UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JHON ESTEBAN RODRIGUEZ-CARVAJAL,

Petitioner,

v.

Todd BLANCHE, in his official capacity as Attorney General of the United States;

Markwayne MULLIN, in his official capacity as Secretary of the Department of Homeland Security;

David 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;

James TADMAN, in his official capacity as Sheriff of Polk County; and

Joey PEDERSON, in his official capacity as Jail Administrator of the Northwest Regional Corrections Center,

Respondents.

Case No. _____

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

INTRODUCTION

1. This case seeks the immediate release of Jhon Esteban Rodriguez-Carvajal ("Petitioner" or "Mr. Rodriguez-Carvajal") from unlawful immigration detention by the Department of Homeland Security's ("DHS") U.S. Immigration and Customs Enforcement ("ICE"). ICE has been detaining Petitioner since at least August 7, 2026 at the Northwest Regional Corrections Center located at 816 Marin Avenue, Crookston, MN in Polk County.

2. Mr. Rodriguez-Carvajal is from Colombia. He entered the United States at the Eagle Pass, Texas Port of Entry in July 2022, at which time he presented himself to United States immigration officials. He was released on humanitarian parole on or about July 14, 2022. On June 30, 2023 Petitioner filed an I-589 application for asylum. Petitioner has an individual merits hearing on this application before the Honorable Kalin Ivany on September 24, 2026. Petitioner also has an approved work permit.

3. ICE took custody of Mr. Rodriguez-Carvajal on August 7, 2026 after he was detained by the International Falls, Minnesota Police Department the evening of August 6, 2026. Petitioner was detained by Sergeant Anthony Kastens, purported to be a "287(g)" task force agent.[1] Though described by ICE as a traffic stop, Petitioner was detained by Sergeant Kastens while walking home from his job at a McDonald's restaurant located in International Falls.

[1] ICE's description of the 287(g) program is available here: https://www.ice.gov/identify-and-arrest/287g

4. Although Mr. Rodriguez-Carvajal provided Sergeant Kastens with a work authorization card, he handed Petitioner over to ICE who have held him in detention without cause for over a month. Mr. Rodriguez-Carvajal has not been charged with any crimes since entering the United States, and was not charged with any crime by International Falls police.

5. ICE, moreover, failed to display or serve Mr. Rodriguez-Carvajal with any administrative warrant or provide him with any arrest or custody paperwork until after he was detained.

6. Mr. Rodriguez-Carvajal is currently being held at the Adult Detention Center located at 816 Marin Avenue, Crookston, MN in Polk County (the "Northwest Detention Center").

7. As set forth herein, Mr. Rodriguez-Carvajal's detention violates the Fourth and Fifth Amendments to the United States Constitution and further violates both 8 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. § 212.5, and this Court should order Petitioner's immediate, outright release.

8. Since August 7, 2026, Mr. Rodriguez-Carvajal has been deprived of his liberty. Petitioner's detention is unlawful for several reasons.

9. *First*, the government has no legitimate interest in detaining Mr. Rodriguez-Carvajal when he is neither a flight risk nor a danger—the only two constitutionally permissible reasons for immigration detention. As Respondents already necessarily determined when they previously released him on humanitarian parole, Mr. Rodriguez-

Carvajal is neither a flight risk nor a danger. Nothing since this initial determination has materially changed. Petitioner has not been charged with any crimes since entering the United States and his asylum application remains pending. Accordingly, Mr. Rodriguez-Carvajal's present detention violates his substantive due process rights, requiring his immediate release.

10. *Second*, procedural due process requires the opportunity to be heard at a meaningful time and in a meaningful manner when the government imposes constraints on a person's liberty. Procedural due process applies to all "persons" within the United States, including noncitizens, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Because the government previously released Mr. Rodriguez-Carvajal on humanitarian parole, due process requires that the government show, in a pre-deprivation hearing before a neutral adjudicator, materially changed circumstances before re-detaining him. Thus, Mr. Rodriguez-Carvajal's detention without any pre-deprivation process violates his procedural due process rights and this alone warrants his immediate release. *See, e.g.*, *Chourio Herrera v Bondi*, 0:26-CV-1895, 2026 WL 827571, at *3 (D Minn Mar. 25, 2026) ("Because the Court finds that the petitioner's grant of humanitarian parole was still valid when he was detained in December 2025, the Court finds his detention is unlawful."); *see also Kevin J.R.M. v. Blanche*, No. 0:26-cv-03122, ECF No. 13, at 15 (D. Minn. July 17, 2026), *report and recommendation adopte*d, *Kavin J.R.M. v. Blanche*, No. 26-CV-3122 (KMM/JFD), 2026 WL 2227793, at *1 (D. Minn. Aug. 3, 2026). Absent outright release, the Due Process

Clause requires, at minimum, that this Court order an immigration bond hearing at which the government bears the burden of proof to justify Mr. Rodriguez-Carvajal's detention.

11. *Third*, Mr. Rodriguez-Carvajal's warrantless arrest violates his Fourth Amendment rights, as well as statute and regulation, similarly mandating his release. The I-200 form served on Mr. Rodriguez-Carvajal was not provided to him until *after* he was detained at the Northwest Detention Center. Moreover, ICE appears to have to have generated two different I-200 forms with conflicting basis for probably cause, and neither indicate an individualized determination of probably cause. Rather, both forms vaguely assert that Petitioner "lacks immigration status or notwithstanding such status is removable." Such allegations directly conflict with the fact that Mr. Rodriguez-Carvajal was previously released on humanitarian parole, has a work authorization permit, and is participating in an active asylum application. Where, as here, the I-200 Warrant does not properly indicate a probable cause basis, the warrant is unlawful. *See Cristian F.J.Z. v. Blanche*, No. CV 26-3469 (JRT/DTS), 2026 WL 2350319, at *2 (D. Minn. Aug. 13, 2026) (ordering outright release where, "[b]y Respondents' own admission, "[t]he Form I-200 does not indicate the probable cause basis[.]").

12. *Fourth*, Respondents' decision to re-detain Mr. Rodriguez-Carvajal was arbitrary, capricious, an abuse of discretion, and contrary to constitutional right. As such, Respondents also violated the Administrative Procedure Act ("APA").

13. *Fifth*, Respondents' re-detention of Mr. Rodriguez-Carvajal revoked a prior custody determination by government officials not authorized by law to make this

determination in violation of the APA and in violation of the *Accardi* doctrine's requirement that agencies comply with their own regulations.

14. For these reasons, as further explained herein, Mr. Rodriguez-Carvajal respectfully asks this Court to declare that his detention is unlawful, order their immediate release, and enjoin Defendants from re-detaining them without meaningful pre-detention process, and otherwise violating their rights in the future. *See Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("Habeas is at its core a remedy for unlawful executive detention," for which "[t]he typical remedy is, of course, release.").

15. Alternatively, absent outright release, the Due Process Clause requires, at a minimum, that this Court order an individualized review of Mr. Rodriguez-Carvajal's detention at an immigration bond hearing where the government bears the burden of justifying Petitioner's detention. *See Pedro O. v. Garland*, 543 F. Supp. 3d 733, 744 (D. Minn. 2021) (concluding that, where a petitioner's detention violates due process, as per *Mathews* the petitioner "is entitled to a bond hearing in immigration court at which the Government must justify [the] detention[] … show[ing] by clear and convincing evidence that Pedro poses either a risk of flight or a risk of danger to the community"); *see also*, *e.g.*, *Matamoros Rodriguez v. Woodbury County Jail*, No. C26-4041-LTS-MAR, 2026 WL 1735035, at *4 (N.D. Iowa June 16, 2026) (ordering bond hearing in which the government bears the burden of proof of showing dangerousness or flight risk by clear and convincing evidence).

FACTUAL ALLEGATIONS

16. Petitioner is a citizen and national of Colombia residing in Koochiching County. He has resided in the United States since 2022.

17. Petitioner entered the country in July 2022, at which time he presented himself to United States immigration officials. He was Released on parole at on or about July 14, 2022. Attached hereto as **Exhibit A** is a true and correct copy of the document confirming his paroled release by DHS.

18. On or about May 30, 2023 Petitioner filed a Form I-589 application for asylum. The basis for his application includes his status as a victim of forced displacement in Colombia. He has a hearing before the Honorable Judge Kalin Ivany concerning the merits of his application on September 24, 2026.

