IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

MARIO JEOVANI CHIRIBOGA SALAZAR ([redacted]

Petitioner,

v.

PAMELA BONDI, in her official capacity as U.S. Attorney General; KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security; TODD M. LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; DAVID EASTERWOOD, in his official capacity as Field Office Director, Director of Enforcement and Removal Operations, St. Paul Field Office, U.S. Immigration and Customs Enforcement; and JOHN DOE, in his/her/their official capacity as Warden of the relevant detention facility,

Respondents.

Civil File No. _____________

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

REQUEST FOR EMERGENCY TEMPORARY RESTRAINING ORDER

Expedited Handling Requested

INTRODUCTION

1. This case seeks the immediate release of Mario Jeovani Chiriboga Salazar ("Mr. Salazar") 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 January 20, 2026. His location is unknown as the detainee locator system does not reflect his current whereabouts. Upon information and belief, he is not in Minnesota and may be detained in Texas.

2. In light of the information and belief that ICE is/has rapidly moved individuals in its custody out of the District of Minnesota, this petition also requests that the Court's Order to Show Cause ("OSC") immediately enjoin Respondents from moving Petitioner outside of the District of Minnesota or, if he has been transferred outside of Minnesota, requiring his return to Minnesota. Ordering that relief in the OSC is now a nearly universal practice in this District. This Court's entry of injunctive relief in the OSC would avoid the repetitive briefing and strain on the Court's resources presented by the motion for a temporary restraining order that would otherwise become necessary.

3. In the alternative, this petition seeks the transfer of Petitioner back to a facility in Minnesota, where he was originally detained and from which he was transferred to Texas without legal process, and to provide a bond hearing. Petitioner must be returned to Minnesota and released from custody unless and until Respondents prove to a neutral adjudicator, by clear and convincing evidence, changed circumstances that Petition is a flight risk or a danger to the community. Respondents will not be able to do so. Due process requires the government to provide noncitizens with notice and a hearing prior to re-detention, and that re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.

4. Petitioner is a citizen of Ecuador who has resided in the United States for more than 3 years after entering without inspection. Mr. Salazar entered the United States on October 4, 2022. He was paroled into the United States through a port of entry. On his second entry into the United States, Mr. Salazar was arrested at a Texas port of entry and

detained for approximately two months. He was subsequently released on parole after posting an immigration bond. His prior immigration court removal proceedings were dismissed. Mr. Salazar currently has a pending U visa application and has been granted employment authorization.

5. Petitioner has a valid grant of deferred action protecting Petitioner from removal from the United States. Petitioner's deferred action is based on his pending U visa application. Petitioner was granted deferred action on February 20, 2025, and that grant of deferred action is valid until February 19, 2029.

6. Mr. Salazar's detention is unlawful for at least four reasons.

7. First, the government has no legitimate interest in detaining Mr. Salazar when he is neither a flight risk nor a danger—the only two constitutionally permissible reasons for immigration detention. Accordingly, his detention violates his substantive due process rights, requiring his immediate release. The lack of legitimate detention interests is particularly acute here, where Mr. Salazar cannot be removed because of his valid deferred action grant, eliminating any flight risk concerns.

8. Second, due process requires that the government show, in a pre-deprivation hearing, materially changed circumstances before re-detaining Mr. Salazar. When the government released Mr. Salazar from its custody, it determined that he was neither a flight risk nor a danger to the community. Since then, nothing has changed to undermine that determination. On the contrary, support for that determination has only strengthened. Mr. Salazar's detention without any pre-deprivation process violates his procedural due process rights and this alone warrants his immediate release. Moreover, Mr. Salazar's grant of

deferred action created a protectable interest in his continued liberty requiring pre-deprivation process before any detention.

