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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA**

ADRIÁN ESPINOZA DE LA CRUZ
and A-E-V, a minor,

Petitioners,

v.

ZACHARY CROSSON, Chief Patrol
Agent of the Havre Sector, U.S.
Customs and Board Patrol; MICHAEL
BERNACKE, Utah Field Office
Director, Enforcement and Removal
Operations, United States
Immigration and Customs
Enforcement; DAVID VENTURELLA,
Acting Director, United States
Immigration and Customs
Enforcement; MARKWAYNE
MULLIN, Secretary, United States
Department of Homeland Security;
TODD BLANCHE, Acting Attorney
General of the United States, *in their
official capacities,*

Respondents.

Civil Action No. CV-26-289-GF-BMM

**PETITION FOR WRITS OF
HABEAS CORPUS**

BACKGROUND

1. The Department of Homeland Security (“DHS”) has affirmatively identified Adrián Espinoza De La Cruz (“Adrián”) and his nine-year-old daughter, A-E-V, as members of the *Hernandez* putative class. *See* Ex. 1, *Hernandez* Putative Class Tracker (Aug. 13, 2026) (“Aug. 13 Class Tracker”).

2. By designating Adrián and A-E-V as putative class members, DHS concedes that neither is detained pursuant to 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231.

3. Adrián and A-E-V live in Billings. Adrián has lived in Billings for four years, and A-E-V for three years.

4. On information and belief, U.S. Customs and Border Patrol (“CBP”) agents detained Adrián and A-E-V on August 11, 2026.

5. CBP took Adrián and A-E-V to the Havre Border Patrol Station, over four hours away.

6. On information and belief, CBP has held Adrián and A-E-V at the Havre Border Patrol Station for seven days and continues to detain them there as of today.

7. On information and belief, the Havre Border Patrol Station is not a long-term detention facility and lacks basic amenities, such as proper bedding.

8. On information and belief, CBP arrested Adrián and A-E-V without a warrant.

9. On information and belief, CBP arrested Adrián and A-E-V without conducting a flight risk determination.

10. Adrián and A-E-V challenge their detention under the U.S. Constitution.

11. On information and belief, the U.S. Department of Homeland Security (“DHS”) has placed or intends to place Adrián and A-E-V into removal proceedings under 8 U.S.C. § 1229(a). During such removal proceedings, Adrián and A-E-V are entitled to defend against their removal, present applications for relief from removal during an evidentiary hearing before an Immigration Judge (“IJ”), and appeal or contest any order of removal entered by an IJ.

12. On information and belief, DHS has taken the position that Adrián and A-E-V are subject to custody under Section 1226(a). *See generally* Aug. 17 Class Tracker.

13. On information and belief, Respondents did not consider Adrián and A-E-V's ties to the United States and to Montana—including that A-E-V attends elementary school in Billings and has upcoming medical appointments in Billings that took months to schedule—prior to detaining them.¹

14. To the extent that Adrián and A-E-V are being held under 8 U.S.C. § 1226(a), Respondents conducted an unlawful warrantless arrest of both without a pre-deprivation determination of flight risk.²

15. Neither Adrián nor A-E-V pose a danger to the community or a flight risk. Their continued detention violates the Immigration and Nationality Act (“INA”) and the Due Process Clause.

¹ September 2, 2026, is the first day of school for Billings Public Schools.

² Respondents concede Adrián or A-E-V are not subject to 8 U.S.C. § 1225(b). Aug. 13 Class Tracker. The Ninth Circuit and the vast majority of courts to consider the issue, including this Court, have rejected the government's policy of treating interior residents as “applicants for admission” subject to mandatory detention. *See, e.g., Rodriguez Vazquez v. Bostock*, No. 25-6842, slip op. (9th Cir. July 30, 2026) (collecting cases); *Torres v. Slaughter*, No. 4:26-cv-00271-BMM, slip op. at 15 (D. Mont. July 7, 2026) (Morris, J.); *Orozco-Ramirez v. Visser*, No. CV-26-252-GF-BMM, 2026 WL 1329806, at *2–3 (D. Mont. May 13, 2026) (Morris, J.); *Cirrus Rojas v. Olson*, No. 25-3127, slip op. (7th Cir. July 30, 2026); *Martinez v. Knight*, No. 1:25-CV-00610-BLW, 2025 WL 3228987, at *1 nn.1–2 (D. Idaho Nov. 19, 2025) (collecting cases); *Vasquez v. Levya*, 2026 U.S. Dist. LEXIS 82988 (D. Idaho Apr. 15, 2026).

