026 WL 127698, at *4 (same); *see also 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) (same for individual previously granted humanitarian parole).

37. Importantly, even noncitizens subject to “mandatory immigration detention” are nevertheless “entitled to due process of law under the Fifth Amendment.” *Mark O. v. Blanche*, 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.”).

38. 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. 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.”); *Heriberto R.E. v. Blanche*, No. 26-cv-2227 (JWB/LIB), No. 12 at 8 (D. Minn. May 1, 2026); *Axel J.M.C.*, 2026 WL 1171344, at *4; *Aleksei v. Warden*, No. 5:26-CV-05030-

RAL, 2026 WL 1133615, at *1 (D.S.D. Apr. 27, 2026); *David J.C.P. v. Blanche*, No. 26-cv-2181 (DWF/ECW), 2026 WL 1102725, at *3 (D. Minn. Apr. 23, 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); *Osman J.M.A. v. Blanche*, No. 26-cv-2123 (DWF/DJF), 2026 WL 1005056, at *3 (D. Minn. Apr. 14, 2026)).

FACTUAL ALLEGATIONS

39. Mr. Hernandez Vidal is a resident of Minneapolis, Minnesota and a citizen of Mexico and has resided in the United States since April 1996.

40. Mr. Hernandez Vidal has three sisters who are citizens and permanent residents in the United States. He has worked and resided in Minneapolis, Minnesota since 2019. In his work with local subcontractors, he has two individuals who work for him and are directly dependent on him for their livelihood.

41. Respondent ICE arrested Mr. Hernandez Vidal on or about March 16, 2026 in or around the Dakota County Jail. Mr. Hernandez Vidal was ordered released from custody following his arrest which had occurred during a routine traffic stop pursuant to a warrant for failure to appear related to an alleged traffic violation and an alleged motor vehicle registration violation.² (*See* Hartman Decl., Ex. 2, March 16, 20206 Order.) While being released from custody, but still within the Dakota County Jail, Mr. Hernandez Vidal

² The vehicle at issue in the underlying case was owned by Mr. Hernandez Vidal's acquaintance (and passenger at the time of the precipitating traffic stop).

was approached by ICE agents. The ICE agents entered some information into a computer, and then, while Mr. Hernandez Vidal awaited completion of his court-ordered release, ICE agents took him into custody without presenting a warrant. Thereafter they brought him to the Sherburne County Jail where he was processed and has remained in detention.

42. Although Mr. Hernandez Vidal's I-213 form indicates that an I-247A was lodged on March 16, 2026, the record does not indicate whether it was lodged before Mr. Hernandez Vidal had already been released pursuant to court order. (*Compare* Ex. 1 at 2 *with* Ex. 2.) While the I-213 indicates an I-200 warrant was subsequently issued, no warrant was presented to Mr. Hernandez Vidal prior to his arrest, and, on information and belief, he had already been detained by ICE agents inside the Dakota County facility prior to issuance of the warrant. It also appears Mr. Hernandez Vidal's Notice to Appear may have been issued after he had already been detained by ICE at the Dakota County Jail, following his court ordered release.

43. State and local law agencies in Minnesota are prohibited from holding someone in custody based on an immigration detainer if they would otherwise be released from custody. (*See* Ex. 3, Advisory Opinion Pursuant to Minn. Stat. § 8.07.)

44. Despite Mr. Hernandez Vidal's court-ordered release from Dakota County Jail and Minnesota's prohibition on holding Mr. Hernandez Vidal pursuant to detainer, there is no record that a judicial warrant was issued for his subsequent arrest in the grounds of the Dakota County Jail, nor any order enjoining or staying his conditional release prior to his being taken into ICE's custody.

45. Mr. Hernandez Vidal is now detained at Sherburne County Jail.

CLAIMS FOR RELIEF

COUNT I

**Violation of the Fifth Amendment Due Process Clause
Substantive Due Process**

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

47. 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.

48. 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)).

49. 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); *see also Santillan Quiroz*, No. 26-

6019, Doc. 91-1, at 44 (noting that immigration detention requires a “strong special justification”) (citing *Zadvydas*, 533 U.S. at 690.

50. 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.

51. 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.

52. Neither purpose is served by Mr. Hernandez Vidal’s detention. Respondents have not made any claim that Mr. Hernandez Vidal presents a flight risk or a danger to the community, nor could they.

53. Since arriving in the United States more than 30 years ago, Mr. Hernandez Vidal has built his entire life here. *See Osorio-Martinez v. Att’y Gen. United States of Am.*, 893 F.3d 153, 173-75 (3d Cir. 2018). He has three sisters who are United States citizens. He works locally in Minnesota with several subcontractors doing gutter work and employs two individuals who rely on the work for their livelihood. And he remains without any criminal record other than minor traffic violations and a pending charge for a motor vehicle registration violation.³

54. Additionally, Mr. Hernandez Vidal was approved for a U Visa in 2019, and that U Visa was not revoked prior to its expiration and in 2023. (*See Ex. 1, I-213 at 3.*)

³ The alleged motor vehicle registration violation relates to a vehicle that is not (and was not, at the time of the traffic stop) owned by Mr. Hernandez Vidal.

