

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0: 26-cv-03406-ECT-LIB

Jose H.V.,

Petitioner,

v.

Todd Blanche, *et al.*,

Respondents.

**RESPONSE TO PETITION
FOR WRIT OF HABEAS
CORPUS**

Respondents respectfully submit this brief pursuant to the Court's July 27, 2026 order requiring the Respondents to address the basis for Petitioner's continued detention.

BACKGROUND

Petitioner is a citizen and native of Mexico. Sabin Decl. Ex. B ("I-213"). Petitioner was admitted on a U1 visa from January 3, 2019 until January 2, 2023. Sabin Decl. Ex. E ("I-261"). Petitioner did not renew the visa, and has been unlawfully present since his visa's expiration. Sabin Decl. Ex. B.

On April 21, 2025, Petitioner was issued a complaint for a gross misdemeanor motor vehicle registration offense, and Driving After Revocation. Ganzhorn Decl. Ex. A. On July 22, 2026, Petitioner failed to appear at a hearing on these charges, and a cash warrant was issued for his apprehension. Ganzhorn Decl. Ex. B. On March 15, 2026, Petitioner was arrested on this warrant. Sabin Decl. ¶ 6. On March 16, 2026, ICE agents encountered Petitioner at the Dakota County Jail during routine ICE Criminal Alien Program (CAP)

operations. Respondents confirmed Petitioner was unlawfully present in the United States and lodged an Immigration Detainer, Form I-247A and a Warrant for Arrest of Alien, Form I-200. Sabin Decl. Ex. B. A Notice to Appear was issued the same day. *Id.*

Petitioner was placed in removal proceedings. Petitioner was ordered removed on the charge of overstaying his visa under 8 U.S.C. § 1227(a)(1)(B) on July 27, 2026.¹ Sabin Decl. ¶ 12.

ARGUMENT

Habeas petitioners bear the burden of proving they are entitled to relief. *Copenhaver v. Bennett*, 355 F.2d 417, 422 (8th Cir. 1966); *Harris v. Tahash*, 353 F.2d 119, 123 (8th Cir. 1965). Petitioner bears the burden of proving his detention is unlawful by a preponderance of the evidence. *Jose J. O. E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025).

As an initial matter, Petitioner misstates the basis for his detention. Petitioner is a visa overstay, meaning he is not an applicant for admission for purposes of § 1225(b)(2). Rather, he is a deportable alien, by virtue of having been legally admitted on a U1 visa and staying in the country beyond its termination. *See generally* 8 U.S.C. § 1227.

The confusion seems to have arisen because Petitioner was originally charged with violations of § 1182(a)(6)(A)(i) and § 1182(a)(7)(A)(i)(I) in his NTA. Sabin Decl. Ex. D. However, the Notice to Appear was later amended to include a charge under 8 U.S.C. § 1227(a)(1)(B), namely that after admission as a nonimmigrant, he remained in the United

¹ Petitioner did not waive his right to appeal to the BIA, and therefore the removal order is not administratively final. As such, Petitioner's detention is based on 8 U.S.C. § 1226 rather than 8 U.S.C. § 1231, which deals with detention on administratively final orders of removal.

States for longer than permitted. Sabin Decl. Ex. E. Petitioner conceded this charge. Sabin Decl. ¶ 12. As a visa overstay, Petitioner is not a removable alien, but a deportable alien. And as such, his detention is justified under § 1226(a) rather than § 1225(b)(2), which applies only to applicants for admission. *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026).

Petitioner is therefore entitled to a bond hearing. At that hearing, an Immigration Judge will weigh the equities mentioned in the petition. However, it does not appear Petitioner has sought a bond hearing up to this point. The burden lies on the Petitioner to seek a bond hearing. 8 C.F.R. § 1003.19(c); *Matter of R-A-V-P-*, 27 I&N Dec. 803 (BIA 2020). Petitioner is represented by counsel in his removal proceedings, and it is not clear why he has failed to do so.

