UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Romel Edmundo GARCIA CABRERA

Plaintiff-Petitioner,

vs.

KRISTI NOEM, Secretary of the United States Department of Homeland Security;

PAMELA BONDI, Attorney General of the United States;

MARY DE ANDA-YBARRA, Field Office Director of Enforcement and Removal Operations, El Paso Field Office; and

CURTIS TAYLOR,
Commanding General, Fort Bliss Military Base, *in their official capacities,*

Defendant-Respondents.

Case No. 3:26-cv-232

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner, Romel Edmundo Garcia Cabrera, [redacted] by his own and proper person and through his attorneys Terja Bouvin Larsen and Brendan K. McBride, hereby petitions this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful arrest and detention while he waits for his U Visa to be adjudicated by U.S. Citizenship and Immigration Services (USCIS).

INTRODUCTION

2. On October 28, 2000, the Victims of Trafficking and Violence Protection Act of 2000 ("Crime Victims Act") was signed into law. This Act permits immigrants who are victims of serious crimes and who assist law enforcement to apply for and receive "U" nonimmigrant

visas. After possessing U nonimmigrant status for three years, such immigrants may apply for lawful permanent resident status.

3. In 2008, Congress expanded the protections for noncitizens who had come forward to report crime by authorizing employment for U visa applicants who had "a pending. bona fide application" awaiting full adjudication. This process, known as the Bona Fide Determination process (BFD), provides an opportunity for certain petitioners to receive work permits and deferred action while their petitions are pending.

4. Petitioner is a beneficiary of deferred action. *See* Exhibit B. He is a citizen and national of Ecuador. The Petitioner arrived in the United States in July 2001, and he has remained in the United States since then. On January 27, 2023, the petitioner submitted Form I-918 Application for Non-Immigrant Status before USCIS. *See* Exhibit C.

5. As a U visa applicant, the Petitioner submitted sensitive information to the government, paid the required fees, and passed rigorous background checks to receive his immigration benefit. In return, the government first issued a Bona Fide Determination Notice in March 2025, assuring that he would not be targeted for arrest or removal as long as he complied with the government's requirements.

6. Nevertheless, Mr. Garcia Cabrera was recently arrested on January 26, 2026, by Immigration and Customs Enforcement (ICE) agents upon leaving the LA Fitness health club in Richfield, Minnesota. Mr. Garcia Cabrera was about to start his car in the parking lot when approximately seven ICE officers surrounded his vehicle. The Petitioner reported to his attorney that the officers did not show him an arrest warrant, nor did he have the chance to explain that he had deferred action and employment authorization. He tried to tell them he had deferred action and employment authorization, but the officers said they did not know anything and that they

were taking him to Fort Snelling. The officers told the Petitioner that he would be at Fort Snelling for about 15 minutes, and then they would let him go. After they handcuffed the Petitioner outside his car, they took his identification out of his pocket.

7. The Petitioner was detained without a warrant in Minnesota, and later on, he was transported to the El Paso Camp East Montana ICE detention facility, where he has remained ever since. While Mr. Garcia Cabrera has an order of removal from 2008, issued against him in absentia, his grant of deferred action prevents ICE from deporting him.

8. Mr. Garcia Cabrera's detention is unlawful for at least two reasons.

9. First, because Mr. Garcia Cabrera cannot be removed, his ongoing detention—particularly without any individualized review—serves no lawful purpose and runs afoul of the substantive and procedural due process protections of the Fifth Amendment, requiring his immediate release. Mr. Garcia Cabrera cannot be removed because his deferred action grant prevents his removal. Moreover, removing the Petitioner would completely undermine the purpose of the Crime Victims Act. Through his grant of a Bona Fide Determination letter and deferred action, Mr. Garcia Cabrera is on a path to permanent legal status, which he is allowed to remain in the United States to access. Respondents' efforts to block Mr. Garcia Cabrera from accessing the protections Congress specifically enacted for the benefit of victims of crime like him improperly subvert Congress's intent that he be permitted to adjust status and establish a stable life in the United States.

10. To be clear, Mr. Garcia Cabrera brings this habeas petition challenging his unlawful arrest and detention; this petition does not challenge Respondents' ability to issue a removal order against Mr. Garcia Cabrera and does not challenge the removal order; it strictly seeks to liberate Mr. Garcia Cabrera from detention on the basis that his arrest was unlawful, his

detention serves no lawful purpose, and his removal is not reasonably foreseeable. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001).

