UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
El PASO DIVISION

Segundo Mariano Chachipanta,

Petitioner,

v.

MARY DE ANDA-YBARRA, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement; Warden of ERO El Paso Camp East Montana;

TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and

PAMELA JO BONDI, *in her official capacity* as Attorney General of the United States;

Respondents.

Case No. 3:26-cv-00250

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY RELIEF

Expedited Handling Requested

INTRODUCTION

1. Petitioner-Plaintiff Segundo Mariano Chachipanta ("Petitioner") is a citizen of Ecuador who has resided in the United States since about 2010. He has since established his permanent residence and livelihood in this country.

2. On information and belief, Petitioner was apprehended by immigration authorities in Minnesota on January 8, 2026. He was then transferred to this jurisdiction. He remains in immigration detention pending removal proceedings.

3. Petitioner is currently detained at the ICE El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936.

4. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision that unlawfully reinterpreted the Immigration and Nationality Act ("INA"). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Prior to this decision, noncitizens like Petitioner who had lived in the U.S. for years and were apprehended by ICE in the interior of the country were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges ("IJs"). Instead, in conflict with nearly thirty years of legal precedent, Petitioner is now considered subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and has no opportunity for release on bond while his removal proceedings are pending.

5. Petitioner's detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who has resided in the U.S. for over twenty years and who was only recently apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Rather, he should be detained pursuant to 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond.

6. Petitioner asks this Court to declare Petitioner's detention is unlawful and issue order Petitioner's immediate release in Minnesota. Alternatively, Petitioner asks this

Court to order that Petitioner not be transferred outside this District during the pendency of this action and issue an Order to Show Cause ordering Respondents to show cause why Petitioner's Petition should not be granted within three days.

7. Additionally, consistent with prior cases, Petitioner respectfully requests that this Court enter an immediate order preventing his removal or transfer from the United States and the Western District of Texas while the petition is considered, to preserve this Court's jurisdiction over their habeas claims. *See, e.g.*, *Carmona-Lorenzo v. Trump et al.*, 25-cv-03172-JFB-RCC, Dkt. 3 (D. Neb. Aug. 19, 2025); *Lorenzo Perez v. Kramer, et al.*, No. 25-cv-03179-JFB-RCC, Dkt. 13 (D. Neb. Aug. 27, 2025); *Duenas Arce v. Trump, et al.*, No. 25-cv-00520-SMB-RCC, Dkt. 3 (D. Neb. Aug. 27, 2025).

CUSTODY

8. Petitioner is currently in the custody of Immigration and Customs Enforcement ("ICE") at ICE El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936. He is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

9. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et. seq*.

10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et. seq.,* the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

11. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

13. Petitioner is "in custody" for the purpose of § 2241 because Petitioner was detained by Respondents.

VENUE

14. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because Petitioner is currently detained in El Paso, at the ICE El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. The Fifth Circuit has long held that exhaustion may be excused when administrative remedies are (i) unavailable, (ii) wholly inadequate, (iii) patently futile, or

(iv) when a constitutional challenge is advanced that is unsuitable for determination in an administrative proceeding. *See Fuller v Rich*, 11 F3d 61, 62 (5th Cir 1994); *Garner v US Department of Labor*, 221 F3d 822, 825 (5th Cir 2000).

16. Exhaustion is futile because of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which holds that individuals who entered the United States without inspection are deemed "applicants for admission" subject to mandatory detention under INA § 235(b)(2)(A). Immigration courts are categorically deprived of authority to conduct bond hearings for individuals in Petitioner's position. *See also Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (recognizing that *Yajure Hurtado* renders administrative exhaustion futile).

17. Because IJs are bound by this precedential interpretation, any further request for bond or custody redetermination would be denied as a matter of law, rendering additional administrative exhaustion wholly ineffective and unavailable in practice. *See Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999) (excusing exhaustion where administrative relief is foreclosed).

18. Moreover, the agency lacks jurisdiction to adjudicate Petitioner's claim that his continued detention violates the Due Process Clause. Constitutional challenges to the legality of detention fall outside the scope of the agency's authority, and exhaustion is therefore not required. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 119 S. Ct. 936, 142 L. Ed. 2d 940 (1999) (exhaustion excused where the agency lacks jurisdiction to address constitutional claims).

19. Accordingly, Petitioner is not required to exhaust further administrative remedies. The administrative process has already confirmed that no bond hearing is available, and the agency is powerless to address the constitutional infirmities of Petitioner's continued detention. Because the available procedures are ineffective, unavailable in practice, and futile, exhaustion serves no practical purpose and should be excused.