Respondents object to Petitioner's use of *Mathews v. Eldridge*, 424 U.S. 319 (1976), to claim he would be owed a bond hearing under § 1225(b)(2). Respondents believe the Eighth Circuit has foreclosed the use of such balancing tests in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024). However, Respondents do not object to the conclusion that Petitioner is owed a bond hearing during his present spell of detention.

Petitioner still makes claims that warrant response, even if premised on the wrong statute.

I. Petitioner has no claim in substantive due process

“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.” ECF No. 1 ¶ 55. Petitioner has a right to a bond hearing to determine whether he is a danger

or a flight risk.

Petitioner fails to enunciate why he is owed rights in due process beyond those prescribed by § 1226(a). The proper test for determining whether such a fundamental right exists is provided in *Washington v. Glucksberg*, 521 U.S. 702 (1997), which provides a two-step inquiry which disciplines the substantive due process analysis. First, it insists on a “careful description of the asserted fundamental liberty interest.” *Id.*, at 721 (internal quotation marks omitted). Second, it stresses that “the Due Process Clause specially protects” only “those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition.” *Id.*, at 720–721 (internal quotation marks omitted).

Petitioner's detention during the pendency of his removal proceedings does not implicate any fundamental rights. “[P]rior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings,” *Demore v. Kim*, 538 U.S. 510, 523 n.7 (2003), so such a right cannot possibly be “objectively, deeply rooted in this Nation's history and tradition.”

In *Demore*, the Supreme Court considered a “substantive due process” challenge to detention under § 1226(c). 538 U.S. at 515. Like Petitioner here, the petitioner in *Demore* “argued that her detention under § 1226(c) violated due process because the [government] had made no determination that she posed either a danger to society or a flight risk.” *Id.* at 514. The Court rejected that claim. It explained that its cases had long “recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process,” because “deportation proceedings ‘would be vain if

those accused could not be held in custody pending the inquiry into their true character.” *Id.* at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *see also id.* at 526 (reiterating the “Court’s longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings”). Therefore, because “[d]etention during removal proceedings is a constitutionally permissible part of that process,” the Court held that the aliens substantive due process “claim must fail.” *Id.* at 531.

II. Petitioner’s arrest

Petitioner next claims that his arrest was unlawful. Petitioner claims that he was arrested and detained “prior to any issuance of a warrant.” ECF No. 1 ¶ 8.

This is refuted by the declaration, which states that an I-200 warrant was served upon Petitioner when released from the Dakota County Jail. Sabin Decl. ¶ 10. The existence of the detainer (I-247A) also suggests that the I-200 was issued before the arrest.

This addresses the only explicit claim made by Petitioner regarding the alleged deficiency of his arrest.

a. Petitioner is not owed relief based on 8 C.F.R. § 236.1(b)(1).

Petitioner does not actually assert that an I-200 was issued before a Notice to Appear, though he makes the supposition that if this were so, the warrant must be invalid based on 8 C.F.R. § 236.1(b)(1). ECF No. 1 ¶¶ 70-71. But even if the NTA was issued slightly after the I-200, the mere violation of regulation would not invalidate the warrant or justify release.

Admittedly, the record is unclear as to whether the Notice to Appear was issued shortly before the I-200 or shortly after. The validity of an administrative warrant does not depend on this regulation. The ability to arrest derives from the ability to detain, and the ability to detain is provided solely by statute. *Arizona v. U.S.*, 567 U.S. 387, 407 (2012) (“The federal statutory structure instructs when it is appropriate to arrest an alien during the removal process.”). The validity of the warrant lies in whether there was probable cause to believe the facts asserted in the I-200, namely that he was subject (or soon would be) to a Notice to Appear, and that he lacked immigration status and was removable under the INA.² This is the substantive authorization for the warrant, clearly based in 8 U.S.C. § 1226(a).