9. Third, the government's position that Mr. Salazar is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is untenable. This Court has repeatedly ruled that § 1225(b)(2)(A) applies to applicants "seeking admission," not to individuals like Mr. Salazar. *See, e.g.*, *Mahad S. v. Noem*, No. 26-CV-476 (JMB/JFD), 2026 WL 177860, at *2 (D. Minn. Jan. 22, 2026); *Ahmed M. v. Bondi*, No. 25-CV-4711 (ECT/SGE), 2026 WL 25627, at *2 (D. Minn. Jan. 5, 2026) (collecting cases). This renders Mr. Salazar current detention unlawful from its inception, in violation of the Immigration and Nationality Act ("INA") and his due process rights.

10. Fourth, Mr. Salazar's warrantless arrest violates his Fourth Amendment rights, as well as statute and regulation, similarly mandating his release. *See, e.g.*, *Ahmed M.*, 2026 WL 25627, at *3 ("[I]t follows that absent a warrant a noncitizen may not be arrested and detained under section 1226(a).") (citation omitted) (alteration in original).

11. For these reasons, Mr. Salazar respectfully asks this Court to declare that his detention is unlawful and order his immediate release.

JURISDICTION & VENUE

12. 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").

13. 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.

14. 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 Mr. Salazar 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.

15. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2), (e)(1), and 2241 because habeas jurisdiction "attached at the time of [Petitioner's] apprehension in this District," when Respondents took custody and control of Petitioner. *Sue H. v. Trump*, Case No. 0:26-CV-00416 (MJD/ECW), Doc. No. 6 at 2 (D. Minn. Jan. 20, 2026). ("Habeas jurisdiction turns on custody and control, not on the Government's unilateral post-seizure movement of the detainee. The position that jurisdiction lies exclusively in the district to which Respondents transfer a petitioner would permit the Government to determine the forum for judicial review through its own logistics. Federal courts may not be divested of jurisdiction in that manner."); *see also Abdiselan A.A. v. Bondi*, Case No. 0:26-CV-00358 (JRT/ECW), Doc. No. 9 at 4 (D. Minn. Jan. 21, 2026) (opining on habeas jurisdiction).

16. Venue is also equitable in this Court because the Petitioner resides in this District, the decision to arrest and detain Petitioner "was directed to personnel within this District, and therefore witnesses and information about the manner of his arrest would also

be found in this District," the custodian can be reached by service of process, transferring venue would prolong Petitioner's detention and the adjudication of his claims, and divesting this Court of jurisdiction through the transfer of detainees to out-of-state facilities without their consent would encourage forum shopping. *Jose A. v. Noem*, Case No. 0:26-CV-00480 (JMB/ECW), 2026 WL 172524 at *2 (D. Minn. Jan. 22, 2026) (citing Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 493 (1973)).

17. Like the petitioner in *Jose A.*, Petitioner has resided in Minnesota for several years and there is no indication of the basis of his detention or what the length of that detention would be. *Id.* Transferring venue to Texas would prolong his detention and the time taken to adjudicate his petition. He should not be penalized because he was unable to file his petition before being transferred due to circumstances outside of his control. The District of Minnesota is the appropriate venue.

PARTIES

18. Petitioner, Mr. Salazar, has lived in the United States for over 3 years. Prior to his detention on or about January 20, 2026, he was residing in Columbia Heights, Minnesota. Petitioner's current location of detention is unknown. Upon information and belief, he is not in Minnesota and may have been transferred to a detention facility in Texas. Mr. Salazar is in the direct control of Respondents.

19. Respondent Pamela Jo Bondi is sued in her official capacity as the U.S. Attorney General. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

20. Respondent Kristi Noem is sued in her 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 Noem is Mr. Salazar's ultimate legal custodian.

21. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. As ICE's Acting Director, Respondent Lyons is a legal custodian of Mr. Salazar.

22. 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 Mr. Salzar. In his official capacity, Respondent Easterwood is a legal custodian of Mr. Salazar.

23. Respondent John Doe is sued in his/her/their official capacity as Warden of the location where Petitioner is presently detained. As Warden, Respondent John Doe oversees the facility where Petitioner is presently detained, and is therefore one of his legal custodians.

REQUIREMENTS OF 28 U.S.C. § 2243

24. 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.*

25. 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).

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

EXHAUSTION OF LEGAL REMEDIES

27. 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).