11. Second, Mr. Garcia Cabrera was arrested without a warrant and without probable cause that he was a flight risk, under unlawful enforcement procedures that multiple courts around the country have declared illegal. Since then, there has been no determination that any probable cause exists to justify his detention. This violates his Fourth Amendment rights, as well as statute and regulation, similarly mandating his release.

12. For these reasons, the Petitioner respectfully asks this Court to hold his arrest and detention unlawful, order restoration of the status quo prior to his detention, *i.e.* release without restraints on his liberty. Mr. Garcia Cabrera also respectfully asks that this Court enjoin Respondents from transferring him outside of this District or the District of Minnesota for the duration of this proceeding.

JURISDICTION

13. Petitioner is in the physical custody of Respondents. Petitioner is detained at El Paso Camp East Montana ICE detention facility.

14. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

15. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. See *Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same).

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

VENUE

17. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner currently is detained.

18. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

PARTIES

19. Petitioner **Romel Edmundo Garcia Cabrera** is a citizen and native of Ecuador who has continuously resided in the United States since 2001. He has had deferred action since March 7, 2025, and it is valid until March 6, 2029. Ever since being unlawfully arrested by ICE on January 26, 2026, Mr. Garcia Cabrera has been in ICE custody at the El Paso Camp East Montana ICE detention facility.

20. Respondent **Kristi Noem** is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA) and oversees ICE, which is responsible for the Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

21. Respondent **Pamela Bondi** is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review

and the immigration court system it operates is a component agency. She is sued in her official capacity.

22. Respondent **Mary De Anda-Ybarra** is the Field Office Director for El Paso ICE. As such, De Anda-Ybarra is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in her official capacity.

23. Respondent **Curtis Taylor** is the Commanding General at the Fort Bliss Military Base, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

24. For the last three decades, Congress has repeatedly and consistently acted to protect noncitizen victims of crime. By creating paths to legal status and citizenship through the VAWA, U Visa, and T visa programs, and by authorizing and approving eligibility for deferred action and employment for petitioners while their petitions are pending, Congress's clear intent is to encourage noncitizen victims to help with exposing and prosecuting crime to protect them from removal and further exploitation if they do.

25. Congress enacted VAWA in 1994 to address the widespread problem that many noncitizens stayed in abusive relationships because an abusive family member held the key to their permanent immigration status in the United States. *See* VAWA, Title IV, Pub. L. 103-322, 108 Stat. 1796, 1902 (September 13, 1994. "[T]he goal of the bill is to 'permit [] battered immigrant women to leave their batterers without fearing deportation." *Hernandez v. Ashcroft*, 345 F.3d 824, 841 (9th Cir. 2003) (quoting H.R. Rep. No. 103-395, at 25).

26. In 2000, Congress passed the Victims of Trafficking and Violence Protection Act of 2000, which included the Violence Against Women Act of 2000 ("VAWA 2000). Title V,

Pub. L. No. 106-386, 114 Stat. 1464, 1518. Recognizing that VAWA protected some survivors of spousal abuse but left many survivors of violent crime without protection and unlikely to report such crime, Congress expanded protections to survivors of other serious crimes when it reauthorized VAWA in 2000. Specifically, VAWA 2000 created the U Nonimmigrant Status, commonly referred to as the U Visa, which provides a path to citizenship for non-citizen survivors of qualifying crimes who assist law enforcement in investigating or prosecuting those crimes. *See* VAWA 2000, § 1513(a)(2)(B), (b); 8 U.S.C. § 1101(a)(15)(U).

27. Underscoring the importance of encouraging noncitizen victims of crime to feel comfortable reporting crime and working with law enforcement authorities, Congress authorized DHS to waive virtually any grounds of inadmissibility to U-Visa petitioners in the public interest. VAWA 2000 § 1513(e); 8 U.S.C § 1182(d)(14). Even a noncitizen "who is the subject of a final order of removal, deportation, or exclusion is not precluded from eligibility." 8 C.F.R. § 214.14(c)(1)(ii).