16. Adrián and A-E-V respectfully request that this Court grant them Writs of Habeas Corpus and order Respondents to immediately release them from custody.

17. Adrián and A-E-V seek habeas relief under 28 U.S.C. § 2241, which is the proper vehicle for challenging civil immigration detention. *See Flores-Torres v. Mukasey*, 548 F.3d 708, 711 (9th Cir. 2008) (finding habeas the appropriate vehicle for challenging detention absent a final order of removal). In the alternative, Adrián and A-E-V request a bond hearing from this Court within seven days.

18. As putative class members subject to this Court's order, Respondents must not move Adrián and A-E-V out of Montana while their habeas petition is considered. Order, *Hernandez v. Crosson*, No. CV-26-280-GF-BMM, 2026 WL 2280918 (D. Mont. Aug. 7, 2026), Dkt. 12 (“*Hernandez Show Cause Ord.*”).³

³ Petitioners are aware that this Court has set a September 4 hearing regarding the *Hernandez* putative class. The exceptional circumstances of a nine-year-old child being incarcerated in a temporary CBP detention facility in Havre, however, necessitates immediate relief. Petitioners attempted to negotiate relief from Respondents, prior to filing, but Respondents refused any potential relief.

19. As an incarcerated minor, A-E-V is entitled to specific protections. *see Flores v. Barr*, No. CV-85-4544-DMG, 2020 WL 2758792, at *4 (C.D. Cal. Apr. 24, 2020) (outlining DHS obligations to “release a minor from its custody without unnecessary delay,” provide suitable living conditions, appropriate and routine medical care, screening for infectious diseases, and individualized assessments of flight risk); *see Flores v. Barr*, No. CV-85-4544-DMG, 2020 WL 2758792, at *4 (C.D. Cal. Apr. 24, 2020) (“Those standards include food, clothing, grooming items, medical and dental care, individualized needs assessments, educational services, recreation and leisure time, counseling, access to religious services, contact with family members, and a reasonable right to privacy.”).

20. This Court has set a September 4 hearing on class relief for the *Hernandez* putative class.

21. Adrián and A-E-V respectfully request that this Court allow expedited discovery of the bases asserted for their stop and detention by CBP, in support of this petition.

CUSTODY

22. Adrián and A-E-V are in Respondents' physical custody. Adrián and A-E-V are currently detained in the State of Montana. They are under the direct control of Respondents and their agents.

JURISDICTION

23. This Court has jurisdiction to hear this habeas petition under 28 U.S.C. § 1331, 28 U.S.C. § 2241, and the U.S. Constitution.

VENUE

24. Venue is proper in this district under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because at least one Respondent is in this District, Adrián and A-E-V are detained in this District, their immediate physical custodians are located in this District, and a substantial part of the events giving rise to the claims in this action occurred in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (“[F]or core habeas petitions challenging present physical confinement, jurisdiction lies in . . . the district of confinement.”).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

25. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988

(9th Cir. 2017). A court may waive the prudential exhaustion requirement if “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (cleaned up)); see *Hernandez v. Crosson*, No. CV-26-280-GF-BMM, 2026 WL 2280918, at *8–9 (D. Mont. Aug. 7, 2026). Adrián and A-E-V assert exhaustion should be waived because administrative remedies are futile, their continued detention results in irreparable harm, and A-E-V’s continued detention as a minor warrants humanitarian relief.

26. No statutory exhaustion requirements apply to Adrián and A-E-V’s claims of unlawful custody in violation of Due Process, and there are no administrative remedies that they need to exhaust. See *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion “a futile exercise because the agency does not have jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (“where the administrative

forum would provide no real opportunity to present the constitutional issues . . . requiring exhaustion makes little sense” (cleaned up)).