28. 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 recent 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)).

29. 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 him 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

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

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

32. 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 recent arrivals who are deemed to be "seeking admission" to the United States under 8 U.S.C. § 1225(b)(2).

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

34. The detention provisions of the INA at 8 U.S.C. §§ 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 of the INA was most recently amended last year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

35. Following enactment of the IIRIRA, the U.S. Department of Justice's Executive Office for Immigration Review ("EOIR") drafted new regulations explaining that, in general, individuals who entered the United States without inspection were not considered detained pursuant to § 1225 and that they were instead detained 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.").

36. In the decades that followed the enactment of the IIRIRA, most noncitizens who entered the United States without inspection and who were thereafter detained and placed in standard removal proceedings under 8 U.S.C. § 1229a were considered eligible to seek release on bond and received bond hearings before an IJ unless their criminal history rendered them statutorily ineligible under 8 U.S.C. § 1226(c). This practice was consistent with many decades of prior practice, in which noncitizens who entered the

United States, even without inspection, were entitled to a custody re-determination hearing before an IJ. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that 8 U.S.C. § 1226(a) simply "restates" the detention authority previously found at 8 U.S.C. § 1252(a)).

37. In July 2025, however, DHS contravened this longstanding legal framework by beginning to assert that all individuals who entered the country without inspection should be considered to be "seeking admission" and therefore subject to the mandatory-detention provision of 8 U.S.C. § 1225(b)(2)(A). *See* U.S. Immigration and Customs Enforcement, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

38. On September 5, 2025, the BIA issued a precedential decision adopting DHS's new interpretation of the detention provisions of the INA, departing from the plain language of the text of the INA, federal precedent, and long-standing regulations. *See* *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

39. In recent months, the overwhelming majority of federal courts to consider the issue have rejected Respondents' new interpretation of the custody statutes and have instead found that § 1226—not § 1225(b)(2)—authorizes detention of noncitizens who entered without inspection and who were later apprehended in the interior of the country. *Quintero Campos v. Deleon*, No. 25-CV-10099 (LJL), 2025 WL 3514120, at *2 (S.D.N.Y.

Dec. 8, 2025) (collecting cases ordering immediate release from custody). This court has repeatedly held the same. *See, e.g.*, *Ahmed M.*, 2026 WL 25627, at *2.

40. As discussed *supra*, the detention provisions at issue in this case were enacted as part of the IIRIRA in 1996. Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. After the enactment of the IIRIRA, EOIR issued regulations clarifying that individuals who entered the country without inspection were not considered to be detained under § 1225(b)(2)(A), but rather under § 1226(a). *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

41. In 1997, after Congress amended the INA through the IIRIRA, EOIR and USCIS's predecessor agency, Immigration and Naturalization Services, issued an interim rule guiding interpretation and application of the IIRIRA. Specifically, under the heading "Apprehension, Custody, and Detention of [Noncitizens]," the agencies 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." 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

42. The overall statutory framework of the INA also clearly supports that § 1226 applies to individuals who have not been admitted and who 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* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) (codified in relevant part at 8 U.S.C. § 1226(c)(1)(E)).

43. By specifically referencing inadmissibility for entry without inspection as falling within 8 U.S.C. § 1182(a)(6)(A), Congress clearly expressed its will that such individuals are covered by § 1226(a) if they do not have the sort of criminal history identified in the Laken Riley Act. Accordingly, § 1226 plainly applies to noncitizens who entered without inspection and are later charged as inadmissible within the interior of the country, including those who never received an admission or parole.

44. The Supreme Court has explained that 8 U.S.C. § 1225(b) "applies primarily to aliens seeking entry into the United States," and is generally imposed "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, 297 (2018). In contrast, § 1226 "authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings." *Id.* at 289 (emphasis added).