28. In the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044, 5053 ("TVPRA"), Congress expanded the protections for noncitizens who had come forward to report crime. Most relevant to this action, the TVPRA added §237(d) to the Immigration and Nationality Act (INA), which authorized DHS to issue a stay of any removal order against a U or T visa applicant if the petition "sets forth a prima facie case for approval." 8 U.S.C. § 1227(d)(1). Any such stay remains in effect until the U or T visa is approved or denied, during which time the applicant "shall not be removed." 8 U.S.C. §§ 1227(d)(1)-(3).

29. The TVPRA also authorized employment for U visa petitioners who had "a pending, bona fide application" awaiting full adjudication. TVPRA §201(c) (codified at 8 U.S.C.

§ 1184(p)(6)). As stated by USCIS, the Bona Fide Determination process "provides an opportunity for certain petitioners to receive BFD [work permits] and deferred action while their petitions are pending, consistent with the [TVPRA]." PM vol. 3, pt. C, ch. 5.

30. Congress created BFD protections in recognition that the full adjudication of a U visa necessary for placement on the waiting list involves a lengthy process, and Congress intended that petitioners with valid petitions promptly receive protection. Indeed, the bipartisan bill's co-sponsors acknowledged the importance of protection from removal, stating that "By protecting the victims and not sending them back to their home country where they are often exploited in a vicious cycle of exploitation, we say to the victims we will make every effort to make you safe and secure." 154 Cong, rec. H10888-01, H10902, 2008 WL 5169865 (Statement of Rep. Smith).

31. In the BFD process, USCIS conducts a streamlined initial review to determine whether an application is "bona fide." The determination is "based on the petitioner's compliance with initial evidence requirements and successful completion of background checks," after which USCIS "considers any national security and public safety risks, as well as any other relevant considerations," in deciding whether to issue an employment authorization document ("EAD") and deferred action. PM, vol. 3, pt. C, ch. 5. "If USCIS determines a principal petitioner and any other qualifying family members have a bona fide petition and warrant favorable exercise of discretion, USCIS issues them BFD EADs and grants deferred action." PM, vol. 3, pt. C, ch.5. C.

32. Deferred action does not confer lawful status and does not prevent an immigration judge from issuing a removal order. However, unless and until terminated, a grant of deferred action prevents immigration authorities from physically removing a noncitizen from the United

States. *See* USCIS Policy Manual, Vol. 1, Pt. H, Ch. 2.A.4, https://www.uscis.gov/policy-manual/volume-1-part-h-chapter-2; *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) ("*AADC*"). A BFD EAD and deferred action are valid for four years and renewable. PM vol. 3, pt. C, ch.5.

33. Employment authorization granted under BFD may be revoked, and deferred action terminated. USCIS identifies four circumstances when early revocation of deferred action is appropriate: (1) "If USCIS determines a national security or public safety concern is present," (2) "If USCIS determines the BFD EAD and deferred action in no longer warranted," (3) "if Form I-918 Supplement B law enforcement certification is withdrawn" by the certifying agency, or (4) "USCIS determines the prior BFD EAD was issued in error." *Id.* If changed circumstances appear to warrant such revocation, USCIS "initiates a waiting list adjudication to gather additional information and evidence." *Id.* ch. 5.C.1.

34. For many years, the process described above has protected the victim of crime from removal from the United States. However, shortly after President Trump took office for his second term, ICE Acting Director Caleb Vitello issued the 2025 Guidance, reversing course from decades of agency practice under which immigration agencies generally refrained from enforcement against survivors of serious crime, unless warranted by adverse factors. Under the De Facto Revocation Policy, ICE now routinely detains and deports people who have valid grants of deferred action from USCIS in connection with pending U or T visa petitions. Neither ICE nor USCIS provides any notice or opportunity to be heard regarding whether such deferred action should be revoked before doing so. Instead, ICE treats its enforcement action as a de facto revocation of deferred action. This policy unlawfully renders the protection of deferred action meaningless.

FACTS

35. Mr. Garcia Cabrera is a national and citizen of Ecuador. He entered the United States without inspection in or about July 2001, and he has not left the United States since then. In or about 2007, Mr. Garcia Cabrera was placed in removal proceedings. Mr. Garcia Cabrera failed to attend his removal proceedings hearing, and he was ordered removed in absentia on January 9, 2008.

36. Mr. Garcia Cabrera has three US Citizen children who are all under 18, and he and his partner are expecting another baby.

