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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

ADRIÁN ESPINOZA DE LA CRUZ and A-E-V, a minor, Petitioners, vs. ZACHARY CROSSON, Chief Patrol Agent of the Havre Sector, U.S. Customs and Board Patrol; et al., Respondents.	CV-26-289-GF-BMM RESPONSE TO PETITION FOR WRITS OF HABEAS CORPUS
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Adrian Espinoza De La Cruz and A-E-V are natives of Mexico present in the United States without being admitted or paroled. On August 11, 2026, Espinoza De La Cruz and A-E-V were arrested in Billings, Montana, and subsequently taken to the Havre Border Patrol Station. On August 18, 2026, Espinoza De La Cruz

and A-E-V filed the instant petition for a writ of habeas corpus to challenge his detention pending removal. (Doc. 1.)

The United States acknowledges that Espinoza De La Cruz and A-E-V have been identified as members of the putative class in *Hernandez v. Crosson*, CV-26-280-GF-BMM, having entered into the United States without inspection and being present in the interior of the United States, not having been apprehended upon arrival, and not being subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231 when immigration officials made an initial custody determination. *See Hernandez v. Crosson*, CV-26-280-GF-BMM, Doc. 12 at 4 (D. Mont. Aug. 3, 2026); Doc. 1; (*see also* A-files lodged under seal (Doc. 7)). Moreover, the United States does not dispute that Espinoza De La Cruz and A-E-V were arrested without a warrant and that available records do not evidence an individualized determination of escape risk at the time of the arrest, although warrants were issued and served after Espinoza De La Cruz and A-E-V arrived in Havre.

Espinoza De La Cruz and A-E-V contend their warrantless arrest without an individualized assessment of escape risk violates 8 U.S.C. § 1357 and the Due Process Clause. (Doc. 1 at 15-16.) They seek immediate release from custody as a remedy. (Doc. 1 at 16.)

The Court addressed a similar issue when addressing the individual relief sought in *Hernandez*, No. CV-26-280-GF-BMM, 2026 WL 2280918, at *4 (D.

Mont. Aug. 6, 2026). In opposition, the United States argued that other district courts within the Ninth Circuit addressing similar circumstances concluded that any purported delay in serving a warrant on an unadmitted alien does not render the arrest unlawful, and it does not entitle an unadmitted alien to release through a habeas proceeding.¹

The Court concluded that warrantless arrests conducted without an individualized assessment of flight risk did not comply with 8 U.S.C. § 1357 and violated the Due Process Clause. 2026 WL 2280918, at *4. In doing so, the Court rejected the United States' argument that release pursuant to habeas was not the appropriate remedy for detention based on an improperly issued warrant. *See id.* at 15-20.

The United States acknowledges that the operative facts in this case are similar to those at issue in *Hernandez*. Nevertheless, the United States maintains, as it did in *Hernandez*, that habeas is not appropriate based on a purported

1 The United States cited *Miranda Benavidez v. Semaia*, 2026 WL 2178769, at *2–*3 (C.D. Cal. July 27, 2026) (collecting cases and concluding alleged warrantless arrest did not entitle petitioner to release through a habeas petition); *Liu v. Janecha*, 2026 WL 2178768, at *2 (C.D. Cal. July 27, 2026) (same); *Kaur v. Hernandez*, 2026 WL 2123025, at *2 (W.D. Wash. July 23, 2026) (same); *Salcido Mendez v. Sec'y of Homeland Security*, 2026 WL 2138133 (C.D. Cal. July 17, 2026) (same); *Chiniakov v. Warden, Adelanto ICE Processing Ctr.*, 2026 WL 2043765, at *2 (C.D. Cal. July 2, 2026) (same); *Reyes v. Hermosilla*, 2026 WL 528692, at *2–*3 (W.D. Wash. Jan. 15, 2026) (same); *L-J-P-L- v. Wamsley*, 2025 WL 2430268, at *6 n.3 (D. Or. Aug. 22, 2025) (same).

unlawful arrest if the present detention is authorized. *See, e.g., U.S. ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 158 (1923) (explaining that the object of the writ of habeas corpus “is to ascertain whether the prisoner can lawfully be detained in custody; and if sufficient ground for his detention by the government is shown, he is not to be discharged for defects in the original arrest or commitment”); *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1040 (1984) (reaffirming this principle). This Court has already considered those arguments as presented in *Hernandez* and found a contrary line of reasoning more persuasive. 2026 WL 2280918, at *4.

Accordingly, in respect for judicial efficiency, the United States will preserve, but not detail, those arguments here. For the same reasons, the United States does not believe judicial efficiency would be served by hearing argument in this matter as explained in the contemporaneously filed unopposed Motion to Vacate Hearing.

For the reasons above, the Court should dismiss or deny Petitioners’ habeas petition.

DATED this 19th day of August 2026.

MARK STEGER SMITH
Acting United States Attorney

/s/ Timothy A. Tatarka
Timothy A. Tatarka
Assistant U.S. Attorney

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(d)(2)(E), the attached brief is proportionately spaced, has a typeface of 14 points and contains 740 words, excluding the caption and certificates of service and compliance.

DATED this 19th day of August 2026.

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