45. Further, § 1225(b)(2) specifically applies only to those "seeking admission," and the definitions provided at the implementing regulations state that an "[a]rriving alien" is one who is "coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. The use of the present progressive tense would exclude noncitizens like Petitioner who are initially apprehended in the interior of the country over 3 years after they had entered the country, as they cannot reasonably be considered to be actively "seeking admission" or "coming . . . into the United States" after years spent building a life and raising a family within the interior of the country, as is the case for Petitioner. *Id.*; *see*

Martinez v. Hyde, 792 F. Supp. 3d (D. Mass. 2025) (citing the use of the present and present-progressive tenses to conclude that 8 U.S.C. § 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) (interpreting the language "is arriving" in 8 U.S.C. § 235(b)(1)(A)(i) and concluding that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process.").

46. Separately, this case also implicates a grant of deferred action. "Deferred action" is an "affirmative immigration benefit" that operates to "prevent[] recipients' removal from the United States," for a specified period of time, even if they are otherwise potentially removable. *Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901, 909, 912 (W.D. Wash. 2025); *see generally* USCIS Policy Manual [hereinafter "USCIS PM"], Vol. 1, Pt. H, Ch. 2.A.4, https://www.uscis.gov/policy-manual; *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) (noting deferred action means "no action will thereafter be taken to proceed against an apparently deportable alien even on grounds normally regarded as aggravated"); *Victor G. v. Lyons* No. 26-cv-119, 2026 WL 127733, at *2-3 (D. Minn. Jan. 17, 2026) (explaining deferred action). Deferred action does not confer lawful status and does not prevent an immigration judge from issuing a removal order. However, it is a "formal determination" by DHS "not to remove a particular individual," and noncitizens with deferred action are "considered to be in a period of stay authorized under USCIS policy for the period deferred action is in effect." *Sepulveda Ayala*, 794 F. Supp. 3d at 912-13 (citation omitted); *see* 8 C.F.R. § 1.3(A)(4)(vi). Deferred action is "not simply a non-enforcement policy." *DHS v. Regents of the University of Cal.*,

591 U.S. 1, 18 (2020). Rather, it is an "affirmative determination that certain individuals meet enumerated criteria and are entitled to forbearance from removal and work authorization." *Sarmiento v. Perry*, 2026 WL 131917, at *7 (E.D. Va. Jan. 19, 2026) (citing *Regents*, 591 U.S. at 18); *see also* 8 C.F.R. § 274a.12(c)(14) (eligibility for work authorization).

47. Deferred action is granted "based on a prescribed set of factors generally related to humanitarian grounds," *Sepulveda Ayala*, 794 F. Supp. 3d at 912 (citations omitted), often in connection with an application for lawful immigration status for survivors of violence or abuse. For example, deferred action is available for: crime survivors with approved U visa applications or pending applications USCIS has determined are bona fide; trafficking survivors with pending T-visa applications that USCIS has determined are bona fide; domestic abuse survivors with approved self-petitions under the Violence Against Women Act (VAWA), and youth who have been abused, neglected, or abandoned by a parent who have approved petitions for Special Immigrant Juvenile Status (SIJS). 8 C.F.R. §§ 214.14(d)(2), 214.205(c), (e); USCIS PM, Vol. 3, Pt. C, Ch. 5 & Pt. D, Ch. 5.D.2; *see also A.C.R. v. Noem*, No. 25-cv-3962, 2025 WL 102611 (E.D.N.Y. Jan. 14, 2026) (explaining SIJS deferred action program). Deferred Action for Childhood Arrivals (DACA) is also a form of deferred action. *Regents*, 591 U.S. at 10.

48. In deciding deferred action requests, USCIS considers whether the noncitizen warrants a favorable exercise of discretion based on the totality of the evidence. Generally, this evaluation includes consideration of whether the noncitizen poses a danger

to the public or a national security risk. *See, e.g.*, *Victor G.*, 2026 WL 127733, at *3 (noting USCIS "already determined [the petitioner] is not a 'risk to national security or public safety' by virtue of its bona fide determination and grant of employment authorization and deferred action"); *F.R.P. v. Wamsley*, No. 3:25-CV-1917, 2025 WL 3037858, at * 4 (D. Or. Oct. 30, 2025) (explaining that the "mere fact" of the petitioner's VAWA approval, giving rise to deferred action, suggests he is neither a flight risk or a danger to the community, since it required a criminal background check and showing of "good moral character"); *Gamez Lira v. Noem*, No. 1:25-cv-855, 2025 WL 2581710, at *3 (D.N.M. Sept. 5, 2025) (explaining that a DACA grant was evidence that DHS already determined the recipient poses no danger or flight risk).

