

**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-03406-ECT-LIB

**PETITIONER'S REPLY
TO RESPONDENTS'
RESPONSE TO
PETITION FOR WRIT
OF HABEAS CORPUS**

Introduction

In their response to Petitioner Jose Hernandez Vidal's petition for habeas corpus, Respondents concede that Mr. Hernandez Vidal's detention is pursuant to § 12226(a) rather than § 1225(b)(2). (ECF No. 6 at 3.) Respondents further assert that "[t]he confusion seems to have arisen because [Mr. Vidal] was originally charged with violations of § 1182(a)(6)(A)(i) and § 1182(a)(7)(A)(i)(I) in his NTA. (*Id.* at 2.) More precisely, the confusion arose because the NTA expressly misstates the legal basis for Mr. Hernandez Vidal's arrest and detention.

(See NTA, ECF No. 8-4, at 1 (indicating that Mr. Hernandez Vidal is “an alien present in the United State who has not been admitted or paroled.”).) Consistent with the misclassification of Mr. Herandez Vidal’s status, he did not receive the initial custody determination prescribed under § 1226(a). (See Hartman Supp. Decl., Ex. 1, Seruelo Decl. at ¶ 2.) See also 8 C.F.R. § 1236.1(d).

Although Respondents point to a later amendment to the NTA charging petitioner under 8 U.S.C. § 1227(a)(1)(B), nothing in that document purports to correct or clarify Mr. Hernandez Vidal’s (concededly) misstated status from the original NTA. (See I-261, ECF No. 8-5.) In fact, according to the I-261, the new charges were specifically brought in addition to the original charges (for which detention was premised on misclassification of Mr. Hernandez Vidal’s status). (*Id.* at 1.) The I-261 (which was not issued until Mr. Hernandez Vidal had already been held in detention by ICE for *50 days*), did not result in the initial custody determination prescribed under § 1226(a). (Hartman Supp. Decl., Ex. 1, Seruelo Decl. at ¶ 2.) It was not until Mr. Hernandez Vidal’s master hearing that DHS conceded it could not sustain the charges against Mr. Hernandez Vidal under § 1182(a)(6)(A)(i) or § 1182(a)(7)(A)(i)(I). (*Id.* at ¶ 4.) DHS further acknowledged that the charges under the original NTA (and, by extension, the corresponding authority to detain Mr. Hernandez Vidal), was contradicted by the charges in the I-261. (*Id.*)

I. The Administrative Warrant for Mr. Hernandez Vidal was Invalid because it was Issued Before Deportation Proceedings Commenced.

The law is clear that the NTA must issue prior to arrest pursuant to an I-200. 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.") *accord* 8 U.S.C. 12229(a)(1). Respondents concede that they cannot establish the NTA was issued before the I-200 warrant. (ECF No. 6 at 5.) Instead, they mistakenly state that "Petitioner does not actually assert that an I-200 was issued before a Notice to Appear." (*Id. contra.* Pet. at 28 ("[U]pon information and belief, ICE agents had already detained Mr. Hernandez Vidal prior to issuance of . . . his Notice to Appear.")) Given Respondents' failure to dispute the improper timing of the issuance of the NTA or to produce related evidence, the Court is left with the conclusion that the NTA was improperly issued *after* the I-200. *See Carlos J.M. v. Blanche*, No. 26-CV-2943 (ECT/DTS), 2026 WL 2168878, at *2, n.2 (D. Minn. July 20, 2026), *report and recommendation adopted sub nom. Carlos J.M. v. Blanche*, No. 26-CV-2943 (ECT/DTS), 2026 WL 2170790 (D. Minn. July 28, 2026) (explaining that where the Government asserted the "material facts . . . are established by" the written pleadings, "[i]t must live with the consequences of that decision"); *Pedro D.C. v. Blanche*, No. 26-CV-2450 (KMM/DLM), 2026 WL 1759444, at *2 ("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, . . . [a]bsent any basis to conclude that Respondents issued the NTA prior to Pedro D.C.'s arrest, the Court declines to make that assumption.").

Because Respondents have no basis to defend the timing of the NTA, they argue instead that it does not matter, because "mere violation of a regulation would not invalidate the warrant or justify release." (*Id.* at 5.) This position has been flatly rejected by courts in this jurisdiction. *See Victor P. v. Blanche*, No. 26-CV-3217 (JMB/SGE), 2026 WL

2110732, at *3 (D. Minn. July 22, 2026) (“The record presented establishes that Respondents generated the NTA after the Form I-200 warrant[.] ... Thus, the Court concludes that the Form I-200 warrant was plainly invalid under 8 C.F.R. § 236.1(b), and Victor P.’s arrest was effected without a required warrant.”); *Jairo L. U. G. v. Mullin*, No. CV 26-3051 (JRT/SGE), 2026 WL 1893624, at *1 (D. Minn. July 1, 2026) (“[I]t appears removal proceedings were not commenced against Petitioner through a Notice to Appear until June 11, 2026—nearly three weeks after his arrest pursuant to the I-200 warrant. Accordingly, Petitioner’s arrest pursuant to the I-200 warrant was unlawful.”); *Luis A.S. v. Easterwood*, No. 0:26-cv-02447, ECF Doc. 9, 7 (D. Minn. May 26, 2026) (“The gap in time and location between Luis’s arrest and the issuance of the NTA is critical. The Form I-200 warrant empowers ICE to arrest aliens during removal proceedings. . . . A warrant issued before removal proceedings have begun therefore purports to exercise authority that does not yet exist.”).