37. On January 27, 2023, the petitioner submitted Form I-918 Application for Non-Immigrant Status before USCIS, in which he disclosed that he had a prior removal order. *See* Exhibit C.

38. The application was later determined to be bona fide, and Mr. Garcia Cabrera was granted deferred action and issued an Employment Authorization Document, which expires on March 6, 2029. *See* Exhibits A and F.

39. On January 26, 2026, at about 1:30 pm, Mr. Garcia Cabrera was arrested without any notice or warning while leaving the LA Fitness health club in Richfield, Minnesota. Approximately seven ICE agents surrounded his vehicle. They told him to get out of the car and that they had a warrant for his arrest, but then never showed him the warrant. They handcuffed him and then took his identification out of his pocket. The officers did not use the Petitioner's name until after they saw his identification. Mr. Garcia Cabrera attempted to tell the officers that he had deferred action and employment authorization through the U visa process, but they said

they did not know anything about that and that they would take him to Fort Snelling. They told him he would only be at Fort Snelling for about 15 minutes, and then they would let him go.

40. Once he arrived at Fort Snelling, he was in a holding cell with about 20 other men. As the afternoon progressed, more men were added to the holding cell. At Fort Snelling, he tried to tell ICE again that he had deferred action and authorization to work.

41. About six hours later, they transported Mr. Garcia Cabrera to the airport in full shackles on his wrists, ankles, and waist. They put him on a plane. He was then transported to ERO El Paso Camp East Montana. He arrived at approximately 3 am on January 27, 2026.

42. The Petitioner is housed with at least 50 other men. The number fluctuates as more men arrive and some men leave. He is wearing the same pants in which he was detained. They gave him a blanket, two pairs of used underwear, two used t-shirts, and two pairs of socks.

43. Mr. Garcia Cabrera has been unable to speak to his family since January 26, the day that he was detained. He reports that the room where he is detained is not clean.

44. Upon information and belief, the ICE officers had no warrant for Mr. Garcia Cabrera's arrest. Mr. Garcia Cabrera was not accused of violating any vehicle and traffic law. Mr. Garcia Cabrera only had two prior arrests for Driving While Intoxicated from 2006 and 2007, about 20 years ago. He had a stable address, a family, a stable job, deferred action, a work permit, and a path to permanent status. He did not run or try to evade the officers. Nevertheless, they arrested him without a warrant and transferred him to El Paso Camp East Montana ICE detention facility.

45. At the time of his arrest and at all times since, Mr. Garcia Cabrera's BFD and deferred action have been valid. USCIS has not given him any Notice of Intent to Revoke

Employment Authorization and, upon information and belief, has not initiated any termination under 8 C.FR. 274a.14(b), as required by law, to revoke his BFD EAD.

46. Mr. Garcia Cabrera relied on his BFD EAD and deferred action, and he ordered his affairs around the government's promise that, for the duration of his BFD EAD and deferred action grant, he would not be targeted for arrest or removal.

47. Nevertheless, Mr. Garcia Cabrera remains deprived of his physical liberty, despite his valid BFD EAD and deferred action. He is separated from his partner, who is pregnant; his U.S. citizen children, who are 17 and 6 years old; his community and employment; and is detained in Texas, far from Minnesota.

48. The government's decision to detain Mr. Garcia Cabrera, despite being unable to remove him, inflicts concrete, ongoing harm upon him and undermines the rule-of-law commitments upon which he–and all other noncitizen victims of crime–reasonably relied.

CAUSES OF ACTION

FIRST CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Substantive Due Process and 8 U.S.C. § 1231(a)(6)

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

50. Because Mr. Garcia Cabrera's removal is not reasonably foreseeable and there is no other justification for his detention, his detention is neither authorized by 8 U.S.C. § 1231(a)(6) nor related to any legitimate government interest, in violation of the substantive due process protections of the Fifth Amendment.

51. Because Mr. Garcia Cabrera was issued a removal order in 2008, he is detained under 8 U.S.C. § 1231(a)(6), which governs the detention of noncitizens with final removal orders.