REQUIREMENTS OF 28 U.S.C. § 2243

27. This Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless petitioners are not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

28. 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) (emphasis added).

PARTIES

29. Adrián is 36 years old and has been a Billings resident for about four years.

30. A-E-V is nine years old and has been a Billings resident for about three years.

31. On information and belief, as of August 18, 2026, Adrián and A-E-V are being detained at the Havre Border Patrol Station.

32. Respondent Zachary Crosson is the Chief Patrol Agent of the Havre Sector for CBP. He is named in his official capacity.

33. Respondent Michael Bernacke is Utah Field Office Director for Enforcement and Removal Operations under ICE. He is a legal custodian of Adrián and A-E-V, named in his official capacity.

34. Respondent David Venturella is Acting Director of ICE. He is a legal custodian of Adrián and A-E-V, named in his official capacity.

35. Respondent Markwayne Mullin is Secretary of DHS. He is a legal custodian of Adrián and A-E-V, named in his official capacity.

36. Respondent Todd Blanche is Acting Attorney General of DOJ. He is a legal custodian of Adrián and A-E-V, named in his official capacity.

STATEMENT OF FACTS

37. Adrián has lived in Billings for about four years.

38. Adrián is a devoted father to his daughter A-E-V.

39. A-E-V has lived in Billings for about three years. A-E-V attends  This fall, she will begin the fourth grade.

40. A-E-V has had gastrointestinal issues for about a year and a half, which are exacerbated by diet. She cannot eat greasy foods or drink

soda and needs to drink almond milk as a dairy substitute. A-E-V has an upcoming appointment with a gastroenterologist on August 27, 2026, which took over three months to schedule; her parents made the appointment at the beginning of May. She needs to complete bloodwork and an ultrasound one week before her appointment.

41. On August 11, 2026, at approximately 11:00 A.M., CBP detained Adrián and A-E-V in Billings, Montana.

42. On information and belief, CBP arrested and detained Adrián and A-E-V without a warrant and without probable cause.

43. On information and belief, Adrián and A-E-V were transported to the Havre Border Patrol Station that same day.

44. On information and belief, CBP subsequently determined that it had detained Adrián and A-E-V pursuant to 8 U.S.C. § 1226(a).

45. On information and belief, at no time prior to Adrián's and A-E-V's arrests did any CBP officer obtain a judicial arrest warrant.

46. On information and belief, if CBP officers had a warrant it was an administrative arrest warrant.

47. On information and belief, CBP did not conduct the required flight risk determination before apprehending and detaining Adrián and A-E-V, as 8 U.S.C. § 1357 requires for warrantless arrests.

48. Each day that Adrián and A-E-V are unjustly deprived of their liberty causes irreparable harm.

49. There is no reason for Adrián or A-E-V to remain detained. They pose no risk to anyone, and their continued detention violates both the INA and the Due Process Clause of the U.S. Constitution.

50. This Court's intervention is required to ensure Adrián and A-E-V do not continue to suffer irreparable harm in the form of unjustified detention, which if left unaddressed will become unlawfully prolonged.

LEGAL BACKGROUND

The INA's custody statutes

51. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

52. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229(a). Individuals in Section 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a),

1236.1(d) (2026), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention until their removal proceedings are concluded, *see* 8 U.S.C. § 1226(c).

53. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for recent arrivals “seeking admission” under Section 1225(b)(2).

54. Last, the INA provides for detention of noncitizens who have received a final order of removal from the United States, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

55. This case concerns detention under 8 U.S.C. § 1226(a).

56. Respondents concede that neither Adrián nor A-E-V are held pursuant to Section 1225(b)(2).

57. Respondents included Adrián and A-E-V in the list of putative class members who are “not or will not be subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231 at the time the Department of Homeland Security makes an initial custody determination.” *Hernandez Show Cause Ord.* ¶ 10; *see* Aug. 17 Class Tracker.

DHS's use of after-the-fact administrative warrants is invalid

58. A noncitizen may be arrested and detained under Section 1226 only “on a warrant issued by the Attorney General.” 8 U.S.C. § 1226(a) (citation modified).

