UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

MARCELO SALDIVAR-MARTINEZ,

Petitioner,

v.

TODD BLANCHE, in his official capacity as Acting Attorney General; MARKWAYNE MULLIN, in his official capacity as Acting Secretary of the U.S. Department of Homeland Security; DAVID VENTURELLA, in his official capacity as Acting Director of Immigration and Customs Enforcement; DAREN K. MARGOLIN, in his official capacity as Acting Director of the Executive Office for Immigration Review; and JOEL BROTT; in his official capacity as Sheriff of Sherburne County.

Respondents.

Case No. 26-cv-03441

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

Expedited Handling Requested

INTRODUCTION

1. This case seeks the immediate release of Petitioner, Marcelo Saldivar-Martinez ("Petitioner"), from unlawful immigration detention by the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE). ICE has been detaining Petitioner without lawful justification since May 17, 2026, at the Sherburne County Jail.

2. Petitioner is a citizen of Mexico who has resided in the United States for over twenty years. Petitioner entered the United States on foot in Arizona on or abouts July 2,

2003. Since entering the country, Petitioner has established a life for himself. He has started a small business, married his spouse, and now has five children between the ages of one and fifteen, all of whom are U.S. Citizens.

3. On May 17, 2026, local police stopped Petitioner's vehicle and detained him in connection with a misdemeanor driving while impaired (DWI) charge. Petitioner was released that same day, but was immediately re-detained by ICE upon his release.

4. Petitioner's detention is unlawful. Petitioner was not arrested pursuant to a valid administrative warrant, in violation of his Fourth Amendment rights, as well as statute and regulation, mandating his release. Moreover, the government has no legitimate interest in detaining Petitioner when he is not a flight risk or a danger to the community—the only two constitutionally permissible reasons for detention. Accordingly, his detention violates his substantive due process rights, requiring his immediate release.

5. Further, Petitioner preserves his argument that, despite the Eighth Circuit's holding in *Avila*, the government's position that Petitioner is subject to mandatory detention under Section 1225(b)(2)(A) is untenable because Petitioner was not an applicant "seeking admission," and Petitioner's detention was unlawful from its inception. For these reasons, Petitioner's detention is unlawful and he should be immediately released.

JURISDICTION AND VENUE

6. The Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2241 (habeas corpus); Art. I, § 9, c. 2 of the U.S. Constitution ("Suspension Clause").

7. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

8. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

9. Venue is proper in this district pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Respondents are holding Petitioner at the Sherburne County Jail in Elk River, Minnesota, which is within the jurisdiction of this District.

PARTIES

10. Petitioner is a citizen of Mexico who has lived in the United States for more than twenty years. Petitioner is currently being detained at the Sherburne County Jail, and is under the direct control of Respondents.

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

12. Respondent Markwayne Mullin is being sued in his official capacity as the Secretary of the DHS. In this capacity, he is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq., including the detention and removal of noncitizens. He oversees ICE and Customs and

Border Protection (CBP), the component agencies responsible for Petitioner's arrest, detention, and custody. He is a legal custodian of Petitioner and has authority to release him.

13. Respondent Daren Margolin is sued in his official capacity as Acting Director of the EOIR, the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings. Respondent Margolin is a legal custodian of Petitioner and has authority to release him.

14. Respondent David Venturella is the Acting Director of ICE and is sued in his official capacity. Respondent Venturella is a legal custodian of Petitioner and has authority to release him.

15. Respondent Joel Brott is the Sheriff of Sherburne County and has authority over the Sherburne County Jail, where Petitioner is currently detained. Respondent Brott is a legal custodian of Petitioner and is named in his official capacity.

EXHAUSTION OF LEGAL REMEDIES

16. No statutory exhaustion requirement applies to a petitioner challenging immigration detention under 28 U.S.C. § 2241. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 965–66 (D. Minn. 2025); *see also Montano v. Texas*, 867 F.3d 540, 542 (5th Cir. 2017) ("Unlike 28 U.S.C. § 2254, Section 2241's text does not require exhaustion."). 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. *Jose J.O.E.*, 797 F. Supp. 3d at 967–68.