19. At the time of his release in July 2022, Petitioner was told to check in with ICE in 2022 and 2023 as a condition of his parole, which he did. In 2023 Petitioner reported to ICE offices in Minnesota to reports a change in address. Petitioner was told that he did not need to check in again with ICE, though he needed to continue with proceedings concerning his asylum application.

20. During the pendency of his asylum application, Mr. Rodriguez-Carvajal has been residing in Minnesota. He has not been charged with any crimes since his entry into the United States and has no pending criminal matters in Colombia. Attached hereto as **Exhibit B** is a true and correct copy of the results of a search for criminal and civil court records involving Mr. Rodriguez-Carvajal, which was retrieved from the Minnesota Court

Records Online (MCRO) database on September 21, 2026 and an official statement of the National Police of Colombia confirming that, as of August 14, 2026, Petitioner "has no pending matters with the judicial authorities" of Colombia.

21. Mr. Rodriguez-Carvajal moreover has a valid work permit and was working at a McDonald's location in International Falls, MN at the time he was detained. He and his partner, who is a citizen of Venezuela, live in Minnesota with his partner's child. All three have asylum applications currently pending.

22. On August 6, 2026 Mr. Rodriguez-Carvajal was walking home from work when he was stopped by Sergeant Anthony Kastens of the International Falls Police Department. Petitioner was not given a reason for why he was stopped, was not provided with any warrant and was not, and never has been, charged with any crime or traffic violation in connection with this stop.

23. Petitioner provided Sergeant Kastens with his valid work authorization card. According to a Form I-213 filled out by a filled out by a US Department of Homeland Security deportation officer (the "I-213 Form," a copy of which is annexed hereto as **Exhibit C**), Sergeant Kastens contacted ICE and confirmed that Mr. Rodriguez-Carvajal had been paroled into the United States in 2022. The I-213 Form also acknowledges that Petitioner has a pending asylum application.

24. The I-213 Form includes several inaccuracies. It claims that Mr. Rodriguez-Carvajal was occupying a vehicle when he was stopped by Sergeant Kastens, but Petitioner was walking at the time. The I-213 Form claims that Petitioner first entered the United

States on July 7, 2022, but the parole document (Exhibit A) confirms that he entered on July 12, 2022 and was paroled on July 14, 2022. The I-213 Form alleges that Petitioner failed to report to ICE following his parole, but Mr. Rodriguez-Carvajal twice reported to ICE and was told, in 2023, that further check-ins were not necessary.

25. According to their own I-213 Form, Petitioner was not served with an I-200 Warrant for Arrest until after he was arrested by Sergeant Kastens. Indeed, Petitioner was not served with any I-200 Warrant until after he was taken to the Northwest Detention Center.

26. DHS has, apparently, generated two separate I-200 Warrants concerning Petitioner. A copy of the first, dated August 6, 2026 (the "8/6 Warrant," a copy of which is annexed hereto as **Exhibit D**) asserts two purported basis for probable cause: (1) that "biometric confirmation" of Petitioner's identify indicates that her "lacks immigration status or notwithstanding such status is removable under U.S. immigration law," and (2) that "statements made voluntarily by" Petitioner indicates that her "lacks immigration status or notwithstanding such status is removable under U.S. immigration law." No further explanation is given. The 8/6 Warrant purports to have been served in International Falls, though Petitioner was not provided any papers until being taken to Crookston, MN.

27. A second I-200 Warrant is dated August 7, 2026, the day after Petitioner was arrested. A copy of this warrant (the "8/7 Warrant") is annexed hereto as **Exhibit E**. This warrant was plainly not issued before Petitioner's arrest, nor was it served at the time he was arrested. It repeats the assertion of probable cause based on Petitioner's alleged

"statements" but does not include any assertion of "biometric confirmation." It also alleges to have been served in Grand Forks, North Dakota, though he was being unlawfully detained in Polk County, MN.

28. Neither the 8/6 Warrant nor the 8/7 Warrant indicate that Petitioner's humanitarian parole has ever been revoked, nor do they reference his pending application for asylum or his valid work permit. Nothing had changed with regard to Petitioner's immigration status since entry into the country in 2022 and his arrest and detention on August 6, 2026. Such arrest and detention was arbitrary and unconstitutional.

JURISDICTION & VENUE

29. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 (habeas corpus), and art. I, § 9, cl. 2 of the U.S. Constitution ("Suspension Clause").

30. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, the Suspension Clause, and the Court's inherent equitable powers.

31. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) ("[T]he primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases."). Because Petitioner seeks to challenge his custody as a violation of the U.S. Constitution, laws, or treaties of the United States, jurisdiction is proper in this Court.

32. Venue lies in this District because it is the judicial district in which Petitioner is currently detained. Venue is also proper in this Court under 28 U.S.C. § 1391(b)(2), (e)(1)(A)-(B) because Respondents are employees, officers, and agencies of the United States, because a defendant resides in this District, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

33. Petitioner has lived in the United States for over four years, since July 2023. Prior to his detention on or about August 7, 2026, Petitioner was residing in Koochiching County. Petitioner is currently detained at the Northwest Detention Center. Petitioner is in the direct control of Respondents.

34. Respondent Todd Blanche is sued in his official capacity as the U.S. Attorney General. As Acting Attorney General, he has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

35. Respondent Markwayne Mullin is sued in his official capacity as Secretary of Homeland Security. As head of the U.S. Department of Homeland Security, the federal agency tasked with enforcing immigration laws, Secretary Mullin is Petitioner's ultimate legal custodian.

36. Respondent David J. Venturella is sued in his official capacity as Acting Director of ICE. As ICE's Acting Director, Respondent Venturella is a legal custodian of Petitioner.

37. Respondent David Easterwood is sued in his official capacity as Field Office Director of the St. Paul Field Office, Enforcement and Removal Operations, ICE. In that capacity, Field Office Director Easterwood has supervisory authority over the ICE agents responsible for detaining Petitioner. In his official capacity, Respondent Easterwood is a legal custodian of Petitioner.

38. Respondent James Tadman is sued in his official capacity as Sheriff of Polk County. As Sheriff of Polk County, James Tadman oversees the Northwest Detention Center, where Petitioner is presently detained, and is therefore one of his legal custodians.

39. Respondent Joey Pederson is sued in his official capacity as Jail Administrator of the Northwest Detention Center, where Petitioner is presently detained, and is therefore one of his legal custodians.

REQUIREMENTS OF 28 U.S.C. § 2243

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

41. 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) (citation omitted). "The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the

trial courts do not act within a reasonable time." *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978).

42. Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

EXHAUSTION OF LEGAL REMEDIES

43. Detained immigrants petitioning under 28 U.S.C. § 2241 et seq. face no statutory exhaustion requirements. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025). 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. *Id.* at 967-68; *see also Giron Reyes v. Lyons*, 801 F. Supp. 3d 797, 803 (N.D. Iowa 2025). 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).

44. It would be futile for Petitioner to seek a custody redetermination hearing before an Immigration Judge ("IJ") because of the Board of Immigration Appeals ("BIA")'s decision holding that anyone who has entered the United States without inspection is now considered an "application for admission" who is "seeking admission" and therefore subject to the INA's mandatory detention provision under 8 U.S.C. § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025); *see also 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." (citation omitted)).

45. Additionally, the IJ does not have jurisdiction to review [Petitioner's] claim of unlawful custody in violation of his due process rights, and it would therefore be futile for Petitioner to pursue administrative remedies related to that claim. *See, e.g., Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (BIA 2020); *Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992). *Cf. Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) ("[E]xhaustion would be a futile exercise because the agency does not have jurisdiction to review [the] claim.").

LEGAL FRAMEWORK

I. Detention Authority Under the Immigration and Nationality Act.

47. The INA prescribes essentially three forms of detention for noncitizens in removal proceedings.

48. *First*, 8 U.S.C. § 1226 authorizes the detention of noncitizens in removal proceedings under 8 U.S.C. § 1229a who are "already in the country." *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Section 1226(a) "sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of [a noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Id.* at 288 (quoting § 1226(a)). "To detain a noncitizen under § 1226(a), a warrant is required." *Martha C.G.P. v. Blanche*, No. 26-cv-2308, 2026 WL 1329557, at *3 (D. Minn. May 13, 2026) (citing *Ahmed M. v. Bondi*, No. 25-cv-4711, 2026 WL 25627, at *3) (D. Minn. Jan.