Therefore, DHS has already conducted a criminal background and security check to confirm that Mr. Hernandez Vidal did not pose a risk to national security or public safety. *See* 8 U.S.C. § 1182 (a)(2)-(3). Mr. Hernandez Vidal had been residing continuously in the United States for 27 years when his U Visa expired, and there is nothing in his record to alter DHS's assessment in the subsequent three years.

55. Because the government is not detaining Mr. Hernandez Vidal to serve legitimate interests in protecting against danger or flight risk, his detention violates substantive due process under the Fifth Amendment, and this Court should order his immediate release.

COUNT II
Violation of the Fifth Amendment Due Process Clause
Procedural Due Process

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

57. 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.

58. The government's infringement on Mr. Hernandez Vidal'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).

59. 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.

60. The first *Mathews* factor weighs heavily in Mr. Hernandez Vidal’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)).

61. Mr. Hernandez Vidal is a “person” within the meaning of the Due Process Clause, and all such persons have a strong, constitutionally protected interest in their liberty. Mr. Hernandez Vidal entered the United States more than thirty years ago and has been residing here since then. During that time, Mr. Hernandez has established community ties: he has two individuals who work for him with local subcontractors who are dependent on him for their livelihood, and he attends a local church. Mr. Hernandez Vidal’s protected liberty interest “deserves great weight and gravity.” *Acosta Dominguez v. Noem*, No. EP-25-CV-00741-DB, 2026 WL 67200, at *4 (W.D. Tex. Jan. 8, 2026); *see also Heriberto*

R.E. v. Blanche, No. 26-cv-2227 (JWB/LIB), No. 12 at 6 (D. Minn. May 1, 2026) (finding a “substantial liberty interest” for a Petitioner who “has established community ties, has family living here, including a United States citizen child, and has been employed in the community”); *Manuel G. v. Blanche*, No. 26-cv-2385, 2026 WL 1256358, at *4 (D. Minn. May 7, 2026). Yet Mr. Hernandez Vidal is being held “far from his family,” in “the same conditions as criminal inmates.” *Jacinto*, 796 F. Supp. 3d at 590; *see also Selvin Adonay E.M.*, 2025 WL 3157839, at *9 (finding the first *Mathews* factor weighed in petitioner’s favor when the conditions of confinement were “indistinguishable from criminal incarceration”). “By his continued detention, Petitioner is undoubtedly experiencing the deprivations of incarceration, like the loss of companionship and income. Therefore ... the first *Mathews* factor favors Petitioner.” *Mark O.*, No. 26-cv-02448, Doc. 7 at 14.

62. The second *Mathews* factor also weighs in Mr. Hernandez Vidal’s favor. Respondents detained Mr. Hernandez Vidal without any notice or meaningful opportunity to respond. Respondents claim that they are statutorily obligated to detain him without any individualized review, despite no evidence demonstrating that Mr. Hernandez Vidal poses any risk of flight or danger. The lack of any mechanism to determine whether Mr. Hernandez Vidal’s detention serves a legitimate statutory purpose makes the risk of erroneous deprivation of liberty not just high, but certain. His detention is the direct result of insufficient safeguards and lack of procedure. *See, e.g., 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); *Rodriguez Brizuela v. Noem*, No. 5:26-cv-0279-JKP, 2026 WL 752257, at *6 (W.D. Tex., Mar. 12, 2026) (“[A] substantial risk of erroneous deprivation of liberty exists when detention without bond of a noncitizen who was arrested within the United States *and lacks any prior release by immigration authorities*, but who has established a life here in the United States.” (emphasis added) (citing *Martinez v. Noem*, No. 25-cv-430-KC, 2025 WL 2965859, at *4) (W.D. Tex. Oct. 21, 2025)). Under these circumstances, the second *Mathews* factor weighs heavily in Mr. Hernandez Vidal's favor.

63. The third factor favors Mr. Hernandez Vidal as well. Mr. Hernandez Vidal's erroneous detention imposes high fiscal and administrative burdens on Respondents, and unlawful detention and violation of noncitizens' constitutional rights disserve the public interest. The third *Mathews* factor generally favors saving the government from expending “substantial resources on needless detention.” *Idle H. v. Bondi*, No. 26-cv-315, 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). 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). Ultimately, “detention is not self-justifying.” *Heriberto R.E.*, No. 26-cv-2227, No. 12 at 7. Releasing Mr. Hernandez Vidal 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.

64. For these reasons, regardless of the statutory authority, mandatory detention as applied to Mr. Hernandez Vidal violates his procedural due process rights, rendering his present detention unconstitutional. *See, e.g., Selvin Adonay E.M.*, 2025 WL 3157839, at *8-10 (finding procedural due process violation was an independent basis for granting habeas petition challenging application of § 1225(b)(2) to person who had been residing in the United States); *Abdirashid H.M.*, 2026 WL 127698, at *4-5 (similar); *Ochoa v. Vergara*, 2026 WL 482211, at *3 (finding mandatory detention of inadmissible noncitizen who had been living in the United States for over a year violated procedural due process under *Mathews*, collecting cases reaching the same conclusion, and ordering release as the appropriate remedy).