17. Other courts in the Eighth Circuit have similarly declined to require prudential exhaustion when evaluating a detained immigrant's habeas corpus petition under similar circumstances—to address a question of statutory interpretation that does not require developing a factual record, and where the agency is demonstrably unlikely to reverse its course. *Giron Reyes v. Lyons*, 801 F. Supp. 3d 797, 803 (N.D. Iowa 2025).

18. 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). Here, Petitioner challenges detention and denial of bond as unconstitutional under the Fifth Amendment and unrelated to any legitimate purpose, making exhaustion unnecessary. In *Matter of Yajure Hurtado*, the agency stated its belief that individuals like Petitioner, who have entered without inspection, are detained under section 1225(b)(2)(A) and subject to mandatory detention. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Further appeal to the BIA would be futile. *See 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.") (internal citation omitted). Accordingly, there are no genuine or meaningful administrative remedies available to Petitioner and exhaustion is not required.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

19. Petitioner is a citizen of Mexico who traveled to the United States to establish a better life for himself. Petitioner has lived in the United States since 2003 when he entered without inspection.

20. On May 17, 2026, Petitioner was arrested in Brooklyn Center, Minnesota in connection with a misdemeanor DWI charge, for which proceedings are still pending. No property was damaged in connection with this incident, nor were there any injuries.

21. While in custody at the Hennepin County Jail, Petitioner was informed that he had visitors who wanted to meet with him. Petitioner was taken into a small room in the lobby of the jail to meet with two federal agents, who inquired about Petitioner's arrest, criminal history, and immigration status.

22. Shortly after his visit from the federal agents, Petitioner was allowed to obtain his discharge papers and leave the jail. When he retrieved his discharge papers, he could see the federal agents were waiting at the door to the jail. As soon as he exited the jail, the agents re-detained him, identified themselves as ICE agents, and purported to show him an administrative warrant. They then took Petitioner into ICE custody, where he was questioned further about his immigration status. ICE agents later gave Petitioner a folder containing his A-number and his Notice to Appear. (Ex. A.) He has been in detention at the Sherburne County Jail since that time.

23. Aside from traffic-related violations, Petitioner has no criminal history. In 2023, Petitioner was convicted of a misdemeanor driving-while-intoxicated offense. No injuries or property damage occurred as a result of this offense, and Petitioner accepted responsibility, paid all fines, and completed every court-ordered requirement. Petitioner poses no danger to society and is not a flight risk.

24. Since arriving in the United States more than two decades ago, Petitioner has made the United States his home, establishing deep family, economic, and community

roots here. He married his spouse in 2014, and together they are raising five young children between the ages of one and fifteen, all United States citizens. In 2017, Petitioner started his own construction business, which remains operational and helps support his family. (*Id.*) His mother, a lawful permanent resident, also lives with him in Minnesota. (*Id.*)

25. Petitioner respectfully seeks the opportunity to return home and to continue following the legal processes set up by Congress and DHS for immigrants to seek status in this country.

26. In addition, detaining Petitioner is an expensive and pointless endeavor for the government. *See Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (finding the public interest favored release because "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million. Supervised release programs cost much less by comparison: between 17 cents and 17 dollars each day per person.").

27. Respondents have a history of removing detainees from Minnesota to other jurisdictions hundreds of miles away after federal habeas cases are initiated, complicating legal efforts to challenge their detention and uphold their constitutional rights. *See, e.g.*, Ellie Roth, MPR News, *Observer: ICE Detainee Flights Increase at MSP as Enforcement Action Ramps Up*, https://shorturl.at/YIZ3N (Jan. 14, 2026); Beenish Ahmed, NPR, *ICE is Deporting Some Immigrants so Quickly, Their Attorneys are Left Scrambling*, https://shorturl.at/3otTm (Dec. 26, 2025); Joey Peters & Cynthia Tu, Sahan Journal, *ICE Enforcement Prompts Relocation of Detainees Outside of Minnesota, Worrying Attorneys about Access, Rights*, https://2cm.es/1in9V (Dec. 16, 2025).