5, 2026) (collecting cases)). It thus follows that, absent a warrant, a noncitizen may not be arrested and detained pursuant to this section. *Id.*

49. Noncitizens properly detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a custody-redetermination hearing before an IJ—also known as a bond hearing—unless they have been arrested, charged with, or convicted of certain crimes that subject them to mandatory detention under § 1226(c). *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).

50. *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 arriving noncitizens who are deemed to be "seeking admission" to the United States under 8 U.S.C. § 1225(b)(2). *See Avila v. Bondi*, 170 F.4th 1128, 1135–36 (8th Cir. 2026) (holding that all applicants for admission are necessarily "seeking admission" and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)).

51. *Third*, the INA authorizes detention of noncitizens who have received a final order of removal. 8 U.S.C. § 1231(a).

52. Given the Eighth Circuit's recent holding in support of the government's statutory re-interpretation, this case concerns Respondents' detention authority under 8

U.S.C. § 1225(b)(2). *See Avila*, 170 F.4th at 1135–36.[2] While Respondents will likely maintain that this case concerns their detention authority under 8 U.S.C. § 1225(b)(2), because Respondents served an invalid I-200 arrest warrant pursuant to § 1226, such is the proper detention authority. *See, e.g.*, *Yonatan P. v. Blanche*, No. 26-CV-2949 (JMB/EMB), 2026 WL 1842652 (D. Minn. June 26, 2026) (granting habeas petition where Respondents arrested petitioner pursuant to a warrant under 1226—a statute of detention Respondents cannot switch after-the-fact); *Hector J.A.S. v. Blanche*, No. 26-cv-2242 (JRT/DLM), 2026 WL 1243500 (D. Minn. May 6, 2026) ("Respondents represented to Petitioner in the Form I-200 administrative warrant that he was being arrested and detained under 8 U.S.C. § 1226, which requires a warrant."); *Dos Santos Silva v. Warden*, No. 8:26-CV-131, 2026 WL 926725, at *1 (D. Neb. Apr. 6, 2026) (granting habeas petition "[b]ecause," despite entering the country without inspection, "the petitioner was granted conditional parole [release on recognizance] under § 1226 when he entered the United States in 2021," and, as such "the revocation of his parole is governed by that statute").

[2] Petitioner maintains, for preservation purposes only, that *Avila* was wrongly decided, and the interpretation adopted by the majority of circuit courts on this issue is instead correct. *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*, 180 F.4th 1226, 1232 (10th Cir. 2026); *Cirrus Rojas v. Olson*, No. 25-3127, 2026 WL 2198315 (7th Cir. July 30, 2026); *Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir. July 30, 2026); *Guerrero Orellana v. Moniz et al.*, No. 25-2152 (1st Cir Aug. 13, 2026).

II. The Due Process Clause Imposes Substantive and Procedural Limits on Immigration Detention.

53. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *accord Trump v. J.G.G.*, 605 U.S. 670, 673 (2025); *see also Lopez v. Heinauer*, 332 F.3d 507, 512 (8th Cir. 2003) ("The Supreme Court has long recognized that deportable [noncitizens] are entitled to constitutional protections of due process." (citing *Yamataya v. Fisher*, 189 U.S. 89, 100–01 (1903)).

54. Indeed, "[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. 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); *see also, e.g.*, *Abdirashid H. M. v. Noem*, No. 25-4779 (JRT/EMB), 2026 WL 127698, at *4 (D. Minn. Jan. 9, 2026) (finding constitutionally protected liberty interest when petitioner had previously been "liv[ing] a productive life in the community"); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1148 (D. Minn. 2025) (finding a noncitizen had a significant constitutionally protected private interest in part based on separation from her children).

55. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risk of danger to the community and prevent

flight. *Zadvydas v. Davis*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. 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." *Zadvydas*, 533 U.S. at 690; *accord, e.g.*, *Fernandez v. Lyons*, 2025 WL 2531539, at *4 (D. Neb. Sept. 3, 2025) (describing the standard for substantive due process violation).

56. Relatedly, even where detention is substantively justified, 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. Prior to detaining a noncitizen in civil immigration detention, even for a legitimate purpose, the government must provide and follow sufficient procedural protections. *See Yrysbaev v. Arnott*, No. 6:26-cv-3047, 2026 WL 395897, at *3 (W.D. Mo. Feb. 12, 2026) ("In the immigration context, the Constitution requires the government to afford notice of any action against [a noncitizen] and requires the opportunity for the [noncitizen] to be heard. The opportunity to be heard must be meaningful, that is, an opportunity granted at a meaningful time and in a meaningful manner." (internal citations omitted)).

57. To evaluate whether civil immigration detention violates procedural due process, courts apply the three-part balancing test in *Mathews v. Eldridge*, 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." 424 U.S. 319, 335 (1976); *see, e.g.*, *Manuel G. v. Blanche*, No. 26-CV-2385 (SRN/ECW), 2026 WL 1256358, at *5 (D. Minn. May 7, 2026) (applying *Mathews*); *Orlando R.V.V. v. Blanche*, 0:26-cv-01903, Doc. 11, at 13-23 (D. Minn. Apr. 28, 2026) (same); *David J.C.P. v. Blanche*, No. CV 26-2181 (DWF/ECW), 2026 WL 1102725, at *2 (D. Minn. Apr. 23, 2026) (same); *Selvin Adonay E.M. v. Noem*, No. 25-cv-3975, 2026 WL 3157839, at *8 (D. Minn. Nov. 12, 2025) (same); *Abdirashid*, 2026 WL 127698, at *4 (same).

58. Importantly, even noncitizens subject to "mandatory immigration detention" are nevertheless "entitled to due process of law under the Fifth Amendment." *Mark O. v. Blanche*, No. 26-cv-02448, Doc. 7 at 5 (D. Minn. May 18, 2026); *see also id.* at 7 (holding that *Banyee*, *Demore*, and *Thuraissigiam* "are inapposite" to Petitioner's procedural due process claim); *Heriberto R.E. v. Blanche*, No. 26-cv-2227 (JWB/LIB), No. 12 at 6 (D. Minn. May 1, 2026) ("Due process does not turn on statutory classifications alone, such as treating a noncitizen as an applicant for admission. It depends on the nature of the deprivation and the circumstances in which it is imposed.").

59. Accordingly, several courts in the Eighth Circuit have granted post-*Avila* habeas petitions filed by unadmitted noncitizens challenging various forms of mandatory detention on procedural due process grounds. *See, e.g.*, *Manuel G. v. Blanche*, No. 26-CV-2385 (SRN/ECW), 2026 WL 1256358, at *3 (D. Minn. May 7, 2026) ("While *Avila*

addressed a noncitizen's statutory rights, it did not address his due process rights."); *Heriberto R.E. v. Blanche*, No. 26-cv-2227 (JWB/LIB), No. 12 at 8 (D. Minn. May 1, 2026); *Axel J.M.C.*, 2026 WL 1171344, at *4; *Aleksei v. Warden*, No. 5:26-CV-05030-RAL, 2026 WL 1133615, at *1 (D.S.D. Apr. 27, 2026); *David J.C.P. v. Blanche*, No. 26-cv-2181 (DWF/ECW), 2026 WL 1102725, at *3 (D. Minn. Apr. 23, 2026); *Osman J.M.A. v. Blanche*, No. 26-cv-2123 (DWF/DJF), 2026 WL 1005056, at *3 (D. Minn. Apr. 14, 2026); *Nelson E.T.B. v. Venturella*, No. CV 26-3541 (JRT/DLM), 2026 WL 2364527, at *2 (D. Minn. Aug. 14, 2026); *Kurt D. v. Blanche*, No. CV 26-3320 (JWB/DJF), 2026 WL 2445470, at *1 (D. Minn. Aug. 20, 2026); *Ovidio D. v. Blanche*, No. 26-CV-3374 (KMM/SGE), 2026 WL 2333992, at *2 (D. Minn. Aug. 12, 2026).

III. Regardless of Initial Detention Authority, the Immigration and Nationality Act, Accompanying Regulations, and Due Process Clause Demand Pre-Deprivation Process Prior to Re-Detention.

60. Even if a noncitizen is subject to mandatory detention under § 1225(b)(2), Respondents cannot arbitrarily re-detain a noncitizen previously released from immigration detention absent pre-deprivation process.

61. The source of DHS's authority to release noncitizens from custody depends on which detention statute applies. Section 1222(c) is the most restrictive provision and authorizes release only when necessary under federal witness protection statutes. *See* 8 U.S.C. § 1226(c)(4). Section 1226(a) is broader in scope. Under § 1226(a), DHS can release noncitizens on bond, on their own recognizance (i.e., "conditional parole" or

"OREC"), or on humanitarian parole. *See* 8 U.S.C. §§ 1226(a)(2)(A)-(B); 8 C.F.R. § 236.1(8).