PARTIES

20. Petitioner is from Ecuador and has resided in the United States since approximately 2010. He is currently detained in the ICE El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936. Respondent Mary De Anda-Ybarra, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement and Warden of ERO El Paso Camp East Montana, is sued in her official capacity. Respondent Anda-Ybarra is a legal custodian of Petitioner.

21. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

22. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland

23. The Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

24. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department

of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND AND ARGUMENT

25. Removal proceedings are governed under 8 U.S.C. § 1229a, which provides that "[a]n immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien," 8 U.S.C. § 1229a(a)(1) and that "[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States." 8 U.S.C. § 1229a(a)(3).

26. To initiate removal proceedings, "written notice (in this section referred to as a 'notice to appear') shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any)." 8 U.S.C. § 1229(a)(1).

27. The "[a]pprehension and detention of aliens" is governed under 8 U.S.C. § 1226, which provides that:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General ... may release the alien on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General.

8 U.S.C. § 1226(a)(2)(A) (emphasis added).

28. The regulations provide that, to detain a person under 8 U.S.C. § 1226(a), the Department must issue an I-200 to take a person into custody; and that such a person is subject to release on bond. The regulation states:

(b) Warrant of arrest—

> (1) In general. At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I–200, Warrant of Arrest. A warrant of arrest may be issued only by those immigration officers listed in § 287.5(e)(2) of this chapter and may be served only by those immigration officers listed in § 287.5(e)(3) of this chapter.
>
> (2) If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation.

(c) Custody issues and release procedures—

> (1) In general.
>
> (i) After the expiration of the Transition Period Custody Rules (TPCR) set forth in section 303(b)(3) of Div. C of Pub.L. 104–208, no alien described in section 236(c)(1) of the Act may be released from custody during removal proceedings except pursuant to section 236(c)(2) of the Act.

8 C.F.R. § 236.1(b).

29. 8 U.S.C. 1226(a) is the default detention authority, and it applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a).

30. 8 U.S.C. 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings." Jennings v. Rodriguez, 583 U.S. 281, 289 (2018).

31. 8 U.S.C. § 1226(a) applies not just to persons who are deportable, but also to noncitizens who are inadmissible. Specifically, while § 1226(a) provides the general right to seek release, § 1226(c) carves out discrete categories of noncitizens from being released—including certain categories of inadmissible noncitizens—and subjects those limited classes of inadmissible aliens instead to mandatory detention. *See, e.g.,* 8 U.S.C. § 1226(c)(1)(A), (C).

32. The Laken Riley Act (LRA) added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See* LAKEN RILEY ACT, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, people charged as inadmissible under § 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E).

33. By including such individuals under § 1226(c), Congress reaffirmed that § 1226 covers persons charged under § 1182(a)(6)(A) or (a)(7). Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people like lawful permanents residents, who have been lawfully admitted and continue to have lawful status, while grounds of inadmissibility (found in § 1182) apply to those who have not yet been admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020) ("specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute

generally applies.") (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010))

34. The "[i]nspection by immigration officers [and] expedited removal of inadmissible arriving aliens, [and] referral for hearing" is governed under 8 U.S.C. § 1225, which provides that "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1).

35. "All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3).

36. "If an immigration officer determines that an alien ... who is arriving in the United States ... is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum." 8 U.S.C. § 1225(b)(1)(A)(i) (emphasis added).

37. "If the officer determines at the time of the interview that an alien has a credible fear of persecution ... the alien shall be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii).

38. "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a

doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

39. 8 U.S.C. § 1225(b)'s mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

40. "Read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention of applicants for admission until certain proceedings have concluded. Until that point, nothing in the statutory text imposes a limit on the length of detention, and neither provision says anything about bond hearings." *Jennings v. Rodriguez*, 583 U.S. at 282.

41. By regulation, "[a]rriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked." 8 C.F.R. § 1.2.

42. "[A]n immigration judge may not redetermine conditions of custody imposed by the Service with respect to ... [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act." 8 C.F.R. § 1003.19(h)(2)(i)(B).

43. As such, arriving aliens are not entitled to bond, nor, arguably, are arriving aliens falling within the confines of 8 U.S.C. § 1225(b).

44. Congress did not intend to subject all people present in the United States after an unlawful entry to mandatory detention if arrested. Prior to Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), which codified both 8 U.S.C. § 1225 and 8 U.S.C. § 1226, aliens present without admission were not necessarily subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportability proceedings, which applied to all persons within the United States).

45. In articulating the impact of IIRIRA, Congress noted that the new § 1226(a) merely "restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).

46. Respondents' longstanding practice of considering people like Petitioner as detained under § 1226(a) further supports reading the statute to apply to them. Typically, DHS issues a person Form I-286, Notice of Custody Determination, or Form I-200, Warrant for Arrest of Alien, stating that the person is detained under § 1226(a) (§ 236 of the INA).