28. Given the circumstances, immediate legal intervention is necessary. As a husband, father of five young children, small-business owner, and son to a lawful-permanent-resident mother who lives with him, Petitioner is central to his family's stability and support. Pending the adjudication of this Petition, Petitioner further seeks an order restraining Respondents from transferring Petitioner to a location outside of the State of Minnesota, so that the jurisdiction of this Court is not impeded, and so that Petitioner remains accessible to legal counsel and loved ones.

LEGAL FRAMEWORK

A. Due Process

29. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The "Great Writ" has been referred to by United States Courts as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). A petitioner may seek a writ of habeas corpus when their custody violates the U.S. Constitution or a federal law. 28 U.S.C. § 2241(c)(3).

30. "[T]he Due Process Clause applies to all 'persons' within the United States, including [immigrants], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

31. "The Supreme Court has long recognized that deportable [noncitizens] are entitled to constitutional protections of due process." *Lopez v. Heinauer*, 332 F.3d 507, 512 (8th Cir. 2003) (citing *Yamataya v. Fisher*, 189 U.S. 89, 100–01 (1903)). *See also Demore*

v. Kim, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)) ("It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings."); *accord Trump v. J.G.G.*, 605 U.S. 670, 673 (2025)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 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).

32. Immigration detention is civil and must "bear[] a reasonable relation to the purpose for which the individual [is detained]" so that it is "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690 (cleaned up). There are only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See id.* at 683; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017); *see also Mohammed H. v. Trump*, 786 F. Supp. 3d 1149, 1158 (D. Minn. 2025) (discussing valid immigration detention purposes). "Retribution and deterrence are not legitimate nonpunitive governmental objectives." *Bell v. Wolfish*, 441 U.S. 520, 539 n.20 (1979).

33. 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." *Jerson A.D.G. v. Bondi*, No. 26-516 (DWF/SGE), 2026 WL 207352, at *1 (D. Minn. Jan. 27, 2026) (quoting *Zadvydas*, 533 U.S. at 690); *accord, e.g., Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539, at *4 (D. Neb. Sept. 3, 2025) (describing the standard for substantive due process violation).

34. Additionally, 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. To evaluate whether civil immigration detention violates procedural due process, courts apply the three-part balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), 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."

B. Statutory and Regulatory Framework

35. The INA prescribes essentially three forms of detention for noncitizens in removal proceedings. First, noncitizens in removal proceedings under 8 U.S.C. § 1229a and detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a custody-redetermination hearing—also known as a bond hearing—unless they have been arrested, charged with, or convicted of certain crimes that subject them to mandatory detention. *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). 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 than expedited, removal proceedings. Third, the INA authorizes detention of noncitizens who have received a final order of removal. 8 U.S.C. § 1231(a).

36. The long-standing agency interpretation of the INA was that section 1225 governed detention of noncitizens at or near the border, while section 1226 governs "detention of those who are already present in the United States." *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *4 (W.D. La. Sept. 11, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018)). For decades, noncitizens apprehended while already present in the United States were generally entitled to a bond hearing, unless their criminal history rendered them ineligible under section 1226(c).

37. On July 8, 2025, ICE, "in coordination with" the DOJ, announced a new policy claiming that any noncitizen who ever entered without inspection is subject to mandatory detention under section 1225(b)(2)(A), regardless of when they entered, when they are apprehended, and how their ongoing detention may impact them and their families.[1] On September 5, 2025, the BIA adopted this novel interpretation in a published

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for- applications-for-admission.

decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the BIA held that all noncitizens who are present in the United States without admission are subject to mandatory detention under section 1225(b)(2)(A) and are ineligible for bond hearings. *Yajure Hurtado*, 29 I&N at 216.