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

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

66. 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).

67. 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).

68. 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).

69. Because ICE agents are required to obtain a warrant prior to the arrest of a noncitizen (*see id.*), a warrant obtained following arrest is invalid. *Francisco M.A. v. Blanche*, No. CV 26-2032 (JRT/EMB), 2026 WL 1229701, at *2 (D. Minn. May 5, 2026) (“Based on the record before the Court, the Court finds that the warrant issued in this case is invalid because it appears that the warrant was either issued in the field or after Petitioner was arrested and detained.”)

70. Where an I-200 warrant is obtained by an officer in the field, it is essential to understand the timing of issuance relative to arrest or detention. Such warrants have repeatedly been found to have been invalid because they were issued after arrest or detention. *See, e.g. id.* The timing in this case raises additional questions, because the Dakota County Jail was in the process of releasing Mr. Hernandez Vidal when he encountered and was detained by ICE, and because the Dakota County Jail had no authority to continue to hold him in custody based on the I-247 detainer, given his order of conditional release. (*See* Ex. 3; *see also* Ex. 2.)

71. Even where an I-200 warrant is issued and served prior to arrest or detention, the warrant is still invalid if it is served before removal proceedings are initiated. 8 C.F.R. § 236(b)(1) (“At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I-200.”); *Pedro D.C. v. Blanche*, No. 26-CV-2450 (KMM/DLM), 2026 WL 1759444, at *2 (D. Minn. June 18, 2026) (“Respondents

argue it is possible that the issuance of the NTA preceded service of the I-200 warrant, even if the NTA was not served until afterwards. While possible, Respondents noticeably do not claim that is true here, let alone provide evidence to support that claim.”)

72. 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).”).

73. 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)).

74. Mr. Hernandez Vidal’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, Mr. Hernandez Vidal had been in the United States for more than 30 years and built strong ties to his community. Moreover, Mr. Hernandez Vidal fully complied with the ICE officers and in no way tried to disobey or flee. Therefore, no officer could have probable cause that Mr. Hernandez Vidal was likely to escape before a warrant could be obtained.

75. Without a statutory basis to arrest, and given Mr. Hernandez Vidal’s court-ordered release, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Mr. Hernandez Vidal. *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.

76. Because Respondents failed to establish probable cause for Mr. Hernandez Vidal’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, Mr. Hernandez Vidal has received no such custody determination.

77. Respondents’ warrantless arrest of Mr. Hernandez Vidal, 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 IV
Violation of the Immigration and Nationality Act
(Argument Presented for Preservation Purposes Only)

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

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

80. Respondents claim that Mr. Hernandez Vidal is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). But courts across the United States have overwhelmingly concluded that noncitizens like Mr. Hernandez Vidal 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). Likewise, three circuit courts have concluded the same. *See Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026); *Hernandez Alvarez v. Warden*, 175 F.4th 1258 (11th Cir. 2026); *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026); *Santillan Quiroz v. Mullin*, No. 26-6019 (10th Cir. June 30, 2026).

81. Accordingly, Mr. Hernandez Vidal's mandatory detention under 8 U.S.C. § 1225(b)(2)(A) violates both the INA and Mr. Hernandez Vidal's procedural due process rights. As this renders his detention unlawful from its inception, he should be released.

REMEDY

82. The appropriate remedy for Respondents' unlawful conduct is Mr. Hernandez Vidal's immediate release.

83. 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").

84. By detaining Mr. Hernandez Vidal without any individualized assessment of dangerousness or flight risk to justify his detention, Respondents have failed to respect the safeguards demanded by the Fifth Amendment. The proper remedy is immediate release.

85. Additionally, where a noncitizen is arrested and detained without a valid warrant, the appropriate remedy is immediate release. *See Martha C.G.P.*, 2026 WL 1329577, at *3 (“The remedy for a warrantless arrest is immediate release.”); *see also 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 Mr. Hernandez Vidal. Furthermore, upon information and belief, ICE agents had already detained Mr. Hernandez Vidal prior to issuance of an administrative warrant or his Notice of Appearance, thus rendering the warrant invalid. *Francisco M.A. v. Blanche*, No. CV 26-2032 (JRT/EMB), 2026 WL 1229701, at *2 (D. Minn. May 5, 2026).

PRAYER FOR RELIEF

WHEREFORE, Petitioner 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 schedule a custody hearing before a neutral adjudicator within five days, to be held at least one week after the scheduling date to provide Petitioner preparation time, at which Respondents will bear the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk;
5. 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;

6. 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
7. Grant Petitioner any further relief that this Court deems to be just and proper.

Respectfully submitted,

Dated: July 24, 2026

/s/ Ted D. Hartman

Ted D. Hartman

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ATTORNEY FOR PETITIONER

VERIFICATION

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. I have discussed the factual assertions in this petition with Petitioner. 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 24th day of July, 2026.

/s/Ted D. Hartman

Ted D. Hartman

Norton Rose Fulbright US LLP