47. As these arrest documents demonstrate, DHS has long acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the country's borders long after their entry. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J.,

dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government's interpretation and practice to reject its new proposed interpretation of the law at issue).

48. EOIR regulations have long recognized that Petitioner are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19—the regulatory basis for the immigration court's jurisdiction—provides otherwise.

49. In fact, EOIR confirmed that § 1226(a) applies to Petitioner when it promulgated the regulations governing immigration courts and implementing § 1226 decades ago. At that time, EOIR explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323.

50. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court should independently interpret the statute and give the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent. 603 U.S. 369 (2024).

51. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009¬546, 3009–582 to 3009–583, 3009–585. Following IIRIRA, the Executive Office for Immigration Review ("EOIR")

issued regulations clarifying that individuals who entered the country without inspection were not considered detained under § 1225, but rather under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

52. The statutory context and structure also make clear that § 1226 applies to individuals who have not been admitted and entered without inspection. In 2025, Congress added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. *See* The Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (8 U.S.C. § 1226(c)(1)(E)).

53. By specifically referencing inadmissibility for entry without inspection under 8 U.S.C. § 1182(6)(A), Congress made clear that such individuals are otherwise covered by § 1226(a). Thus, § 1226 plainly applies to noncitizens charged as inadmissible, including those present without admission or parole.

54. The Supreme Court has explained that § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez,* 583 U.S. at 297-98. In contrast, Section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." *Id.* at 289 (emphases added).

55. Furthermore, § 1225(b)(2) specifically applies only to those "seeking admission," and the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are "coming or attempting to come into the United States." The use of the present progressive tense would exclude noncitizens like Petitioner who are apprehended in the interior years after they entered, as they are no longer "seeking admission" or "coming [...] into the United States." *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in INA § 235(b)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

56. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner, who had entered the U.S. over twenty years ago.

57. There are now almost 2000 rulings rejecting this interpretation and instead have consistently found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. More than 95% of the rulings on this issue have concluded that § 1226 controls, not § 1225.

STATEMENT OF FACTS

58. Petitioner is a citizen of Ecuador.

59. Upon information and belief, Petitioner has resided in the U.S. since approximately 2010.

60. Respondents apprehended Petitioner in Minnesota without a warrant of arrest.

61. Petitioner has not committed an offense that implicates 8 U.S.C. § 1226(c).

62. Petitioner is now detained at the ICE El Paso Camp East Montana located at 6920 Digital Road, El Paso, Texas 79936

63. Without relief from this Court, he faces continued detention without a bond hearing.

REMEDY

64. Respondents' detention of Petitioner under 8 U.S.C. § 1225(b)(2) violates the Due Process Clause of the United States Constitution. Petitioner's ongoing detention violates the Fifth Amendment's guarantee that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const., Amend. 5.

65. Due Process requires that detention "bear [] a reasonable relation to the purpose for which the individual [was] committed." *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001) (citing *Jackson v. Nicaraguana*, 406 U.S. 715, 738 (1972)).

66. Petitioner seeks immediate release to the extent that Respondents justify his detention on 8 U.S.C. § 1225(b)(2), which plainly does not apply to him.

67. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, *I.N.S. v. St. Cyr*, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) ("A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus"), implicit in habeas jurisdiction is the power to order release. Boumediene v. Bush, 553 U.S. 723, 779 (2008) ("[T]he

habeas court must have the power to order the conditional release of an individual unlawfully detained.").

68. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g., Munaf v. Geren*, 553 U.S. 674 (2008) ("The typical remedy for [unlawful executive detention] is, of course, release."); *see also Wajda v. US*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 "is to obtain release from the duration or fact of present custody.").

69. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, "habeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and that as an equitable remedy, federal courts "[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . . to dispose of habeas corpus matters 'as law and justice require.'" *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987), quoting 28 U.S.C. § 2243. An order of release falls under court's broad discretion to fashion relief. *See, e.g., Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) ("Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien's release.").

70. Alternatively, Petitioner requests a constitutionally adequate custody redetermination hearing in which he is not erroneously treated as detained pursuant to 8 U.S.C. § 1225(b)(2) and is instead treated as a detainee under 8 U.S.C. § 1226(a) within seven calendar days.

CAUSE OF ACTION

COUNT I - VIOLATION OF THE IMMIGRATION & NATIONALITY ACT – 8 U.S.C. § 1225(b)(2)

71. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

72. Section 1225 of Title 8 of the U.S. Code governs aliens arriving at the border and seeking admission from outside the country. *See* 8 U.S.C. § 1225.