62. Regardless of the statutory vehicle for release, a DHS officer may not release a noncitizen unless the individual does not pose a risk of flight or danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8) (permitting officer to release noncitizen on conditional parole under 8 U.S.C. 1226(a)(2), *i.e.*, release on recognizance, where noncitizen "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding"); 8 C.F.R. § 212.5 (humanitarian parole available only when "the [noncitizens] present neither a security risk nor a risk of absconding"); 8 U.S.C. § 1226(c)(4) (permitting release of individual detained under § 1226(c) only when it is determined "that the [noncitizen] will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding"); *see also Govea Perez v. South Texas ICE Processing Center*, No. SA-26-CA-02187-XR, 2026 WL 1078577, at *2 (W.D. Tex. Apr. 17, 2026) ("Release from initial detention … can be granted only based on individualized findings that the noncitizen represents neither a flight risk nor a danger to the community.").

63. Similarly, in deciding whether to release a noncitizen on bond or their own recognizance, Immigration Judges consider whether the individual poses a danger to the community and whether they are likely to appear for future proceedings. 8 C.F.R. § 1003.19(h)(3); *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006).

64. As a result, any "[r]elease" of a noncitizen "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); *see also Mark O.,* No. 26-cv-02448, Doc. No. 7 at 15 ("[The fact remains that Petitioner was previously released, which 'in and of itself reflects a determination that the individual is neither a flight risk nor a danger to the community[.]'" (quoting *Orlando R.V.V.*, No. 26-cv-1903, Doc. No. 11 at 15 (D. Minn. Apr. 28, 2026); *Govea Perez*, 2026 WL 1078577, at *2 ("[E]very noncitizen who has been paroled or released into the interior of the country has been found by a government official to pose neither a security risk nor a flight risk."); *Alegria Palma*, No. 25-cv-1942 at *2, n.2 (noting that ICE respondents stated that "a determination that Petitioner was not a danger to the community or a flight risk … would be a consideration" prior to releasing him on his own recognizance).

65. Statutory and regulatory provisions governing re-arrest also depend on the manner of release. Under the text of the INA and federal regulations, certain DHS officials "at any time may revoke a bond or [conditional] parole authorized under [§ 1226(a)], rearrest the [noncitizen] under the original warrant, and detain the [noncitizen]." 8 U.S.C. § 1226(b); *see* 8 C.F.R. § 236.1(c)(9). For decades, however, DHS has had a consistent policy and practice of re-detaining noncitizens in removal proceedings only when the individual circumstances related to their flight risk or danger to the community had materially changed. *See Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981) (holding

that the government cannot re-arrest and re-detain a noncitizen released by an immigration judge on bond "absent a change of circumstance" warranting detention); *Saravia*, 280 F. Supp. 3d at 1197; Federal Defendants' Supplemental Brief at 1, *Saravia v. Sessions*, No. 3:17-cv-03615-VC, (N.D. Cal. Nov. 3, 2017), Dkt. No. 90. (representing to a federal district court that the government historically arrested previously released noncitizens only after "a material change in circumstances" as to whether they are a flight risk or dangerous).

66. DHS has placed explicit limits on re-detention under 8 U.S.C. § 1226(b) by requiring authorization from a high-level official within the field office. By regulation, such revocations of release from custody may only be carried out in the "discretion of the district director, acting district director, deputy director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign)." 8 C.F.R. § 236.1(c)(9); *see also Mohamed A. v. Blanche*, No. 26-CV-2799 (JMB/DTS), ECF Dkt. No. 31 at 13, n. 7 (D. Minn. June 18, 2026) (granting outright release based on "the analysis in *Barco Mercado* [S.D.N.Y.] [concluding] that re-detention absent a revocation [pursuant to 8 C.F.R. § 236.1] of the prior release order violates the Due Process Clause"); *Dos Santos Silva*, 2026 WL 926725, at *1.

67. Additionally, despite "the breadth of [the] statutory language" in 8 U.S.C. § 1226(b), the federal government's authority is subject to "an important implicit limitation": As reflected its previous policy and practice, the government cannot lawfully re-detain someone without "a material change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197; *see also, e.g., Matter of Sugay*, 17 I. & N. Dec. at 640; *Doh H. v. Blanche*, No. 26-

cv-02413, Doc. 8 at 8 (D. Minn. May 6, 2026) (recognizing the requirement that "officials invoking section 236.1(c)(9) [to re-detain an noncitizen] … make at least a showing of material changed circumstance before revoking release" and collecting cases from "numerous other courts around the country … conclud[ing] the same"); *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *8 (S.D. Iowa Apr. 17, 2026) (acknowledging "dozens of years of practice"; *Kevin J.R.M. v. Blanche*, No. 0:26-cv-03122, ECF No. 13, at 15 (D. Minn. July 17, 2026), report and recommendation adopted, *Kavin J.R.M. v. Blanche*, No. 26-CV-3122 (KMM/JFD), 2026 WL 2227793, at *1 (D. Minn. Aug. 3, 2026) (ordering outright release on regulatory and due process grounds—Mathews framework—for individual previously released on his own recognizance, as, even with intervening criminal charges, "after a noncitizen has been released on his own recognizance, the government must show a material change in circumstances related to those goals before revoking release").

68. This limitation means that a person who immigration authorities released on an order of recognizance cannot be re-detained "solely on the ground that he is subject to removal proceedings[,]" without some new, intervening cause. *Saravia*, 280 F. Supp. At 1196. Indeed, the Fourth Amendment, which also applies to seizures by immigration authorities, prohibits such re-arrests, which courts have long held could result in "harassment by continual rearrests." *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971) (Stevens, J.) (prohibiting re-arrest without change in circumstances in criminal context); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying

Fourth Amendment principles from criminal context to "limit" scope of immigration agents' seizure authority).

69. This prohibition also derives from fundamental constitutional principles enshrined in the Due Process Clause of the Fifth Amendment. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacremento v. Lewis*, 523 U.S. 833, 846 (1998). Due process requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 736 (1972).

70. As described *supra*, the Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings (or, in the case of a removal order, at removal) and preventing danger to the community. *Zadvydas*, 533 U.S. at 690-92; *see Demore*, 538 U.S. at 519–20, 527–28, 531. It has also held that, in general, these purposes may not be assessed on a blanket or categorical basis. Instead, immigration custody decisions generally must be based on an "individualized determination" of flight risk and danger to the community. *See INS v. Nat'l Ctr. For Immigrants' Rts., Inc.*, 502 U.S. 183, 194 (1991); *see also Zadvydas*, 533 U.S. at 690.

71. Moreover, individuals who are released from government custody have a protected liberty interest in remaining out of custody. The government's decision to release

an individual from custody creates "an implicit promise" that their liberty "will be revoked only if [they] fail[] to live up to the … conditions [of release]." *Morrissey*, 408 U.S. at 482.

72. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. 481–82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen as within the protections of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482.

73. Accordingly, in the criminal context, the Supreme Court has repeatedly recognized that re-detention after some form of conditional release requires a pre-deprivation hearing. *See, e.g.*, *Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*, 411 U.S. at 781–82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). *See also, e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("[A] person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated.") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

74. Similarly, and following this Supreme Court guidance, numerous courts have concluded that these principles apply with at least equal force to people released from civil immigration detention because they too have a protected liberty interest in their ongoing freedom from confinement. *See Abdirashid H.M. v. Noem*, No. 25-4779 (JRT/EMB), 2026 WL 127698, at *4 (D. Minn. Jan 9, 2026) ("The Court joins several district courts around the country in recognizing the self-evident idea that an individual who has been released from custody to live a productive life in the community obtains a protected interest in their 'continued liberty.'"); *Singh v. Mullin*, No. C26-56-LTS-MAR, 2026 WL 1021846, at *4 (N.D. Iowa Apr. 15, 2026) ("[W]hen the Government decides to release an individual … it creates an implicit promise ... that their liberty 'will be revoked only if they fail to live up to the conditions of release.") (internal citations omitted); *Yrysbaev v. Arnott*, No 6:26-cv-3047-MDH, 2026 WL 395897, at *3 (W.D. Mo. Feb. 12, 2026) ("When the government grants a [noncitizen] parole into the country, it creates a liberty interest intimately tied to freedom from imprisonment.").