38. The overwhelming majority of federal courts to consider the issue have rejected Respondents' new interpretation of the custody statutes and have instead 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. *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); *see also Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1062 (7th Cir. 2025) (concluding that respondent was not likely to prevail on the merits that petitioner was subject to mandatory detention under § 1225(b)(2)). Courts within this Circuit have likewise refused to read *Avila* broadly, rejecting mandatory detention in materially distinguishable cases. *See, e.g., Singh v. Arnott*, No. 6:26-CV-3281-MDH, 2026 WL 1454155, at *2 (W.D. Mo. May 22, 2026) (finding re-detention was subject to § 1226(a)); *Bryan A.Q.C. v. Lyons*, No. CV 26-3165 (JRT/EMB), 2026 WL 1998719, at *3 (D. Minn. July 10, 2026) (same).

39. And, indeed, the current circuit split increasingly favors Petitioner's position. Within the last few months, multiple Circuit Courts have rejected Respondents' interpretation. *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); *see also Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1062 (7th Cir. 2025) (concluding that respondent was not likely to prevail on the merits that petitioner was subject to mandatory detention under § 1225(b)(2)). These courts recognize that the government's interpretation is contrary to the plain text of the INA.

40. Despite the overwhelming rejection of Respondents' new policy in courts nationwide, split panels of the Fifth and Eighth Circuits recently held that Respondents' reinterpretation of its statutory detention authorities is correct. *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). For all the reasons explained above, and as explained in Judge Erickson's well-reasoned dissent in *Avila* and Judge Douglas's equally persuasive dissent in *Buenrostro-Mendez*, those cases were wrongly decided. *See Avila*, 170 F.4th at 1138–41 (8th Cir. 2026) (Erickson, J., dissenting); *Buenrostro-Mendez*, 166 F.4th at 508–21 (Douglas, J., dissenting). Petitioner retains this argument to preserve it for further review.

41. Regardless, *Avila* and *Buenrostro-Mendez* address only the statutory habeas claim. *See Rodriguez v. Ortega,* No. 26-50183, 2026 WL 1906557, at *17 (5th Cir. July 2, 2026), *reh'g en banc granted*, No. 26-50183, 2026 WL 2014647 (5th Cir. July 10, 2026) (finding *Buenrostro-Mendez* did not foreclose due process claims). Accordingly, Courts in this District have held that other claims for habeas relief are not foreclosed. *See, e.g.*, *Jesus Alejandro G. A. v. Blanche*, No. 26-CV-1932 (LMP/ECW), 2026 WL 1383138, at *2 (D. Minn. May 18, 2026) ("But Avila did not address the question of due process—that is, whether the mandatory detention provision of Section 1225(b)(2), as applied to a

noncitizen who is present in the interior of the United States without authorization, is consistent with constitutional protections."); *Osman J.M.A. v. Blanche*, No. CV 26-2123 (DWF/DJF), 2026 WL 1005056, at *3 (D. Minn. Apr. 14, 2026) (finding detention under § 1225(b)(2) without an individualized bond hearing violated the petitioner's due process rights); *Manuel G. v. Blanche*, No. 26-CV-2385 (SRN/ECW), 2026 WL 1256358, at *5 (D. Minn. May 7, 2026) (same).

42. 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").

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Fourth Amendment, 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.3(d) and 8 C.F.R. § 236.1(b)

Petitioner's detention prior to service of his Notice to Appear violates his rights under the Fourth Amendment

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

44. 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).

45. 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 exists when the totality of the circumstances at the time of the arrest is sufficient to lead a reasonable person to believe that the suspect has committed or is committing an offense ...." *Hussen v. Noem*, 822 F. Supp. 3d 944, 987 (D. Minn. 2026) (quoting *Garang v. City of Ames,* 2 F.4th 1115, 1121 (8th Cir. 2021)). 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).