FACTUAL ALLEGATIONS

49. Petitioner is resident of Columbia Heights, Minnesota and a citizen of Ecuador and has resided in the United States since October 2022.

50. Mr. Salazar is the father of three children, ages 19, 17, and 8. He is the primary financial provider for his family, and he is the primary caretaker of his 8-year-old, responsible for daily tasks and caregiving. He has close ties with his community through his involvement in the Catholic church. He maintains employment at a restaurant and is a notably hard worker. In addition, Mr. Salazar has a physical disability, as an amputee, and health problems that cause extenuating challenges while in detention.

51. Mr. Salazar was previously detained upon entry to the United States on October 4, 2022. He was arrested at a Texas port of entry and detained for approximately two months. Mr. Salazar was subsequently released on parole after posting an immigration

bond, and the immigration court removal proceedings were terminated or dismissed. He now has a pending U visa application and has approved employment authorization.

52. Petitioner has a bona fide pending application for a U visa, and has been granted employment authorization. Based on that application, on February 20, 2025, DHS granted Petitioner deferred action, valid until February 19, 2029. This deferred action protects him from removal while he waits for approval of his U visa application.

53. Respondent ICE arrested Petitioner on or about January 20, 2026, in or around Columbia Heights, Minnesota. Mr. Salazar was arrested while driving to his place of employment, when he was intercepted by immigration agents during the drive. No evidence of a judicial warrant has been provided and there is a lack of probable cause for an arrest in a public space, as well as a stop lacking reasonable suspicion.

54. There was no administrative warrant issued for Mr. Salazar's arrest. To the contrary, he is still on deferred action for his pending U visa and he has employment authorization. Section 1226 detention generally requires that an administrative warrant be issued for arrest. *See Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 961 (D. Minn. 2025). The failure to supply an administrative warrant supports a request for immediate release of Mr. Salazar.

55. Petitioner's location is unknown as the detainee locator system does not reflect his current whereabouts. Upon information and belief, he is not in Minnesota and may be detained in Texas.

CLAIMS FOR RELIEF

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

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

57. 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.

58. 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)).

59. 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).

60. 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.

61. 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.

62. Neither purpose is served by Mr. Salazar's detention. Respondents have not made any claim that Mr. Salazar presents a flight risk or a danger to the community, nor could they. When Mr. Salazar was previously released from detention, the government came to precisely the opposite conclusion—that he did not present any risk of flight or danger.

63. Since then, Mr. Salazar's 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). Mr. Salazar is a hardworking individual with a family who depends on him. He is the father of three children, ages 19, 17 and 8, who rely on him for emotional, financial, and fatherly support. Mr. Salazar's continued detention is causing significant hardship for both him and his family. His youngest daughter, aged 8, relies on him for daily care and transportation to school and activities. He is the primary financial provider for his children, and they have lost a pilar of their family unit through this detention. Mr. Salazar is also a devout Catholic who remains active in his church and community, further reflecting his ties. In addition, Mr. Salazar has a physical disability—

as one of his hands was amputated due to a prior accident—and health problems that cause extenuating challenges while in detention. Further, he remains without any criminal record.