52. In *Zadvydas*, the Supreme Court held that to avoid offending the Due Process Clause, detention under 8 U.S.C. § 1231(a)(6) is limited to "a period reasonably necessary to bring about" the individual's removal from the United States. 533 U.S. 678, 689 (2001). While detention is presumptively reasonable for up to six months, *id.* at 701, this presumption is rebuttable. *Villanueva*, 2025 WL 2774610, at *10; *Zavvar v. Scott*, No. CV 25-2104, 2025 WL 2592543, at *5–6 (D. Md. Sept. 8, 2025) (collecting cases); *see Zadvydas*, 533 U.S. at 699-701. The six-month period is merely a "guide" to lower courts' determinations of whether removal is reasonably foreseeable. *Puertas-Mendoza v. Bondi, et al.*, 2025 WL 3142089, at *2; *Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL 1750346, at *6 (D.N.J. June 24, 2025) (quoting *Zadvydas*, 533 U.S. at 700–01). Importantly, *Zadvydas* unequivocally held that "once removal is no longer reasonably foreseeable, continued detention is no longer authorized." *Zadvydas* 533 U.S. at 699–700; *accord Puertas-Mendoza*, 2025 WL 3142089, at *2-4; *Munoz-Saucedo*, 2025 WL 1750346, at *6.

53. Accordingly, a noncitizen may challenge their detention before the six-month mark if they "can prove" that there is no significant likelihood of their removal in the reasonably foreseeable future. *See Puertas-Mendoza*, 2025 WL 3142089, at *2-4; *Munoz-Saucedo*, 2025 WL 1750346, at *6; *Villanueva*, 2025 WL 2774610, at *10; *Zavvar v. Scott*, No. CV 25-2104, 2025 WL 2592543, at *5–6.

54. Here, the government cannot remove Mr. Garcia Cabrera from the United States for at least three reasons. First, Mr. Garcia Cabrera has a valid grant of deferred action, which

precludes his removal. *See Primero*, 2025 WL 1899115, at *4 ("Respondents do not suggest that ICE routinely removes individuals with active grants of deferred action from the United States, or that Petitioner will be removed before his deferred action is terminated."). His grant of deferred action remains valid until March 6, 2029.

55. Second, Mr. Garcia Cabrera has a procedural due process right under the INA and DHS regulations not to have his BFD EAD revoked without notice and an opportunity to submit evidence in opposition to the revocation under 8 C.F.R. 274a.14(b)(2), and forced removal from the United States would constitute a *de facto* revocation of his BFD EAD. Therefore, removing Mr. Garcia Cabrera from the United States (regardless of his deferred action grant) would be unlawful.

56. Third, removing Mr. Garcia Cabrera (regardless of his deferred action grant) would contravene the very purpose of the TVPRA statute. As discussed *supra*, the core purpose of the U Visa protection is to provide beneficiaries like Mr. Garcia Cabrera with protection from removal and a means to adjust their status to become a lawful permanent resident from within the United States. 8 U.S.C. § 1227(d)(1); 154 Cong. rec. H10888-01, H10902, 2008 WL 5169865 (Statement of Rep. Smith). Allowing Mr. Garcia Cabrera to be removed from the United States after he has already been granted BFD EAD and deferred action would thus eviscerate Congress's goal in creating the status in the first place.

57. For all of the foregoing reasons, the government cannot lawfully remove Mr. Garcia Cabrera from the United States. Therefore, there is no significant likelihood of his removal in the reasonably foreseeable future, and his detention violates 8 U.S.C. § 1231(a)(6). *See Ayala v. Bondi*, No. 25-01063, 2025 WL 2209708, at *4 (W.D. Wash Aug. 4, 2025)

(granting habeas petition for a noncitizen with a U Visa deferred action and a prior removal order).

58. For the same reasons, the Petitioner's detention violates the Petitioner's substantive due process rights under the Fifth Amendment. 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). Substantive due process requires that there be a reasonable relation between an individual's detention and the government's purported interest in that detention. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018).

59. As the Supreme Court recognized in *Zadvydas*, the government's only interests in post-order immigration detention are to (1) prevent flight risk, so a person can actually be removed, or (2) otherwise ensure the safety of the community. *Zadvydas*, 533 U.S. at 690-91. But if a person cannot actually be removed, "preventing flight" is a "weak or nonexistent" justification. *Id.* at 690; *cf. Phan v. Reno*, 56 F. Supp. 2d 1149, 1156 (W.D. Wash. 1999) ("Detention by the INS can be lawful only in aid of deportation."). Detention for community safety, in turn, is only permissible "when limited to especially dangerous individuals and subject to strong procedural safeguards." 533 U.S. at 691.