This accords with caselaw. Because administrative procedures create no substantive rights, the mere failure to follow these procedures cannot, standing alone, constitute a substantive deprivation of rights. A showing of prejudice is necessary. This legal rule holds in immigration proceedings. “Violation of a regulation does not invalidate a deportation proceeding unless the regulation serves a purpose of benefit to the alien. Violation of a regulation renders a deportation unlawful only if the violation prejudiced interests of the alien which were protected by the regulation.” *U.S. v. Calderon-Medina*, 591 F.2d 529, 530 (9th Cir. 1979); see also *U.S. v. Barraza-Leon*, 575 F.2d 218, 221-22

² The I-200 states the bases for the warrant, namely the “execution of a charging document to initiate removal proceedings against the subject;” and “biometric confirmation of the subjects identity [that indicate...] that the subject whether lacks immigration status or notwithstanding such status is removable under U.S. immigration law.”

(9th Cir. 1978) (Immigration Judge's failure to make inquiry required by C.F.R. was harmless absent credible showing from alien that he was entitled to relief from deportation).

The Eighth Circuit has held the same. Hence, a regulatory violation will not serve to exclude evidence or invalidate deportation proceedings unless the "regulation in question serves a purpose of benefit to the alien and the violation prejudiced interests of the alien which were protected by the regulation." *Puc-Ruiz v. Holder*, 629 F.3d 771, 780 (8th Cir. 2010) *applying In Matter of Garcia-Flores*, 17 I.&N. Dec. 325, 329 (BIA 1980)(adopting "prejudice" test put forth by the 9th Circuit in *Calderon-Medina*). Prejudice must be specifically demonstrated unless compliance with the regulation is mandated by the Constitution, in which case prejudice will be presumed. *Id.* But for a regulation that is not constitutionally mandated, the burden lies on the petitioner to show the "regulatory violations potentially affected the outcome of his deportation proceeding." *Id.*

Here, Petitioner does not explicitly claim that Respondents violated 8 C.F.R. § 236.1(b)(1). But even were this so, he would not be owed relief as a result, because he has asserted no prejudice. Petitioner "cannot reasonably contend that he relied on the regulation, or that its breach had any effect on his conduct." *U.S. v. Carceres*, 440 U.S. 741, 753 (1979)(IRS's violation of internal regulation did not allow relief under the Fourth Amendment, where regulation was not required by Constitution or statute). The ability to arrest on an administrative warrant derives from the authority to detain. And after a records check, Respondents had clear reason to believe that Petitioner was in the country

unlawfully, and could be detained under 8 U.S.C. § 1226(a). Whether the NTA was issued shortly before or shortly after the service of Petitioner's I-200 is irrelevant.

b. If the arrest was warrantless, it met the standards of § 1357(a)(2)

Even presuming, *arguendo*, that Petitioner's arrest was warrantless, it met the standards of 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.3.

An immigration agent is empowered "to arrest [without a warrant] any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest[.]" § 1357(a)(2). "Reason to believe" in that statute is synonymous with probable cause that the Fourth Amendment demands for a valid arrest. *U.S. v. Sanchez-Velasco*, 956 F.3d 576, 581 (8th Cir. 2020); *U.S. v. Diaz-Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010). Agents also have the right to make arrests for any offense against the United States committed in the officer's presence. 8 U.S.C. § 1357(a)(5). Such an arrest must also be supported by probable cause.

Probable cause is an objective standard. *District of Columbia v. Wesby*, 583 U.S. 48, 54 n.2 (2018). Probable cause for arrest "is not a high bar." *Id.* at 57, *quoting Kaley v. U.S.*, 571 U.S. 320, 338 (2014). "When the constitutional validity of an arrest is challenged, it is the function of a court to determine whether the facts available to the officers at the moment of the arrest would 'warrant a man of reasonable caution in the believe' that an offense has been committed." *Beck v. Ohio*, 379 U.S. 89, 91 (1964). "In dealing with probable cause ... as the very name implies, we deal with probabilities; they are factual and practical considerations of everyday life on which reasonable and prudent men, not legal

technicians, act.” *Brinegar v. U.S.*, 338 U.S. 160, 175 (1949).

The records check performed by ICE prior to Petitioner’s arrest provided probable cause that he was present in the United States illegally. Additionally, Respondents’ post-arrest conduct satisfied regulation. “Unless voluntary departure has been granted...a determination will be made within 48 hours of the arrest...whether the alien will be continued in custody or released on bond or recognizance and whether a notice to appear and warrant of arrest...will be issued.” 8 C.F.R. § 287.3(d).