46. 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 Hussen*, 822 F. Supp. 3d at 987-988. Federal regulations track these strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

47. Warrants for immigration arrests are also procedurally limited. ICE is only empowered to issue an administrative warrant "[a]t the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed." 8 C.F.R. § 236.1(b)(1). Thus, ICE may only arrest a non-citizen under an administrative

warrant if the warrant "issues at the same time or after" the Notice to Appear. *Vladimir G. v. Easterwood*, No. 26-CV-2971 (JMB/ECW), 2026 WL 1786418, at *2 (D. Minn. June 22, 2026). This temporal distinction is meaningful. Where an arrest is pursuant to an administrative warrant issued before the Notice to Appear, the warrant is therefore invalid, and the arrest is thus unlawful. *Id*; *see also Luis A. S. v. Easterwood*, 0:26-cv-02447, slip op. at 6 (D. Minn. May 26, 2026), ECF No. 9. ("…a Form I-200 administrative warrant is not valid unless it is issued '[a]t the time of issuance of the notice to appear, or at any time thereafter. This is because an NTA is a 'case-initiating pleading[]'—'like an indictment in a criminal case'—that 'serves as the basis for commencing a grave legal proceeding.') (internal citations omitted).

48. Time and time again, courts in this District have found that Respondent's failure to comply with the timing requirements of 8 C.F.R. § 236.1(b)(1) require petitioner's immediate release. *See, e.g.*, *Luis A. S.*, slip op. at 6; *Jouquin C.S. v. Bondi*, 2026 WL 483256 at *3 (D. Minn. Feb. 20, 2026); *Pedro D.C. v. Blanche*, No. 26-CV-2450 (KMM/DLM), 2026 WL 1759444, at *2 (D. Minn. June 18, 2026); *Jesus F.D. v. Mullin*, No. 26-cv-2486 (PJS/DTS), Dkt No. 10 (D. Minn. Jun. 10, 2026).

49. Here, Petitioner was not issued a Notice to Appear until *after* he was detained. Without the Notice to Appear, Respondents had no authority to detain Petitioner. *See Luis A. S.*, slip op. at 6. Moreover, Petitioner was never provided with a copy of the purported warrant issued for his arrest. Therefore, Petitioner's detention is invalid, and his immediate release is required.

50. Moreover, 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."). 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 over twenty years and built strong ties to his community. Moreover, Petitioner fully complied with the ICE officers and in no way tried to disobey or flee. Therefore, no officer could have probable cause that Petitioner was likely to escape before a warrant could be obtained.

51. Without a valid warrant or 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 has continued well beyond 48 hours, rendering it presumptively unconstitutional.

52. 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.

53. Respondents' warrantless arrest of Petitioner, 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 invalid) (citing *Francisco M.A. v. Blanche*, 2026 WL 1229701, at *1–2 (D. Minn. May 5, 2026)).

COUNT TWO

Fifth Amendment Procedural Due Process

Petitioner is being deprived of an adequate and meaningful process to challenge his ongoing confinement.

54. Petitioner realleges and incorporates by reference the allegations contained above.

55. Petitioner has due process rights as a resident of the United States. *Zadvydas*, 533 U.S. at 693. Petitioner has a cognizable protectable liberty interest in his freedom from

detention. *Jesus Alejandro G. A. v. Blanche*, No. 26-CV-1932 (LMP/ECW), 2026 WL 1383138, at *12 (D. Minn. May 18, 2026) (holding noncitizens in mandatory detention without a bond hearing constitutes a due process violation); *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 686 (W.D. Tex. 2025) (same); *Diaz v. Kaiser*, No. 25-cv-5071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025) (collecting cases); *accord M.S.L. v. Bostock*, No. 6:25-cv-01204-AA, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025) ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.") (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025) (same). 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).

56. Federal courts use the three-part test in *Mathews v. Eldridge* to determine whether civil detention violates a detainee's due process rights. 424 U.S. at 335. The elements of this test are: (1) the private interest that the official action affects; (2) the risk that the procedures used will result in an erroneous deprivation of the private interest, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest in following the existing procedures, both in achieving their objectives and in the potential burdens of an alternate procedure. *Id.*

57. Here, all three factors favor the Petitioner.

58. First, Petitioner has a significant private interest at stake. A person's interest in freedom from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."). Petitioner's wrongful confinement directly attacks this interest. Petitioner's liberty interest is particularly acute. Petitioner has resided in the United States for more than twenty years and during that time has established a community of family and friends in the United States. Under these circumstances, Petitioner plainly possesses a constitutionally protected interest in remaining free from arbitrary confinement. *See, e.g.*, *Souleimane C. v. Blanche*, No. 26-CV-2215 (LMP/JFD), 2026 WL 1180075, at *4 (D. Minn. Apr. 30, 2026) ("[petitioner's] right to a bond hearing… strikes at the heart of his due process right to be free of arbitrary detention.").