59. “Issuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a). It follows that absent a warrant a noncitizen may not be arrested and detained under section 1226(a).” *Brice v. Gantt, et al.*, No. CIV-26-1421-D, 2026 WL 2243982, at *3 (W.D. Okla. Aug. 4, 2026) (quoting *Sergio P. v. Bondi*, No. 26-CV-1538, 2026 WL 497290, at *2 (D. Minn. Feb. 23, 2026)).

60. One limited exception to this warrant requirement is “if [the officer] has reason to believe that the [person] ... is in the United States in violation of any . . . law or regulation [regulating the admission, exclusion, expulsion, or removal of aliens] and is likely to escape before a warrant can be obtained for his arrest.” 8 U.S.C.A. § 1357(a)(1), (2) (emphasis added).

61. “[A] proper arrest pursuant to § 1226 requires either an arrest warrant that is issued before arrest, or a reasonable belief by an authorized officer upon initial investigation that a noncitizen is in the

United States in violation of the law and presents a risk of escape if not arrested before a warrant can be obtained.” *Hernandez, v. Crosson, et al.*, No. CV-26-280-GF-BMM, 2026 WL 2280918, at *4 (D. Mont. Aug. 7, 2026).

62. Federal immigration officers throughout the United States use administrative warrants, rather than judicial warrants that are supported by probable cause and approved by a neutral detached judicial officer. *See, e.g., Garcia Lanza v. Noem*, 822 F. Supp. 3d 326, 332 (E.D.N.Y. 2026) (“[T]he officers resorted to the expedient of a Government form, an I-200 administrative arrest warrant, authorized for use by immigration enforcement officers only under carefully proscribed circumstances. Those circumstances are extremely limited due to the extraordinary nature of this process—it allows arresting officers to issue their own warrants—a rare exception to the traditional practices in American law.”).

63. Post-arrest issuance of administrative warrants is “plainly invalid.” *Id.*; *see, e.g., Gopie v. Lyons*, No. 25-CV-05229-SJB, 2025 WL 3167130, at *1 (E.D.N.Y. Nov. 13, 2025) (post-arrest issuance of administrative arrest warrant and NTA meant “ICE arrested [plaintiff]

when they had no authority to do so”); *Castañon Nava v. Dep’t of Homeland Sec.*, 806 F. Supp. 3d 823, 853–54 (N.D. Ill. 2025) (ICE lacked authority “to engage in its policy of issuing I-200 warrants to collaterals in the field without the concurrent or prior issuance of an NTA.”); *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *10–11 (D. Colo. Nov. 25, 2025) (“issuing post hoc warrants once plaintiffs had already been unlawfully arrested does nothing to cure the initial statutory violation.”); *Maldonado v. Bostock*, No. 2:23-CV-00760-LK-BAT, 2023 WL 5804021, at *3 (W.D. Wash. Aug. 8, 2023) (“The parties provide no authority for the proposition that DHS retains discretion to sidestep or override Section 1225 by issuing an NTA and arrest warrant.”).

64. Courts countrywide have concluded that DHS has a practice of unlawful warrantless arrests without an individualized assessment of flight risk. *E.g. Aguilar Peralta, et al., v. Dep’t. of Homeland Sec., et al.*, No. 2:26-CV-337, 2026 WL 2069917, at *18–24 (S.D. Ohio July 17, 2026); *see also Ramirez Ovando*, 810 F. Supp. 3d at 1237; *M-J-M-A v. Hermosillo*, 822 F. Supp. 3d 1147, 1175 (D. Or. 2026); *United Farm Workers v. Noem*, 785 F. Supp. 3d 672, 735 (E.D. Cal. 2025).

65. Failure to comply with 8 U.S.C. § 1357 is a statutory procedural failure that results in a deprivation of due process. *Hernandez v. Crosson, et al.*, No. CV-26-280-GF-BMM, 2026 WL 2280918, at *4 (D. Mont. Aug. 6, 2026).