75. And the fact that the release "decision-making process involves discretion does not prevent an individual from having a protectable liberty interest." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (citing *Young v. Harper*, 520 U.S. 143, 150 (1997)); *see also Singh v. Warden of Golden State Annex Det. Facility*, No. 1:26-CV-1284 DJC CSK, 2026 WL 731053, at *4 (E.D. Cal. Mar. 16, 2026), *report and recommendation adopted sub nom. Singh v. Warden of the Golden State Annex Det. Facility*, No. 1:26-CV-1284 DJC CSK, 2026 WL 802319 (E.D. Cal. Mar. 23, 2026) ("Even

when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute.") (citing *Young*, 520 U.S. at 147–49).

76. Similarly, even in cases where release could have arguably been contrary to law, an individual acquires a protected liberty interest in their release. *See Govea Perez v. South Texas ICE Processing Center*, No. SA-26-CA-02187-XR, 2026 WL 1078577, at *9, n.10 (W.D. Tex. Apr. 17, 2026) (explaining that, even if a "noncitizen[] should never have been released in the first place … even an erroneously conferred benefit can create a constitutionally protected property interest where there was reason to rely on it"); *see also Wolff v. McDonnell*, 418 U.S. 539, 558 (1974) (due process clause applies "even when the liberty itself is a ... creation of the State"); *Hurd*, 864 F.3d at 692–93 ("The Due Process Clause may itself confer a procedurally protected liberty interest on someone living openly in society for years after what, unbeknownst to him, was his premature release from prison."); *DeWitt v. Ventetoulo*, 6 F.3d 32, 34–35 (1st Cir.1993); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process supports the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the release was not his fault and he had appropriately adjusted to society, so it "would be inconsistent with fundamental principles of liberty and justice" to return him to prison) (cleaned up).

77. Thus, an individual subject to mandatory detention under 8 U.S.C. § 1225(b)(2) who is released—even if the government later argues that such release is

contrary to the law requiring their detention—has a protected liberty interest in their continued release from detention.

78. Importantly, the Eighth Circuit's decision in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), does not change that analysis. In that case, the court considered the narrow question of whether the *length*—over "a year in a county jail"—of an individual's mandatory detention under 8 U.S.C. § 1226(c) violated due process. *Banyee*, 115 F.4th at 931; *see also Singh v. Mullin*, No. C26-56-LTS-MAR, 2026 WL 1021846 (N.D. Iowa Apr. 15, 2026) ("*Banyee* simply reaffirmed that the *span* of a removal proceeding did not change the due process dimension of the [noncitizen]'s detention." (emphasis added)). In response to this question, the Eighth Circuit merely held that "[d]ue process imposes no time limit on detention pending deportation[.]" *Banyee*, 115 F.4th at 930. *Banyee* was expressly focused on detention duration, specifically for an individual subject to mandatory detention under 1226(c) based on a criminal conviction. As such, it is inapposite to the issue of whether re-detention of someone previously released is lawful. *See, e.g.*, *Mark O.*, No. 26-cv-02448, Doc. 7 at 7 (holding that *Banyee*, *Demore*, and *Thuraissigiam* "are inapposite" to Petitioner's procedural due process claim); *Manuel G. v. Blanche*, No. 26-cv-2385, 2026 WL 1256358, at *4 (D. Minn. May 7, 2026) ("Respondents' purported basis for [Petitioner's] detention is § 1225(b)(2)(A), not § 1226(c), which distinguishes this case from *Banyee* and *Demore*.").

79. Based on the protected liberty interests an individual has in their prior release, numerous courts have therefore concluded that it is a violation of procedural due

process to re-detain an individual without notice, evidentiary findings, or an opportunity to be heard. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) ("An essential principle of due process is that a deprivation of life, liberty, or property be *preceded* by notice and opportunity for hearing appropriate to the nature of the case.") (internal quotation marks and citation omitted) (emphasis added); *see also Feisal O. v. Noem*, No. 26-CV-81 (JMB/EMB), 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026) ("[T]he redetention of a person previously ordered released under section 1226—without Respondents first formally revoking that order of release or following any procedures prior to making a decision that conflicts with an order of release—violates due process."); *Singh v. Warden of Golden State Annex Det. Facility*, No. 1:26-CV-1284 DJC CSK, 2026 WL 731053, at *4 (E.D. Cal. Mar. 16, 2026), *report and recommendation adopted sub nom. Singh v. Warden of the Golden State Annex Det. Facility*, No. 1:26-CV-1284 DJC CSK, 2026 WL 802319 (E.D. Cal. Mar. 23, 2026) ("Petitioner has a liberty interest in not being incarcerated after prior release without pre-custodial hearing or notice."); *Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) ("Respondent violated the Fifth Amendment's Due Process Clause by revoking her parole and subjecting her to detention without notice, evidentiary findings, or an opportunity to be heard."); *see also Hurd*, 864 F.3d at 683 (citing *Young*, 520 U.S. at 152) (holding that re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon*, 411 U.S. at 782 (holding the same, in context of probation); *Morrissey*, 408 U.S. 471 (holding the same, in context of parole).

CLAIMS FOR RELIEF

COUNT I
Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution
Substantive Due Process

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

81. 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*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). 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.

82. Because "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," the government may imprison people as a preventive measure only within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

83. Immigration detention is civil detention and must "bear a reasonable relation to the purpose for which the individual was committed" so that it remains "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690 (citation modified); *see also Schall v. Martin*, 467 U.S. 253, 264–69 (1984) (stating that detention must be a proportional—not excessive—response to a legitimate state objective); *see also Santillan Quiroz*, No. 26-

6019, Doc. 91-1, at 44 (noting that immigration detention requires a "strong special justification") (citing *Zadvydas*, 533 U.S. at 690.

84. Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk pending removal and preventing danger to the community. *See Zadvydas,* 533 U.S. at 690–91.

85. To satisfy substantive due process under the Fifth Amendment, a noncitizen's detention must be tied to flight risk or a danger to the community. *Zadvydas*, 533 U.S. at 690.

86. Neither purpose is served by Mr. Rodriguez-Carvajal's detention. Respondents have not made any claim that Rodriguez-Carvajal presents a flight risk or a danger to the community, nor could they. To the contrary, when previously releasing Mr. Rodriguez-Carvajal on humanitarian parole, Respondents necessarily determined he was not a danger or a flight risk. Indeed, 8 C.F.R. § 212.5 (which permits granting of humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5)(A) for "urgent humanitarian reasons or significant public benefit") sets forth in section (b) that humanitarian parole "would generally be justified only on a case-by-case basis . . . provided the aliens present neither a security risk nor a risk of absconding." 8 C.F.R. § 212.5(b). It was already determined, therefore, that Mr. Rodriguez-Carvajal posed no such risk in July 2022.

87. Nothing material has changed to undermine this determination. To the contrary, Mr. Rodriguez-Carvajal has resided in the United States for over four years without incident, lives in Minnesota with his partner and her child, has participated in his

ongoing asylum application, and will be appearing before Judge Ivany concerning his application on September 24, 2026. S*ee also Mark O.*, No. 26-cv-02448, Doc. No. 7 at 15 ("[The fact remains that Petitioner was previously released, which 'in and of itself reflects a determination that the individual is neither a flight risk nor a danger to the community[.]'" (quoting *Orlando R.V.V.*, No. 26-cv-1903, Doc. No. 11 at 15 (D. Minn. Apr. 28, 2026); *Govea Perez*, 2026 WL 1078577, at *2 ("[E]very noncitizen who has been paroled or released into the interior of the country has been found by a government official to pose neither a security risk nor a flight risk."); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

88. Since Rodriguez-Carvajal first came to the United States, his ties to this country have only grown stronger. He has built his entire life here. *See Osorio-Martinez v. Att'y Gen. United States of Am.*, 893 F.3d 153, 173-75 (3d Cir. 2018). And he remains without any criminal record, as set forth above. *See* Ex. B.

89. Because the government is not detaining Mr. Rodriguez-Carvajal to serve legitimate interests in protecting against danger or flight risk, his detention violates substantive due process under the Fifth Amendment, and this Court should order his immediate release.

COUNT II
Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution
Procedural Due Process

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

91. Even "[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner." *Salerno*, 481 U.S. at 746.

92. The government's infringement on Mr. Rodriguez-Carvajal'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). The essence of procedural due process is that a person risking a serious loss must have "an opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Yrysbaev v. Arnott*, 2026 WL 395897, at *3 (citation omitted).