The only dispute that might arise is whether there was a “likelihood of escape” under 8 U.S.C. § 1357(a)(2). Respondents are aware that courts in the district have read “likelihood of escaping” to mean the likelihood of evading further detection in the future—essentially conflating “escape” in § 1357 with “flight risk” as determined in bond hearings. *See Walther A.S. v. Blanche*, No. 26-CV-2804 (LMP/SGE), slip op. at *4 (D. Minn. June 16, 2026)(requiring probable cause that arrestee was “about to go off the grid”). No binding precedent supports this conclusion, and it does not withstand objective scrutiny.

The plain meaning of the statute makes this clear. “Escape” means to “slip or get away, as from restraint.” (Random House College Dictionary, Rev. Ed. 1988); *see also* Black’s Law Dictionary, p. 564. 7th Ed. Bryan Garner, Ed. (“act or an instance of breaking free from confinement, restraint, or an obligation”). By dictionary definition and common usage, “escape” does not mean a perpetual evasion from authorities.

This commonsensical definition is borne out in caselaw. In *U.S. v. Puebla-Zamora*, 996 F.3d 535 (8th Cir.2021). There, the arrested alien encountered law enforcement in the doorway of what was apparently his own apartment. *Id.* at 536. After questioning, agents

arrested the alien without a warrant under 8 U.S.C. § 1357(a)(2). *Id.* at 538. Challenging whether probable cause existed that he was “likely to escape before a warrant issued,” the Eighth Circuit held that the alien’s presentation of a valid passport, the admission he “didn’t have any documents that would allow him to be in the United States legally” and a previous removal for illegal entry “established probable cause that he may escape before a warrant could issue.” *Id.* The Court required no inquiry into “community ties,” employment history, or any other fact that might suggest going permanently “off the grid” rather than absconding from the immediate scene.

Other cases confirm the same conclusion. In *U.S. v. Cantu*, aliens’ presence in a moving car, “possessing the capacity to change momentarily their location and direction,” was sufficient to they were an escape risk, and properly subject to arrest under § 1357(a)(2). 519 F.2d 494, 497 (7th Cir. 1975), *cert. denied*, 423 U.S. 1035 (1975). “From one moment until the next their location was uncertain and their destination not entirely predictable.” *Id.* The *Cantu* court very clearly weighed the likelihood of escape *at the moment* versus whether the suspects would go perpetually “off the grid.”

Commonsense likewise prevailed in *U.S. v. Meza-Campos*, 500 F.2d 33 (9th Cir. 1974). There, the warrantless arrest of an alien was justified based on his being “extremely nervous, was ‘looking around to the left and right past [the officer],’ and that he, the officer, ‘felt that he was looking for an opportunity to run.’” *Id.* The alien admitted his alienage and that he had no immigration papers. *Id.* The Ninth Circuit rejected that any further evidence was necessary to conclude probable cause for escape. “Following the appellant’s argument to its logical conclusion, it would seem that an arresting immigration officer

could never have reason to believe that the arrestee was likely to escape, absent an on-the-scene admission of the arrestee to that effect. We cannot apply such an unreasonably restrictive interpretation to the pertinent statute. Being unable to look into the appellant's mind, the officer could do no more than to draw his own inferences from the objective circumstances.” *Id.* Because the arresting officer’s inferences were reasonable, the alien’s arrest was sustained under § 1357(a)(2).

La Franca v. I.N.S., 413 F.2d 686 (2nd Cir. 1969) makes this all the clearer. There, an arrested alien was the “owner and operator of a bakery in Jersey City. It would seem that a warrant might have been obtained for his arrest.” *Id.* at 689. But the arrested alien had also been twice deported and had previously absconded, leading the Court to concede they could not say officers lacked probable cause for escape. *Id.* Though the alien was fairly easy to find, and had developed significant ties in the community as businessman and property owner—factors weighing strongly against a general “flight risk” determination—the court upheld the arrest.