66. This Court should therefore order Adrián's and A-E-V's immediate release from custody.

67. In the alternative, this Court should conduct a bond hearing itself, rather than order a bond hearing be conducted before an IJ. Immigration detention must reasonably relate to the government's goals of preventing flight and protecting the community from harm and be accompanied by adequate procedural protections to ensure those goals are being served. *See Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001). Neither goals is served by Adrián's and A-E-V's continued detention.

CLAIMS FOR RELIEF
COUNT ONE
Violation of the INA

68. Adrián and A-E-V re-allege and incorporate herein the preceding paragraphs.

69. Respondents arrested and detained Adrián and A-E-V pursuant to Section 1226(a).

70. Section 1226(a) requires Respondents to obtain a warrant prior to arresting a noncitizen.

71. Section 1357 permits the warrantless arrest of a noncitizen only if the noncitizen is likely to escape before a warrant can be obtained, which requires an individualized assessment of flight risk at the time of arrest.

72. Respondents arrested Adrián and A-E-V without a warrant and without assessing their flight risk.

73. Respondents' warrantless arrest did not comply with 8 U.S.C. § 1226 or § 1357.

COUNT TWO
Violation of Procedural Due Process
(U.S. Const. amend. V)

74. Adrián and A-E-V re-allege and incorporate herein the preceding paragraphs.

75. Adrián and A-E-V's continued detention without a bond hearing also violates their Fifth Amendment due process rights. The Due Process Clause prohibits deprivations of life, liberty, and 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 in that Clause.

76. The Due Process Clause prohibits the federal government from depriving any person of liberty without adequate procedural safeguards, including, at minimum, a meaningful opportunity to be heard before a neutral decisionmaker.

77. Respondents deprived Adrián and A-E-V of the basic procedural safeguards in 8 U.S.C. § 1357 and performed a warrantless arrest without an individualized assessment of flight risk.

78. Neither Adrián nor A-E-V have been provided with a constitutionally adequate process to challenge the necessity, legality, or continued justification for their detention.

79. The lack of adequate procedural safeguards creates a substantial risk of erroneous deprivation of Adrián's and A-E-V's fundamental liberty interests.

80. Respondents' actions and omissions violate Petitioners' Fifth Amendment Due Process rights.

COUNT 3
Violation of Substantive Due Process
(U.S. Const. amend. V)

81. Adrián and A-E-V re-allege and incorporate herein the preceding paragraphs.

82. “[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Civil immigration detention is permissible only to prevent danger to the community or flight risk. *See Zadvydas*, 533 U.S. at 690.

83. Here, neither Adrián’s nor A-E-V’s detention serves either purpose. Given their family connections to Montana and to the United States, their lack of dangerousness, and their lack of flight risk, no legitimate consideration justifies their detention, rendering their detention punitive and unconstitutional. The Due Process Clause requires their immediate release.

PRAYER FOR RELIEF

Wherefore, Petitioners Adrián Espinoza De La Cruz and A-E-V respectfully request this Court grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Respondents from transferring Adrián and A-E-V outside of this District during the pendency of these habeas proceedings to preserve jurisdiction over this matter, consistent with this Court’s existing Order;

- (3) Order Respondents to show cause why these Petitioners should not be granted habeas within three days;
- (4) Enjoin Respondents from continuing to detain Petitioners, and order their immediate release from DHS custody;
- (5) Order Adrián and A-E-V's immediate release from custody on any other basis that this Court finds proper;
- (6) In the alternative, order a bond hearing be held before this Court within seven days;
- (7) Declare that Petitioners' detention violates the INA and the Due Process Clause of the Fifth Amendment;
- (8) Order that Respondents are enjoined and restrained from re-detaining Adrián and A-E-V for any purpose, absent exigent circumstances, without written notice and a hearing before an IJ where Respondents will have the burden of establishing that Adrián and A-E-V are either a danger or flight risk by clear and convincing evidence;
- (9) Award Adrián and A-E-V attorney's fees and costs under the Equal Access to Justice Act and on any other basis justified under law; and

(10) Grant any further relief this Court deems just and proper.

Dated: August 18, 2026

Respectfully submitted,

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