The authority relied upon by Respondents does not state otherwise. *Puc-Ruiz v. Holder* related to the exclusion of evidence, and had nothing to do with warrantless arrest or improper detention. 629 F.3d 771, 780 (8th Cir. 2010). Here, by contrast, the issue is whether the government had legal authority to arrest Mr. Hernandez Vidal prior to commencement of the removal proceedings; the answer to that question is plainly “no.”

II. Mr. Hernandez Vidal’s Arrest was Not Proper Under 8 U.S.C. § 1357(a)(2).

In the alternative, Respondents claim that Mr. Hernandez Vidal’s arrest comports with the requirements of 8 U.S.C. § 1357(a)(2). (ECF No. 6 at 8.) As Respondents acknowledge, an arrest is not valid under § 1357(a)(2) unless the arresting agent has reason

to believe Mr. Hernandez Vidal was “likely to escape before a warrant [could] be obtained.” (*Id.* (quoting 8 U.S.C. § 1357(a)(2)).) But regardless of whether the Court interprets “escape” as “about to go off the grid” or “absconding from the immediate scene” (*see id.* at 9-10), Respondents make no showing that officers had reason to believe Mr. Hernandez Vidal was likely to escape before a warrant could be obtained. Instead, they cite numerous cases where warrantless arrests were upheld for reasons that have nothing to do with Mr. Hernandez Vidal’s situation. (*See id.* at 9-10 (collecting cases where reasonable belief of escape was accepted based on: (i) arrestee’s “presence in a moving car;” (ii) encounter in doorway of the residence of an arrestee that had previously been removed and admitted to being in the United States illegally; (iii) arrestee was “extremely nervous,” “looking around to the left and right past [the officer]” such that the officer “felt that he was looking for an opportunity to run;” (iv) twice deported arrestee that had previously absconded).) None of those cases support an inference that the arresting officers in Mr. Hernandez Vidal’s case had a reasonable belief that he posed a risk of escape.

Prior to his arrest, Mr. Hernandez Vidal had no history of absconding from the scene. There is neither evidence of extenuating circumstances surrounding his arrest, nor evidence that he exhibited behavior of any intention or attempt to escape. To the contrary, Respondents’ own arguments suggest Mr. Hernandez Vidal was arrested pursuant to an invalid warrant, rather than any hypothetical determination that he posed an escape risk. The only supposed bases offered for Mr. Hernandez Vidal’s warrantless arrest (asserted by Respondents without any evidence the arresting officers even assessed Mr. Hernandez Vidal to be an escape risk) are (i) that he “spent nearly 30 years evading immigration

detection” and (ii) that “he was in Dakota County Jail because he had failed to appear” at an unrelated hearing that had nothing to do with immigration more than a year earlier. (ECF No. 6 at 12.)

The first basis is plainly false. Respondents offer no evidence that Mr. Hernandez Vidal took any action to “evade immigration detection” in the United States. To the contrary, he applied for, and obtained, a U Visa while residing in the United States—a process which required him to take affirmative steps to alert immigration authorities to his presence. (ECF No. 6 at 1.) While Mr. Hernandez Vidal ultimately overstayed his visa, Respondents offer no evidence that he ever took steps to evade detection or escape custody since his visa expired in 2023. To the extent that Respondents are impliedly arguing that Mr. Hernandez Vidal’s mere continued presence in the United States constitutes “evasion,” that would render § 1357(a)(2)’s escape risk requirement a nullity. Such an interpretation of 8 U.S.C. § 1357(a)(2) must be rejected. *See Francisco M.A. v. Blanche*, No. 26-cv-2032 (JRT/EMB), 2026 WL 1229701, at *3 (D. Minn. May 5, 2026) (explaining that even unlawful presence of a noncitizen in the United States does not equate with likelihood of escape because such an interpretation would “collapse” § 1357(a)(2)’s separate requirements into one).

The second offered basis is equally dubious. Mr. Hernandez Vidal’s failure to appear for a hearing in non-immigration proceedings a year earlier does not support an inference that he would attempt to escape from an immigration officer. Moreover, at the time of Mr. Hernandez Vidal’s warrantless arrest, he had just been granted conditional release with no bond in the Dakota County case. (*See* ECF No. 2-2, March 16, 20206

Release Order.) So the Dakota County Court had *just* made the determination that Mr. Hernandez Vidal's prior failure to appear did not justify his continued detention to ensure a future appearance. If anything, Mr. Hernandez Vidal's arrest and release *undermines* the inference that he posed an escape risk.