Other cases support the same conclusion. *See e.g. Tsimonis v. Holland*, 132 F.Supp. 754, 756-57 (E.D. Penn. 1955)(likelihood of escape existed for alien who said he “intended to remain in the United States as long as he could”); *U.S. v. Reyes-Orepesa*, 596 F.2d 399, 400 (9th Cir. 1979)(alien with known identity and employment, but forged resident alien card, was likely to escape); *Hon Keung Kung v. I.N.S.*, 356 F.Supp. 571, 576 (E.D. Mo. 1973)(likelihood of escape existed where “petitioner had previously deserted ship in violation of law with the apparent purpose of remaining in the United States when he was not authorized to do so”).

Here, Petitioner was clearly an escape risk at the time he was released from the Dakota County Jail. Petitioner had spent nearly 30 years evading immigration detection in the United States. ECF No. 1 ¶ 3. He was in the Dakota County Jail because he had failed to appear at a criminal hearing the year before. Any reasonable officer, looking at the totality of circumstances, must have come to the conclusion that Petitioner was an escape risk.

Even assuming, *arguendo*, that some defect existed for Petitioner's arrest, this would not support the relief Petitioner seeks. Warrantless arrests are never a basis for release. "[W]hile the Court has expressed a preference for the use of arrest warrants when feasible, it has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant." *Gerstein v. Pugh*, 420 U.S. 103, 113 (1975)(citations removed). If warrantless arrests cannot justify release in criminal cases, where constitutional protections are at their highest, release cannot be a proper remedy in immigration cases, where "Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79–80 (1976).

This point is driven home by the fact that in criminal cases, not even an *unlawful* arrest will result in automatic release of a defendant. "An illegal arrest, without more, has never been viewed as a bar to subsequent prosecution, nor as a defense to a valid conviction." *United States v. Crews*, 445 U.S. 463, 474 (1980). Instead, exclusion of evidence is the proper remedy for unlawful arrest in criminal cases. *Weeks v. U.S.*, 232 U.S. 383 (1914); *Wong Sun v. U.S.*, 371 U.S. 471 (1963). "Our numerous precedents ordering the exclusion of such illegally obtained evidence assume implicitly that the

remedy does not extend to barring the prosecution altogether. So drastic a step might advance marginally some of the ends served by exclusionary rules, but it would also increase to an intolerable degree interference with the public interest in having the guilty brought to book.” *United States v. Blue*, 384 U.S. 251, 255 (1966).

In any event, the exclusionary rule is not an appropriate remedy in most immigration cases. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039-42 (1984). “Important as it is to protect the Fourth Amendment rights of all persons, there is no convincing indication that application of the exclusionary rule in civil deportation proceedings will contribute materially to that end. On the other side of the scale, the social costs of applying the exclusionary rule in deportation proceedings are both unusual and significant.” *Id.* at 1046.

A plurality of the justices in *Lopez-Mendoza* left open the possibility that exclusion might be a remedy for “egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained.” *Id.* at 1039; *Puc-Ruiz v. Holder*, 629 F.3d 771, 778 (8th Cir. 2010). The Eighth Circuit has not decided the issue, but has raised doubts “that even an egregious violation by a state officer would justify suppression of evidence in a federal immigration proceeding.” *Lopez-Gabriel v. Holder*, 653 F.3d 683, 686 (8th Cir. 2011)(noting the court in *Puc-Ruiz*, 771 F.3d at 778, deemed it unnecessary to decide the issue); *Garcia-Torres v. Holder*, 660 F.3d 333, 336 (8th Cir. 2011).

In sum, even if Petitioner’s Fourth Amendment claims had merit, he would be owed no relief in habeas, because there is no Fourth Amendment remedy that would justify his release.

EVIDENTIARY HEARING

Respondents believe the Court can resolve the Petition without an evidentiary hearing. The material facts necessary to decide this case are established by the Petition, the declaration submitted with Respondents' response, and the attached immigration records. The remaining issues are legal ones.

CONCLUSION

All habeas relief must be denied.

Dated: August 6, 2026

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