59. Second, the risk of erroneous deprivation is extraordinarily high. Petitioner was detained without notice and without justification. No rationale was provided for his detention at the time of his arrest, and he was promptly transferred into ICE custody. Petitioner poses no danger to the community, and is not a flight risk. Courts have recognized that such a regime creates an intolerable risk that people who pose no danger and no flight risk will be needlessly incarcerated. *See Lopez-Arevelo*, 801 F. Supp. 3d at 687 ("[T]he Court finds that detaining [petitioner] without any individualized assessment of his flight risk and dangerousness deprives him of his constitutional right to procedural due process under the Fifth Amendment of the United States Constitution."). Even if

Petitioner is not subsequently released, Petitioner still has a legal and constitutional interest in the hearing itself, in being heard.

60. Third, Respondents' interest in continued civil detention is minimal. Petitioner is in removal proceedings, subject to the Immigration Court's jurisdiction, and fully available for supervision through less restrictive means. Detaining Petitioner without individualized justification does not meaningfully advance any legitimate governmental objective; it merely imposes confinement for confinement's sake.

61. Moreover, Petitioner poses no safety threats to the community. He has no history of violent offenses, and his prior misdemeanor DWI does not justify continued detention where courts in this District have repeatedly granted habeas relief in comparable circumstances. *See, e.g.*, *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1181 (D. Minn. 2025) (discussing an Immigration Judge finding that a DWI offense did not show that Petitioner had "placed a large segment of the general population at risk."); *see also Manuel G. v. Blanche*, No. 26-CV-2385 (SRN/ECW), 2026 WL 1256358, at *4 (D. Minn. May 7, 2026) (granting habeas relief despite criminal history including three prior DWIs); *Berman J.P.H. v. Margolin*, No. CV 26-2131 (JRT/EMB), 2026 WL 1245758, at *2 (D. Minn. May 6, 2026) (granting habeas relief for Petitioner detained following a DWI). Here, there is nothing to distinguish Petitioner's case where he has caused no harm, whether to property or to others.

62. Releasing Petitioner, or holding a hearing to release Petitioner on bond, would in fact *save* the government the resources and expense of continuing to imprison Petitioner.

63. Courts in this District have repeatedly granted outright release in similar circumstances, where the petitioner's detention violates their due process rights. *See, e.g.*, *Aureliano M.S. v. Bondi*, No. CV 26-1974 (JRT/DJF), 2026 WL 992445, at *2 (D. Minn. Apr. 13, 2026); *Jefferson G.H.L. v. Blanche*, No. 26-cv-2344 (JRT/ECW), 2026 WL 1229623 (D. Minn. May 5, 2026). Continued detention in violation of Petitioner's rights would only compound the unlawful restraint that habeas relief is designed to remedy. *See Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("Habeas is at its core a remedy for unlawful executive detention. . . The typical remedy is, of course, release.").

64. Even if this Court does not grant Petitioner's outright release, he is, at minimum, entitled to a bond hearing. *See, e.g.*, *Manuel G. v. Blanche*, No. 26-CV-2385 (SRN/ECW), 2026 WL 1256358, at *4 (D. Minn. May 7, 2026) (rejecting the government's argument that § 1225(b) bars due process claims); *Jesus Alejandro G. A.*, 2026 WL 1383138, at *7 (same).

65. Denial of a bond hearing "creates a substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement pending resolution of his removal proceedings," particularly when the petitioner is not a flight risk or danger and has lived in the U.S. for a prolonged period. *Vieira v. De Anda-Ybarra*, 806 F. Supp. 3d 690, 701 (W.D. Tex. 2025). The value of an additional safeguard through a bond hearing to determine "whether continued detention is necessary to ensure presence at removal hearings and safety for the community" is high. *Id.*

66. Accordingly, even assuming arguendo that Section 1225 governs, Petitioner's continued detention without individualized process violates the Due Process

Clause. Mandatory detention cannot be wielded as a blunt instrument to extinguish liberty where the Constitution demands reasoned, person-specific justification.