In sum, there is no support for Respondents' argument that his arrest satisfied the escape risk requirement of § 1357(a)(2).

III. The Proper Relief for Mr. Hernandez Vidal's Warrantless Arrest is Immediate Release.

Given Mr. Hernandez Vidal's warrantless arrest and misclassification resulting in a failure to conduct an initial custody determination, and in light of the lack of any legitimate basis for his continued detention, the proper relief in his case is his immediate release. *Accord Vladimir G. v. Easterwood*, No. 26-CV-2971 (JMB/ECW), 2026 WL 1786418, at *3 (D. Minn. June 22, 2026) (ordering outright release where Respondents arrested petitioner pursuant to a warrant under improper statute of detention issued before the NTA, in violation of 8 C.F.R. 236.1(d) and, on alternative grounds, finding the detention in violation of Petitioner's due process rights under *Mathews*); *Wilson L.L. v. Blanche*, No. 26-2475 (JRT/EMB), 2026 WL 1283186, at *1 (D. Minn. May 11, 2026) ("Because the Court concludes that Respondents did not lawfully effectuate a warrantless arrest as required under 8 U.S.C. § 1357, the Court will grant the petition and order Petitioner's immediate release."); *Victor P. v. Blanche*, No. 26-CV-3217 (JMB/SGE), 2026 WL 2110732, at *3 (D. Minn. July 22, 2026) (J. Bryan) (ordering outright release where "[t]he record presented establishes that Respondents generated the NTA after the Form I-200

warrant. . . . Thus, the Court concludes that the Form I-200 warrant was plainly invalid under 8 C.F.R. § 236.1(b), and Victor P.'s arrest was effected without a required warrant.”).

The Court should reject Respondents reliance on *Gerstein v. Pugh* in arguing against release. In *Gerstein*, the Court recognized that warrantless arrest was supported by probable cause and justified on a short-term basis to prevent the suspect from escaping or committing further crimes. 420 U.S. 103, 114 (1975). As discussed above, the government has failed to demonstrate that Mr. Hernandez Vidal posed any risk of escape at the time of his warrantless arrest. (*See* Sec. II, *supra*.) The remaining cases relied upon by Respondents relate to whether a case can be prosecuted or a conviction can be upheld, but that is a fundamentally different question than whether Mr. Hernandez Vidal can be contained indefinitely pursuant to a warrantless arrest. *See Emily Andreina N.V. v. Blanche*, No. 26-CV-2570 (KMM/EMB), 2026 WL 2209844, at *4–5 (D. Minn. July 31, 2026) (explaining that “[s]eeking release from custody in an immigration habeas case based on an illegal arrest is not akin to a criminal defendant’s claim that his unlawful arrest should prohibit the government from prosecuting him for a crime,” and ordering release); *Venancio P.J. v. Blanche*, No. 26-CV-2740 (ECT/JFD), 2026 WL 1862252, at *2 (D. Minn. June 29, 2026) (collecting cases).

Consistent with the above precedent, Mr. Hernandez Vidal is entitled to immediate release for his warrantless arrest made in violation of 8 U.S.C. § 1357(a)(2). In the alternative, and at a minimum, Mr. Hernandez Vidal is entitled to an immediate bond hearing, as the government has already conceded. (ECF No. 6 at 3.) Given the initial misclassification of Mr. Hernandez Vidal’s status, and his resulting prolonged detention

without the required initial custody determination or the bond hearing that he was entitled to, Respondents should bear the burden of proving by clear and convincing evidence that Mr. Hernandez Vidal's continued detention is justified.

IV. Mr. Hernandez Vidal is Also Entitled to Relief for Violation of his Right to Substantive and Procedural Due Process.

While Mr. Hernandez Vidal's immediate release is justified solely on the basis of his warrantless arrest, he is also entitled to relief for violations of his Fifth Amendment right to substantive and procedural due process. The government's argument that Mr. Hernandez Vidal's right to substantive due process is limited to a bond hearing has been repeatedly rejected. 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 v. Davis*, 533 U.S. 678, 693 (2001); *see also, e.g., Mark O. v. Blanche*, 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; *see also Vladimir G.*, 2026 WL 1786418, at *3 (finding detention in violation of petitioner's due process rights was alternative basis supporting relief) (ordering outright release).

V. No Evidentiary Hearing is Necessary.

Finally, given Respondents' concession that they cannot show the NTA was created prior to the I-200, their acknowledgement that Mr. Hernandez Vidal's status and charges

in the original NTA are incorrect, and their failure to demonstrate that Mr. Hernandez Vidal's warrantless arrest was valid under 8 U.S.C. § 1357(a)(2), Mr. Hernandez Vidal agrees that no evidentiary hearing is required prior to ruling on the Petition.

CONCLUSION

For the reasons set forth above and in the Petition, Petitioner respectfully requests this Court:

1. 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;
2. ***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 to occur before a neutral adjudicator within 72 hours, at which Respondents will bear the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk;
3. 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;
4. 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

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

Respectfully submitted,

Dated: August 19th, 2026

/s/ Ted D. Hartman

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