93. Some courts use the three-factor *Mathews v. Eldridge* test to determine what process is due to noncitizens challenging detention. *See Mathews v. Eldridge*, 424 U.S. 319 (1976). The *Mathews* factors assess: (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." *Id.* at 335.

94. The first *Mathews* factor weighs heavily in Mr. Rodriguez-Carvajal's favor. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. "[I]t is axiomatic that "the interest in being free from physical detention" is "the most elemental of liberty interests." *Abdirashid H.M.*, 2026 WL 127698, at *4 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

95. Mr. Rodriguez-Carvajal is a "person" within the meaning of the Due Process Clause, and all such persons have a strong, constitutionally protected interest in their liberty. Mr. Rodriguez-Carvajal entered the United States alone over four years ago and has been residing here since then. During that time, he has established community ties, including living with his family and creating a network of friends and community support and working to support himself financially. Mr. Rodriguez-Carvajal's protected liberty interest "deserves great weight and gravity." *Acosta Dominguez v. Noem*, No. EP-25-CV-00741-DB, 2026 WL 67200, at *4 (W.D. Tex. Jan. 8, 2026). Yet Mr. Rodriguez-Carvajal is being held in "the same conditions as criminal inmates." *Jacinto*, 796 F. Supp. 3d at 590; *see also Selvin Adonay E.M.*, 2025 WL 3157839, at *9 (finding the first *Mathews* factor weighed in petitioner's favor when the conditions of confinement were "indistinguishable from criminal incarceration"). Indeed, the Northwest Detention Center is a corrections facility used to house inmates.

96. In addition, Mr. Rodriguez-Carvajal has a particularly strong liberty interest in light of his prior release on humanitarian parole. *Id.* at *4; *Yrysbaev*, 2026 WL 395897,

at *3. "[O]nce the government opts to provide a liberty interest, it cannot arbitrarily revoke that interest without due process of law." *Muse v. Mullin*, No. 26-cv-4024, 2026 WL 1008532, at *4 (N.D. Iowa Apr. 14, 2026); *Kavin J.R.M. v. Blanche*, No. 26-CV-3122 (KMM/JFD), 2026 WL 2227793, *supra*; *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *7 (S.D. Iowa Apr. 17, 2026) (finding "[t]he first *Mathews* factor … weighs heavily in Petitioner's favor" where the government re-detained him "after previously having allowed him to live and work in the community"). As such, courts in this district and across the Eighth Circuit have repeatedly found that noncitizens released by DHS on parole have a substantial private interest in being out of custody. *See*, *e.g.*, *Osman J.M.A. v. Blanche*, No. CV 26-2123 (DWF/DJF), 2026 WL 1005056, at *3 (D. Minn. Apr. 14, 2026) (finding a protected liberty interest for someone previously released on recognizance); *Sandhu v. Mullin*, No. 7:26CV5009, 2026 WL 1146643, at *2 (D. Neb. Apr. 28, 2026) (same); *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *2 (S.D. Iowa Apr. 17, 2026) (same).

97. This liberty interest stands regardless of whether Petitioner's detention under 8 U.S.C. § 1225(b)(2) is mandatory. *See Hurd*, 864 F.3d at 692–93 ("The Due Process Clause may itself confer a procedurally protected liberty interest on someone living openly in society for years after what, unbeknownst to him, was his premature release from prison."); *DeWitt*, 6 F.3d at 34–35; Johnson, 682 F.2d at 873 (noting that due process supports the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because

the release was not his fault and he had appropriately adjusted to society, so it would be "inconsistent with fundamental principles of liberty and justice" to return him to prison) (cleaned up)).

98. The second *Mathews* factor also weighs heavily in Petitioner's favor. Petitioner was previously released from detention after being found to be neither a danger nor a flight risk. *See* 8 C.F.R. § 212.5(b). Respondents detained Mr. Rodriguez-Carvajal without any notice or meaningful opportunity to respond. Respondents claim that they are statutorily obligated to detain him without any individualized review, despite no evidence demonstrating that Mr. Rodriguez-Carvajal poses any risk of flight or danger. The lack of any mechanism to determine whether Mr. Rodriguez-Carvajal's detention serves a legitimate statutory purpose *before* re-detention makes the risk of erroneous deprivation of liberty not just high, but certain. His detention is the direct result of insufficient safeguards and lack of procedure. *See, e.g., Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1188 (D. Minn. 2025) (noting that lack of consideration of "individualized or particularized facts . . . increases the potential for erroneous deprivation of individuals' private rights"); *Selvin Adonay E.M.*, 2025 WL 3157839, at *9 (finding the second factor weighed in a petitioner's favor when the government took the position detention was mandatory without individualized review); *Rodriguez Brizuela v. Noem*, No. 5:26-cv-0279-JKP, 2026 WL 752257, at *6 (W.D. Tex., Mar. 12, 2026) ("[A] substantial risk of erroneous deprivation of liberty exists when detention without bond of a noncitizen who was arrested within the United States and lacks any prior release by immigration authorities, but who has

established a life here in the United States." (emphasis added) (citing *Martinez v. Noem*, No. 25-cv-430-KC, 2025 WL 2965859, at *4) (W.D. Tex. Oct. 21, 2025)). Under these circumstances, the second Mathews factor weighs heavily in Mr. Rodriguez-Carvajal's favor.

99. The third factor also favors Petitioner. Mr. Rodriguez-Carvajal's erroneous detention imposes high fiscal and administrative burdens on Respondents, and unlawful detention and violation of noncitizens' constitutional rights disserve the public interest. The third *Mathews* factor generally favors saving the government from expending "substantial resources on needless detention." *Idle H. v. Bondi*, No. 26-cv-315, 2026 WL 266462, at *7 (D. Minn. Feb. 2, 2026) (noting the "staggering" costs of immigration detention); *see also Rodriguez Vega*, 2026 WL 482906, at *6 ("[L]imiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from [unnecessarily] expending substantial resources." (citation omitted)). Unnecessary detention also "imposes substantial societal costs," such as "reduced economic contributions and tax payments by detained immigrants," as well as the separation of individuals from their families and communities. *Rodriguez Vega*, 2026 WL 482906, at *6 (citation omitted). In any event, detention with *no* process is wholly unnecessary to allow Respondents to detain those who truly pose a legitimate risk of flight or danger. *Ochoa v. Vergara*, No. 1:26-cv-266, 2026 WL 482211, at *3 (W.D. Tex. Feb. 20, 2026). Releasing Mr. Rodriguez-Carvajal and requiring the

government to provide a pre-deprivation hearing before detaining him stands to save the government money and effort wasted on erroneous detention.

100. Respondents violated procedural due process by re-detaining Mr. Rodriguez-Carvajal without adequate procedural protections before deprivation of his liberty. *See, e.g.*, *Feisal O. v. Noem*, 2026 WL 92857, at *3 (concluding that the redetention of a person previously ordered released without any pre-redetention process violated the Due Process Clause); *Selvin Adonay E.M.*, 2025 WL 3157839, at *8-10 (similar); *Abdirashid H.M.*, 2026 WL 127698, at *4-5 (similar). Therefore, this Court should order Petitioner's release without any restraints on his liberty and prohibit any re-detention absent pre-deprivation process. *Feisal O.*, 2026 WL 92857, at *3 (ordering release on that basis); *see also Mahad S. v. Noem*, 2026 WL 177860, at *3; *Ochoa v. Vergara*, 2026 WL 482211, at *3 (collecting cases finding mandatory detention violated procedural due process and ordering release as the appropriate remedy).

101. For these reasons, regardless of the statutory authority, mandatory detention as applied to Mr. Rodriguez-Carvajal violates his procedural due process rights, rendering his ongoing detention unconstitutional. *See, e.g.*, *Selvin Adonay E.M.*, 2025 WL 3157839, at *8-10 (finding procedural due process violation was an independent basis for granting habeas petition challenging application of § 1225(b)(2) to person who had been residing in the United States); *Abdirashid H.M.*, 2026 WL 127698, at *4-5 (similar); *Ochoa v. Vergara*, 2026 WL 482211, at *3 (finding mandatory detention of inadmissible noncitizen who had been living in the United States for over a year violated procedural due process

under *Mathews*, collecting cases reaching the same conclusion, and ordering release as the appropriate remedy).