60. Here, the government's inability to lawfully remove Mr. Garcia Cabrera eliminates any justification of flight risk, which the government could not show in any event, given Mr. Garcia Cabrera's lengthy residence in the United States, his deep ties to his family and community in Minnesota, and his ability as a U-Visa beneficiary to eventually adjust to lawful

permanent resident status and then gain citizenship. And Mr. Garcia Cabrers's lack of a criminal record besides his two DWIs from 2006 and 2007 eliminates any possible justification of danger.

61. Accordingly, because Mr. Garcia Cabrera's removal is not reasonably foreseeable and there is no other justification for his detention, his detention is neither authorized by 8 U.S.C. § 1231(a)(6) nor related to any legitimate government interests. Therefore, the Petitioner's detention violates the substantive due process protections of the Fifth Amendment, and this Court should order his immediate release.

SECOND CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the US. Constitution Procedural Due Process

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

63. 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.

64. The procedural due process guarantee of the Fifth Amendment requires that individuals be provided notice and an opportunity to be heard before being deprived of liberty or property interests. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

65. In contrast to other habeas petitioners challenging their detention under 8 U.S.C. § 1231(a)(6), Mr. Garcia Cabrera "has been afforded no review of his detention." *Primero*, 2025 WL 1899115, at *5. "To the contrary, Respondents have made no suggestion that there has been any review of Petitioner's record to determine that his detention was warranted to ensure his

removal; instead, Petitioner's detention was the result of a blind enforcement action carried out by ICE in Minnesota.

66. Under the familiar *Mathews* due process test, the government's decision to arrest Mr. Garcia Cabrera without any notice or an opportunity to respond, and continue to detain him without any opportunity to meaningfully challenge that detention, violates his procedural due process rights.

67. The first *Mathews* factor weighs heavily in the Petitioner's favor. Mr. Garcia Cabrera has a profound interest in maintaining his deferred action status and benefits. Because a person cannot be detained for removal if he cannot be removed, maintaining deferred action should be tantamount to maintaining one's freedom. "[A]n individual's private interest in freedom from prolonged detention is unquestionably substantial." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022). Deferred action status also confers the ability to obtain employment authorization and public benefits, which can lead to financial stability and less vulnerability to exploitation and abuse, which are also substantial interests.

68. Second, the risk of erroneously depriving Mr. Garcia Cabrera of that interest is severe. Mr. Garcia Cabrera is separated miles away from his partner, who is pregnant, missing work, and falling behind on payments. Despite his best efforts to set himself on a good track, he has been thrown into sudden instability. He has been afforded absolutely no process, let alone constitutionally sufficient process, prior to or since this deprivation, making the value of additional process high. *See Mathews*, 424 U.S. at 343.

69. Third, the government's interest in detaining Mr. Garcia Cabrera is minimal. Mr. Garcia Cabrera cannot be deported and does not present any flight risk or danger: he is firmly settled in Minnesota, he has maintained stable employment since he obtained his BFD EAD, and

has no criminal history besides his two DWIs from 2006 and 2007. In fact, the Petitioner's erroneous detention imposes high fiscal and administrative burdens on Respondents. Unlawful detention and violation of noncitizens' constitutional rights do not serve the public interest.

70. Mr. Garcia Cabrera's continued detention without an opportunity to be heard violates his procedural due process rights under the Fifth Amendment of the Constitution, and this Court should order his immediate release.

THIRD CLAIM

Violation of the Fourth Amendment to the U.S. Constitution and 8 U.S.C. § 1357(a)(2)
Unlawful Arrest

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

72. 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).

73. 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). That neutral, judicial 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.* Arrest and detention of a person, including a noncitizen, absent a neutral, judicial determination of probable cause, violates the Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination must 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).