73. 8 U.S.C. § 1225(b)(2)(A), specifically, cannot apply as it only applies to those "applicants for admission" who are "seeking admission" at the time of detention and Petitioner was not "seeking admission" at the time he was detained, nor is he doing so now. 8 U.S.C. § 1225(b)(2)(A).

74. As Respondents assert authority to detain Petitioner under 8 U.S.C. § 1225(b)(2)(A), and no such authority exists under that provision, he requests that he be immediately released.

COUNT II – VIOLATION OF THE IMMIGRATION & NATIONALITY ACT – 8 U.S.C. § 1226(a)

75. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

76. Section 1226 of Title 8 of the U.S. Code governs the detention of aliens pending a determination of removal from the United States.

77. Such an alien "may [be] release[d] ... on bond of at least $1,500." 8 U.S.C. § 1226(a)(2)(A).

78. The denial of Petitioner's bond eligibility is in violation of 8 U.S.C. § 1226(a)(2)(A), which specifically makes his eligible for bond.

79. If Respondents do not release Petitioner without any conditions, he requests that he be afforded the opportunity to present his case for release in a bond hearing pursuant to 8 U.S.C. § 1226(a)(2)(A).

COUNT III – DECLARATORY RELIEF

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

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

81. 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).

82. 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.*

83. 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).

84. 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).

85. Petitioner's warrantless arrest occurred without probable cause that Petitioner posed 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). Petitioner has built ties to his community. Petitioner fully complied with the ICE officers and in no way tried to disobey or flee. Therefore, no officer could have probable cause that Petitioner was likely to escape before a warrant could be obtained.

86. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue

holding Petitioner. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. Petitioner received no such judicial determination, yet Petitioner's detention continued well beyond 48 hours, rendering it presumptively unconstitutional.

87. Regulations also provide that noncitizen arrested without a warrant must 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).

88. During that custody determination, the immigration officer must make findings as to whether "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). Similarly, upon information and belief, Petitioner has received no such custody determination.

COUNT IV – DECLARATORY RELIEF

89. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

90. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that 8 U.S.C. § 1254a(d)(4) prohibits his detention.

91. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that he is eligible for release from Respondents' custody.

92. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner is not subject to detention under to 8 U.S.C. § 1225(b)(2) and must be released unless Respondents assert authority to detain his under 8 U.S.C. § 1226(c).

93. In the event Respondents assert that Petitioner is detained under 8 U.S.C. § 1226(a), Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner is eligible for release from Respondents' custody pursuant to a bond as set forth at 8 U.S.C. § 1226(a)(1).

COUNT V – VIOLATION OF THE FIFTH AMENDMENT

94. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

95. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

96. Petitioner is not subject to mandatory custody under the Immigration & Nationality Act and is therefore entitled to a bond hearing in which a neutral arbiter may determine the justification for his continued detention under 8 U.S.C. § 1226(a)(2)(A), the denial of which constitutes a violation of the Fifth Amendment's guarantee of due process.

COUNT VI – VIOLATION OF 8 C.F.R. §§ 236.1, 1236.1 AND 1003.19 - UNLAWFUL DENIAL OF RELEASE ON BOND

97. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

98. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission,

[noncitizens] who 26 are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added).

99. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before immigration courts under 8 U.S.C. § 1226 and its implementing regulations.

100. Nonetheless, DHS and EOIR have adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.

101. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

102. As such, the Court must order the Respondents afford Petitioner a bond hearing to comport with these regulatory requirements.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

1. Assume jurisdiction over this matter;

2. Order that Petitioner not be transferred outside of this District pending the duration of these proceedings and transport Petitioner back to Texas if he is moved out of the state or out of the country;

3. Issue an Order to Show Cause ordering Respondents to show cause why Petitioner's Petition should not be granted within three days;

4. Declare that Petitioner's detention is unlawful;

5. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody in Minnesota because Respondents did not detain Petitioner with a warrant of arrest.

6. If Respondents detained Petitioner based on a warrant of arrest, Respondents shall provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) and the Due Process Clause within five business days or immediately release Petitioner in Minnesota for failing to do so;

7. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

8. Grant any further relief this Court deems just and proper.

Date: January 30, 2026

Respectfully submitted,

/s/ Joshua K. Poertner
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Attorneys for Petitioner

Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

We submit this verification on behalf of Petitioner as Petitioner's attorneys. We have discussed the factual assertions in this petition with Petitioner's family, who are also acting on Petitioner's behalf and who we understand to have personal knowledge of the facts alleged herein. We 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 our knowledge.

January 30, 2026

<u>/s/ Joshua K. Poertner</u>
Joshua K. Poertner