67. Petitioner's detention also violates his right to due process because it does not further the two legitimate purposes for immigration detention. *Zadvydas*, 533 U.S. at 690 (finding that immigration detention is justified in two scenarios: (1) ensuring a noncitizen's appearance during removal proceedings and (2) preventing danger to the community).

68. Respondents can present no justification for Petitioner's detention on these bases. Petitioner poses no flight risk—prior to his detention, Petitioner established a life in the United States for more than twenty years. Indeed, given his lengthy residence in the United States and the hardship his removal would cause his family, Petitioner has a cognizable basis to seek cancellation of removal under INA § 240A(b).[2] Nor does Petitioner pose any danger to the community. There is no legitimate purpose for his immigration detention.

69. Moreover, Petitioner's detention is punitive because it bears no "reasonable relation" to any legitimate government purpose. *Id.* at 690 (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect").

[2] INA § 240A(b) provides that a noncitizen in removal proceedings may be eligible for cancellation of removal if (1) they have had a continuous presence in the United States for more than 10 years, (2) they have not been convicted of certain offenses, and (3) removal would result in hardship to family with citizen or lawful permanent resident status.

70. Due process demands, at a minimum, a lawful basis for detaining and continuing to detain any person. Because Respondents have no basis to continue to detain Petitioner, his continued detention violates the Fifth Amendment, and he should be released.

COUNT THREE

Fifth Amendment Substantive Due Process

Petitioner's detention is without adequate justification

71. Petitioner realleges and incorporates by reference each and every allegation contained above.

72. Petitioner's ongoing detention violates his substantive due process rights because his liberty is being restricted without justification. *See Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3). The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690. Courts have also recognized that immigrants for whom the government granted a limited form of immigration relief and allowed to live in the country for years "under the understanding that [they are] unlikely to be subject to enforcement proceedings" possess a cognizable liberty interest. *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *10–11 (W.D. Tex. Oct. 2, 2025) (finding a person who lived in the U.S. for twenty years, including thirteen years with deferred action, has a cognizable liberty interest) (quoting *Gamez Lira v. Noem*, No. 1:25-CV-00855-WJ-KK,

2025 WL 2581710, at *3 (D.N.M. Sept. 5, 2025)); *see also Chourio Herrera v. Bondi*, No. 0:26-CV-1895, 2026 WL 827571, at *3 (D. Minn. Mar. 25, 2026) (finding detention was unlawful where petitioner was granted humanitarian parole).

73. To comply with the Due Process Clause, detention must always bear "some reasonable relation to the purpose for which the individual was committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018); *Ivan L.C.R. v. Bondi*, No. CV 26-1735 (JWB/JFD), 2026 WL 1231738, at *2 (D. Minn. Mar. 20, 2026).

74. Petitioner's detention violates his substantive right to due process because it does not further the two legitimate purposes for immigration detention. *Zadvydas*, 533 U.S. at 690. The only legitimate purposes, consistent with due process, for federal civil immigration detention is to prevent flight risk and ensure the detained person's attendance for a legal hearing adjudicating their status or potential removal, or to otherwise ensure the safety of the community. *Id.* at 690–91 (finding that immigration detention is justified in two scenarios: (1) ensuring a noncitizen's appearance during removal proceedings and (2) preventing danger to the community).

75. Here, there is no legitimate purpose for Petitioner's detention. First, Petitioner poses no flight risk because there is no reason to believe that Petitioner would not attend immigration proceedings, or otherwise comply with requirements related to his release. His family, livelihood, and community are firmly rooted in Minnesota, where his spouse, five U.S.-citizen children, and lawful-permanent-resident mother depend on him. Second, Petitioner, as discussed above, poses no safety threat to the community.