COUNT III
Violation of the Fourth Amendment to the U.S. Constitution, 8 U.S.C. § 1357(a)(2), and 8 C.F.R. § 287.3(d)
Unlawful Arrest

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

103. 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).

104. 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 requires a 'substantial probability; based on facts related to the individual." *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *15 (D. Colo. Nov. 25, 2025) (quoting *Storey v. Taylor,* 696 F.3d 987, 992 (10th Cir. 2012) (finding probable cause for immigration arrests lacking). 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 circumstance. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

105. 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 Ramirez Ovando*, 2025 WL 3293467, at *2. Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

106. Even where a noncitizen is "subject to mandatory detention under 8 U.S.C. § 1225(b)(2), federal immigration officials must still comply with 8 U.S.C. § 1357(a)(2)." *Martha C.G.P. v. Blanche*, No. CV 26-2308 (DWF/JFD), 2026 WL 1329577, at *3 (D. Minn. May 13, 2026) (internal citations omitted); *see also, e.g.*, *Wilson L.L. v. Blanche*, No. CV 26-2475 (JRT/EMB), 2026 WL 1283186, at *2 (D. Minn. May 11, 2026) ("Because Respondents have not shown that Petitioner was likely to escape, they failed to comply with 8 U.S.C. § 1357—the requirement for arresting a noncitizen without a warrant. Respondents therefore improperly arrested and detained Petitioner under 8 U.S.C. § 1225(b)(2).").

107. Only where circumstances permit a warrantless arrest as outlined in 8 U.S.C. § 1357(a)(2) do the regulations at 8 C.F.R. § 287.3 come into play. See 8 C.F.R. 287.3(a)

(regulating noncitizens "arrested without a warrant of arrest *under the authority contained in [8 U.S.C. § 1357(a)(2)]*" (emphasis added)).

108. Here, Petitioner's arrest was not based on any pre-existing warrant. Rather, he was approached by Sergeant Kastens while merely walking down the street on his way home after work. Based on the government's own I-213 Form (Ex. C), Sergeant Kastens did not have any knowledge of Petitioner's "alienage" until after stopping him and calling "ICE/ERO."

109. Petitioner's subsequent arrest was purportedly premised on one of, or both, the 8/6 I-200 Warrant (Ex. D) and/or the 8/7 I-200 Warrant (Ex. E), neither of which were served at the time of Petitioner's arrest. Indeed, the 8/7 I-200 Warrant was allegedly served in Grand Forks, North Dakota, though he was arrested in and has been detained in Minnesota. Whatever warrant may have been served on Mr. Rodriguez-Carvajal was not provided to him until after Petitioner was taken to the Northwest Detention Center. Neither purported warrant identifies a specific basis for Petitioner's arrest or detention, and neither indicates that his humanitarian parole was ever withdrawn at any time. The arrest of Mr. Rodriguez-Carvajal was therefore unlawful, as Respondents failed to establish probable cause to arrest Mr. Rodriguez-Carvajal. *See*, *Cristian F.J.Z. v Blanche*, CV 26-3469 (JRT/DTS), 2026 WL 2350319, *supra*; *see also Sergio P. v. Bondi,* No. 26-CV-1538 (ECT/DTS), 2026 WL 497290, at *2 (D. Minn. Feb. 23, 2026) ("And the warrant provided with Respondents' answer raises several concerns. None of the boxes are checked that would explain the basis for Sergio's arrest."); *Jose R. M. M. v. Bondi*, No. 26-CV-1165

(JRT/DTS), 2026 WL 412447, at *1 (D. Minn. Feb. 13, 2026) (granting a writ of habeas corpus where the warrant "provides no justification for Petitioner's detention").

110. To the extent Mr. Rodriguez-Carvajal's arrest was made without a warrant, it was made 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. § 1357(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."); *Ruben D.A.G.*, Civ. No. 26-2041, slip op. at 8 ("Anyone without a lawful presence does not immediately present a likelihood of escape merely by being a noncitizen."). 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, Mr. Rodriguez-Carvajal had been in the United States for over four years and built strong ties to his community. Moreover, despite being arrested Petitioner fully complied with both local police and ICE officers and in no way tried to disobey or flee. Therefore, no officer could have probable cause that Mr. Rodriguez-Carvajal was likely to escape before a warrant could be obtained.

111. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Mr. Rodriguez-Carvajal. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. He received no such judicial determination, yet his detention has continued for over a month - well beyond 48 hours – rendering it presumptively unconstitutional.

112. Because Respondents failed to establish probable cause for Mr. Rodriguez-Carvajal'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, Mr. Rodriguez-Carvajal has received no such custody determination.

113. Respondents' warrantless arrest of Mr. Rodriguez-Carvajal 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 not served on Petitioner until after his arrest and detention") (citing Francisco M.A., 2026 WL 1229701, at *1–2).

COUNT IV
Violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)

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

115. The APA provides that a "reviewing court shall … hold unlawful and set aside agency action, findings, and conclusions" that are (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to constitutional right, power, privilege or immunity; (c) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, or (d) without obstruction of procedures required by law. 5 U.S.C. § 706(2). In order to be reviewable under the APA, the challenged action must constitute a final agency action, which includes "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). Final agency action is arbitrary and capricious if the agency fails to "articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (internal citations omitted). Courts may not consider an agency's "impermissible post hoc rationalizations." *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020) (internal citations omitted).

116. Although the INA purports to authorize DHS to revoke a parole "at any time," DHS has long applied the rule promulgated by the BIA in *Matter of Sugay*, 17 I&N

Dec. 637, 640 (BIA 1981) in the context of parole revocation—that DHS requires a showing of a "material change in circumstances" before re-detaining noncitizens it previously released on parole. *See Saravia*, 280 F. Supp. 1168. Regardless, "[e]ven when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute." *Vilela*, 2025 WL 3101334, at *3.

117. DHS's decisions to re-detain Petitioner constitutes reviewable final agency action because the re-detentions mark the "consummation" of the DHS's decision-making process on the question of Mr. Rodriguez-Carvajal's custody, and it is an action "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1977) (internal citations omitted). Indeed, the "practical and legal effects of the agency action" are that Mr. Rodriguez-Carvajal has been deprived of his liberty with no end in sight. *Or. Natural Desert Ass'n v. U.S. Forest Service*, 465 F.3d 977, 982 (9th Cir. 2006).

118. DHS's decision to re-detain Mr. Rodriguez-Carvajal was an abuse of discretion and contrary to law where it departed from its policy and practice of requiring a "material change in circumstances" before re-detaining noncitizens it had originally released on parole. *See Saravia*, 280 F. Supp. 3d at 1187. The decisions were also arbitrary and capricious in violation of the APA where the agency failed to contemporaneously—or ever—articulate any flight-risk or danger-based justifications for those decisions. *Motor*

Vehicle Mfrs. Ass'n of U.S., 463 U.S. at 42–43; *Regents*, 591 U.S. at 21. And as described *supra/infra*, the decisions were also contrary to constitutional right.

119. As such, DHS's decision to re-detain Mr. Rodriguez-Carvajal was in violation of the APA. Such action must be set aside, and release ordered.

COUNT V
Violation of the Administrative Procedure Act,
5 U.S.C. § 706(2)(A) – *Accardi Doctrine*
Unlawful Failure to Follow/Effective Rescission of
8 C.F.R. § 236.1(c)(9); 8 C.F.R. § 1236.1(c)(9)

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

121. Under the *Accardi* doctrine, federal agencies are required to follow their own binding regulations, and failure to do so renders resulting agency action unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). The *Accardi* doctrine is particularly important "[w]here the rights of individuals are affected," and it gives rise to a claim against an agency "even where the internal procedures are possibly more rigorous than otherwise would be required" by statute. *Morton*, 415 U.S. at 235. *Accardi* thus applies with full force in immigration proceedings and is enforceable through habeas corpus where regulatory violations result in detention.

122. DHS regulations implementing 8 U.S.C. § 1226(b) authorize revocation of release from custody under the statute only in the "discretion of the district director, acting district director, deputy director, assistant director for investigations, assistant director for

detention and deportation, or officer in charge (except foreign)." 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9); *see also Sandhu v. Mullin*, No. 7:26CV5009, 2026 WL 1146643, at *4 (D. Neb. Apr. 28, 2026) ("[A]s the regulation shows, that discretion [to revoke parole] must be exercised by *someone*. Here, there is no evidence a 'district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge' exercised discretion to revoke Sandhu's conditional parole." (emphasis in original) (citing 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9)).