74. Congress enacted a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). The Immigration and Nationality Act thus provides immigration agents with only limited authority to conduct warrantless arrests. 8 U.S.C.§ 1357(a)(2). Specifically, an officer must have "reason to believe" the person is violating the immigration laws and that the person "is likely to escape before a warrant can be obtained." *Id.* Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

75. Mr. Garcia Cabrera's warrantless arrest occurred without probable cause that he was a flight risk. "Courts 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, the Petitioner (a) held a current, unrevoked BFD EAD and deferred action, making him lawfully present under 8 C.F.R. § 1.3(a)(4)(vi), (b) was living at a stable home address and employed at a stable job, and (c) had been in the United States for almost 25 years and built strong ties to his community. Moreover, Mr. Garcia Cabrera fully complied with the ICE officers and in no way tried to disobey or flee. Therefore, no officer could have held a reasonable belief that Mr. Garcia Cabrera was likely to escape before a warrant could be obtained. *See* 8 U.S.C. § 1357(a)(2).

76. 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.

Garcia Cabrera. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. He received no such judicial determination, yet his detention continued beyond 48 hours, rendering it presumptively unconstitutional.

77. Mr. Garcia Cabrera's warrantless arrest occurred in violation of the clear, narrow circumstances permitted by statute. There has been no finding of probable cause or other determination by a neutral magistrate that would cure this infirmity; his arrest lacked any legal basis, and there continues to be no legal basis for his detention. Therefore, his arrest and ensuing detention constitute an unreasonable and unlawful seizure in violation of the Fourth Amendment and 8 U.S.C. § 1357(a)(2). Thus, this Court should order his release.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Prohibit Petitioner's removal from the United States and transfer outside the Western District of Texas or the District of Minnesota during the pendency of this action;

c. Declare that Petitioner's arrest and detention violate 8 U.S.C. § 1231(a)(6); the Due Process Clause of the Fifth Amendment; the Fourth Amendment; and the INA;

d. Grant the writ of habeas corpus and order Petitioner's immediate release from ICE custody;

e. Order Respondents to release the Petitioner in Minnesota, or if released in Texas, that the Respondent cover the travel expenses from Texas to Minnesota;

f. Order that upon release, the Respondent return to the Petitioner all his personal documentation, including his work authorization, social security card, driver's license, and any other personal documents he had in his possession at the time of his arrest as well as his mobile phone or any other personal property removed from his person when or since he was detained.

g. In the alternative, grant bail pending the conclusion of the habeas review; *see, e.g., Sanchez v. Winfrey*, No. CIV.A.SA04CA0293RFNN, WL 1118718 (W.D. Tex. Apr. 28, 2004) (granting bail where the applicant does not pose a risk of flight or danger, and finding that such relief is necessary to "give effect to the requested habeas relief"); and

h. Grant such other and further relief as law and justice require.

Date: January 29, 2026

Respectfully Submitted:

Brendan K. McBride
Texas State Bar No. 24008900
The McBride Law Firm
316 E. Main St., Ste. 30
Anoka, MN 55303
Phone (210) 386-7357
Email Mcbride.bkl@gmail.com

And

Terja K Bouvin Larsen[1]

[1] Terja K. Bouvin Larsen has represented Petitioner since prior to his detention in Minnesota. This matter involves the sudden, en masse transfer of Minnesota detainees to this District—a practice that threatens to frustrate Petitioner's right to counsel. Pursuant to the Court's order in *Escobar Maya v. Bondi*, No. 3:26-cv-00161-KC, ECF No. 4 (W.D. Tex. Jan. 26, 2026), Ms. Bouvin Larsen is currently finalizing her application for admission to the Bar of this Court. Given these exigent circumstances and the ongoing logistical challenges posed by the mass relocation of her clients, Petitioner respectfully requests her continued involvement in this matter; counsel will promptly file

Bienvenidos Law Firm, Inc.
Minnesota Stat Bar No. 0319594
316 East Main Street
Anoka, Minnesota 55303
Phone (763)-951-2235
Email terja@bienvenidoslaw.com

Attorneys for Petitioner

any additional *pro hac vice* motions or documentation the Court deems necessary to maintain her standing while her general admission is processed.

VERIFICATION

I, Terja Kristina Bouvin Larsen, being duly sworn upon oath, hereby state: I represent the Petitioner in these habeas corpus proceedings. The Petitioner, Romel Edmundo Garcia Cabrera, is currently being held at the El Paso Camp East Montana ICE detention facility, and he is not able to appear in my office to sign the Verification. I have reviewed the record of the removal proceedings and discussed this matter with the Petitioner and the Petitioner's family. I verify that the information contained in the foregoing Petition is true and correct to the best of my knowledge and belief.

Terja K Bouvin Larsen
Attorney for Petitioner