76. Petitioner's continued detention is unrelated to the purposes justifying it as a constitutional matter, and therefore contravenes the fundamental Due Process protections in the Fifth Amendment of the Constitution and is causing Petitioner substantial and irreparable harm.

COUNT FOUR

Immigration and Nationality Act, 8 U.S.C. § 1226

Petitioner's Ongoing Detention, without the Opportunity for a Bond Hearing, Violates his Statutory Right to a Hearing as Guaranteed by 8 U.S.C. § 1226

77. Petitioner realleges and incorporates by reference each and every allegation contained above.

78. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

79. Petitioner is not subject to 8 U.S.C. §§ 1225(b)(1), 1226(c), or § 1231.

80. On March 25, 2026, a panel of three judges on the Eighth Circuit found that people like Petitioner are detained under section 1225(b)(2)(A), rather than section 1226(a). *Avila,* 170 F.4th at 1137. For the reasons explained above, as well as in the number of federal district court cases to address this issue, and in Judge Erickson's dissent in *Avila*, the Eighth Circuit panel's decision is an erroneous interpretation of the statutes at hand.

Respondents' application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

81. The continued application of section 1225(b)(2) to Petitioner, resulting in his mandatory detention, violates the INA. This claim is raised solely to preserve further review.

REMEDY

82. An available remedy for Respondents' unlawful conduct as outlined in this complaint is for Petitioner to be released.

83. Immigration detention is civil in nature, and as a result Congress must have expressly authorized it by statute, and the detention must be reasonably related to its statutory purpose. *Zadvydas*, 533 U.S. at 687, 690 (quoting *Jackson*, 406 U.S. at 738). Detention here serves no statutory purpose, and there is no indication that Petitioner's detention was based on any facts that might indicate that Petitioner should be in custody for some reason.

84. When a habeas petitioner's detention is without legal basis, the typical remedy is release. *Munaf*, 553 U.S. at 693 (describing release as the "typical remedy" for "unlawful executive detention"); *see also Bryan A.Q.C v. Lyons*, No. CV 26-3165 (JRT/EMB), 2026 WL 1998719, at *3 (D. Minn. July 10, 2026) ("his present detention is therefore unlawful… [a]ccordingly, the Court will order his immediate release"); *Jefferson G.H.L. v. Blanche*, No. CV 26-2344 (JRT/ECW), 2026 WL 1229623, at *3 (D. Minn. May 5, 2026) ("…because Respondents have not justified Petitioner's continued detention, release is the proper remedy."); *Jefferson Y.M., v. Blanche*, No. CV 26-3038 (JRT/DLM),

2026 WL 1848510, at *2 (D. Minn. June 26, 2026) ("...the Court concludes that the appropriate remedy is Petitioner's immediate release."). Similarly, where a noncitizen is arrested and detained without a valid warrant, the appropriate remedy is immediate release. *See Martha C.G.P. v. Blanche*, 2026 WL 1329577, at *3 (D. Minn. May 13, 2026) ("The remedy for a warrantless arrest is immediate release."); *see also Wilson L.L. v. Blanche*, 2026 WL 1283186, at *3 (D. Minn May 11, 2026) (ordering immediate release on these grounds and citing multiple supporting cases from the District of Minnesota). This Court should therefore grant Petitioner's the same.

REQUEST FOR ORDER TO SHOW CAUSE

85. Within three days, unless good cause for a delay is shown, "[a] court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

86. Petitioner, by and through counsel, respectfully requests that the Court issue an Order to Show Cause directing Respondents to file a return within three days of the Court's order, showing cause, if any, why a writ of habeas corpus should not be granted.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue an order to show cause to be returned within three days;

c. Order that Petitioner shall not be transferred outside of the District of Minnesota

while this habeas petition is pending;

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner, or in the alternative, requiring a bond hearing with the burden on the government within seven days;

e. Declare that Petitioner's detention is unlawful;

f. Grant Petitioner any preliminary relief to which he shows himself to be entitled;

g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

h. Grant any other and further relief that this Court deems just and proper.

Dated: July 28, 2026

s/ Leah C. Janus

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