123. Thus, while "§ 236.1(c)(9) affords the government significant discretion to revoke release, 'that discretion must be exercised by *someone*.'" *A.N. v. Blanche*, No. CV 26-3470 (JRT/SGE), 2026 WL 2334034, at *2 (D. Minn. Aug. 12, 2026) (emphasis in original) (quoting *Sandhu*, 2026 WL 1146643, at *4). Here, "there is no indication … that any official afforded [Petitioner] any process whatsoever concerning revocation of release prior to his detention in [August] 2026. Thus, [Petitioner's] detention in [August] 2026 is in violation of DHS's own regulations." *Wilson P. v. Blanche*, No. 26-CV-3448 (JMB/SGE), 2026 WL 2294612, at *4 (D. Minn. Aug. 10, 2026).

124. Respondents have not canceled Petitioner's parole (Ex. A), have not shown any material change in circumstances, and did not offer Petitioner a pre-deprivation hearing on any material changed circumstances. Immediate release is therefore warranted. *See Mohamed A.*, No. 26-CV-2799 at 13, n. 7) (granting outright release based on "the analysis

in *Barco Mercado* [S.D.N.Y.] [concluding] that re-detention absent a revocation [pursuant to 8 C.F.R. § 236.1] of the prior release order violates the Due Process Clause").

COUNT VI
Violation of the Immigration and Nationality Act
(Argument Presented for Preservation Purposes Only)

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

126. Petitioner should not be subject to mandatory detention under § 1225(b)(2) if that statutory provision is correctly understood. Petitioner acknowledges that this argument is presently foreclosed by *Avila*. 170 F.4th 1128. Petitioner nonetheless advances the argument to preserve it for appeal or in the event that *Avila* is vacated or abrogated by the Supreme Court.

127. Courts across the United States have overwhelmingly concluded that noncitizens like Petitioner who entered the United States without inspection and are detained by ICE for removal proceedings while they are residing in the United States are not detained under § 1225(b)(2)(A). *See, e.g., Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *13-14 (S.D.N.Y. Nov. 26, 2025) (tallying more than 350 cases reaching the same conclusion, and only 12 going the other way). Likewise, three circuit courts have concluded the same. *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).

128. Accordingly, Petitioner's mandatory detention under 8 U.S.C. § 1225(b)(2)(A) violates both the INA and Petitioner's procedural due process rights. As this renders his detention unlawful from its inception, he should be released.

129. Irrespective of the Eighth Circuit's decision in *Avila*, here, Respondents have apparently detained Petitioner pursuant to 8 U.S.C. § 1226. For one, Petitioner was released on parole in July 202s. Second, Respondents served an invalid I-200 arrest only after detaining Mr. Rodriguez-Carvajal. Thus, Petitioner's proper detention authority is under § 1226 and Petitioner is not properly subject to mandatory detention under § 1225(b)(2). *See, e.g., Yonatan P. v. Blanche*, No. 26-CV-2949 (JMB/EMB), 2026 WL 1842652 (D. Minn. June 26, 2026) (granting habeas petition where Respondents arrested petitioner pursuant to a warrant under 1226—a statute of detention Respondents cannot switch after-the-fact); *Hector J.A.S. v. Blanche*, No. 26-cv-2242 (JRT/DLM), 2026 WL 1243500 (D. Minn. May 6, 2026) ("Respondents represented to Petitioner in the Form I-200 administrative warrant that he was being arrested and detained under 8 U.S.C. § 1226, which requires a warrant."); *Dos Santos Silva v. Warden*, No. 8:26-CV-131, 2026 WL 926725, at *1 (D. Neb. Apr. 6, 2026) (granting habeas petition "[b]ecause," despite entering the country without inspection, "the petitioner was granted conditional parole [release on recognizance] under § 1226 when he entered the United States in 2021," and, as such "the revocation of his parole is governed by that statute").

REMEDY

130. The appropriate remedy for Respondents' unlawful conduct is Mr. Rodriguez-Carvajal's immediate release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the "typical remedy" for "unlawful executive detention").

131. By detaining Mr. Rodriguez-Carvajal without any individualized assessment of dangerousness or flight risk to justify his detention, Respondents have failed to respect the safeguards demanded by the Fifth Amendment. The proper remedy is immediate release.

132. Additionally, where a noncitizen is arrested and detained without a valid warrant, the appropriate remedy is immediate release. *See Martha C.G.P.*, 2026 WL 1329577, at *3 ("The remedy for a warrantless arrest is immediate release."); *see also Wilson L.L.*, 2026 WL 1283186, at *3 (ordering immediate release on these grounds and citing multiple supporting cases from the District of Minnesota). Respondents must comply with 8 U.S.C. 1347 when effectuating all noncitizen arrests—even those subject to mandatory detention under 8 U.S.C. 1225(b)(2). *See, e.g., Martha C.G.P.*, 2026 WL 1329577, at *3; *Wilson L.L.*, 2026 WL 1283186, at *3; *Francisco M.A.*, 2026 WL 1229701, at *3. Thus, Petitioner's detention under this section is unlawful. Nor here would § 1226(a) have supported a lawful detention in the first instance. Detention under § 1226(a) would require a warrant issued by the Attorney General in a manner that complies with the INA and associated regulations. *See, e.g., Hector J.A.S.*, 2026 WL 1243500, at *2; *Joaquin Q. L. v. Bondi*, No. 26-cv-233 (LMP/DTS), 2026 WL 161333, at *2-3 (D. Minn. Jan. 21, 2026)

(collecting cases); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 961 (D. Minn 2025). Upon information and belief, Respondents served no such warrant on Mr. Rodriguez-Carvajal at the time of his arrest.

133. *Alternatively*, should this Court decline to order outright release, it should order Respondents to release Mr. Rodriguez-Carvajal immediately unless they provide a bond hearing before a neutral adjudicator at which Respondents will bear the burden of justifying Mr. Rodriguez-Carvajal's continued detention by clear and convincing evidence of dangerousness or flight risk. *See Pedro O. v. Garland,* 543 F. Supp. 3d 733, 744 (D. Minn. 2021) (concluding that, where a petitioner's detention violates due process, as per *Mathews* the petitioner "is entitled to a bond hearing in immigration court at which the Government must justify [the] detention[] … show[ing] by clear and convincing evidence that Pedro poses either a risk of flight or a risk of danger to the community"); *Koffi D. v. Garland*, No. 23-CV-2421 (ECT/TNL), 2024 WL 1537801, at *2, n. 5 (D. Minn. Apr. 9, 2024)(explaining that where a habeas petition is granted following a "request[] for an initial bond hearing because petitioners were subject to mandatory detention" the "majority of courts [have] conclud[ed] that the Government must justify the ... confinement of a[] [noncitizen] … by clear and convincing evidence"); *see also, e.g.*, *Matamoros Rodriguez v. Woodbury County Jail*, No. C26-4041-LTS-MAR, 2026 WL 1735035, at *4 (N.D. Iowa June 16, 2026) (ordering bond hearing in which the government bears the burden of proof of showing dangerousness or flight risk by clear and convincing evidence); *Lopez-Arevelo*, 801 F. Supp. 3d at 688 (describing "consensus" that "courts granting immigration

detainees' habeas petitions" and opting to order bond hearings "have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk").

PRAYER FOR RELIEF

WHEREFORE, Petitioner that this Court:

1. Assume jurisdiction over this matter;
2. Immediately issue an Order to Show Cause:
   a. Enjoining Respondents and individuals acting in concert with Respondents from removing Petitioner or transferring Petitioner outside of this District pending adjudication of this petition;
   b. Requiring Respondents to show cause within **three days** as to why this petition should not be granted;
3. 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;
4. *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 before a neutral adjudicator within five days, to be held at least one week after the scheduling date to provide Petitioner preparation time, at

which Respondents will bear the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk;

5. 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;
6. 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
7. Grant Petitioner any further relief that this Court deems to be just and proper.

Respectfully submitted,

Dated: September 21, 2026

HUSCH BLACKWELL LLP

s/ Matthew A. Beyer

Matthew Beyer, #0402438
90 South 7th Street, Floor 14
Minneapolis, MN 55402
Tel: 612.852.2700
Matthew.Beyer@huschblackwell.com
Attorneys for Petitioner

VERIFICATION

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. I have discussed the factual assertions in this petition with Petitioner. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status, are true and correct to the best of my knowledge.

Executed this 21st day of September, 2026.

Matthew A. Beyer, Attorney at Law