64. Moreover, here, the government's inability to lawfully remove Mr. Salazar given his deferred action eliminates any justification of flight risk. *Victor G.*, 2026 WL 127733, at *2 (ordering release of noncitizen because he had an unrevoked grant of deferred action preventing his removal); *Santiago v. Noem*, No. EP-25-cv-361, 2025 WL 2792588, at *12 (W.D. Tex. Oct. 2, 2025) ("Where an individual is protected from removal through deferred action, their detention serves no valid purpose."); *Juan M. v. Bondi*, No. 26-CV-266 (ECT/JFD), 2026 WL 129059 (D. Minn. Jan. 17, 2026) (granting habeas and ordering immediate release of noncitizen with U deferred action who was arrested and had not yet been placed into removal proceedings, nothing that "Respondents did not respond to Juan's arguments about deferred action, *see* ECF No. 4, meaning Respondents waived any challenge to these arguments."). The lack of flight risk is particularly evident in light of his pending U visa application and employment authorization which will likely eventually allow them to adjust to lawful permanent resident status and then gain citizenship. The government's previous decision to grant deferred action also demonstrates that the government agrees Mr. Salazar poses no danger to the community. *See, e.g.*, *Victor G.*, 2026 WL 127733, at *3; *F.R.P.*, 2025 WL 3037858, at * 4; *Gamez Lira*, 2025 WL 2581710, at *3; *Juan M.*, 2026 WL 129059 at *1-2.

65. Because the government is not detaining Mr. Salazar 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.

See Victor G., 2026 WL 127733, at *2; *Juan M. v. Bondi*, No. 26-cv-266, 2026 WL 129059, at *1-2 (D. Minn. Jan. 17, 2026) (ordering immediate release where noncitizen argued detention despite a grant of deferred action violated substantive and procedural due process); *Luis S.I. v. Easterwood*, No. 26-cv-533, 2026 WL 253630, at *1-2 (D. Minn. Jan. 28, 2026), *report and recommendation adopted*, 2026 WL 257119 (Jan. 31, 2026) (similar).

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

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

67. 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.

68. Courts use the three-factor *Mathews v. Eldrige* 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.

69. The first *Mathews* factor weighs heavily in Mr. Salazar's favor. Mr. Salazar has a strong liberty interest in light of his prior release and liberty pursuant to a grant of deferred action. *See, e.g.*, *Gamez Lira*, 2025 WL 2581710, at *3 (finding DACA recipient had "a protectable liberty or property interest" in case challenging his detention where "he lived under the understanding" that enforcement, including attendant detention, was unlikely); *Oscar C.M. v. Lyons*, No. 1:25-cv-1915, 2025 WL 3712285, at *3 (E.D. Cal. Dec. 22, 2025) (finding a grant of deferred action "increased Petitioner's reliance on his liberty interest").

70. The second *Mathews* factor also weighs in Mr. Salazar's favor. Mr. Salazar was previously released from detention after being found that he is neither a danger nor a flight risk and was previously granted deferred action, which demonstrates DHS found he did not pose a flight risk or danger. His re-detention—without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond—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. Under these circumstances, the risk of erroneous deprivation of his liberty is high and the second *Mathews* factor weighs heavily in Mr. Salazar's favor.

71. The third factor favors Mr. Salazar as well. Mr. Salazar's erroneous detention imposes high fiscal and administrative burdens on Respondents. Releasing Mr. Salazar and requiring the government to provide a pre-deprivation hearing before re-detaining him stands to save the government money and effort wasted on erroneous detention. And

unlawful detention and violation of noncitizens' constitutional rights disserve the public interest.

72. Respondents violated procedural due process by detaining Mr. Salazar without adequate procedural protections before or after deprivation of his liberty. *See, e.g.*, *Feisal O. v. Noem*, No. 26-CV-81 (JMB/EMB), 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026) (concluding that the redetention of a person previously ordered released without any pre-redetention process violated the Due Process Clause); *Juan M.*, 2026 WL 129059, at *1-2; *Luis S.I.*, 2026 WL 253630, at *1-2; *Santiago*, 2025 WL 2792588, at *13 (detention of DACA-holder violated procedural due process); *B.D.A.A. v. Bostock*, No. 6:25-cv-2062, 2025 WL 3484912, at 5-7 (D. Or. Dec. 4, 2025) (detention of recipient of U visa-based deferred action violated procedural due process). Therefore, this Court should order Mr. Salazar's release without any restraints on his liberty and prohibit any re-detention absent pre-deprivation process. *Id.* (ordering release on that basis); *see also Mahad S. v. Noem*, No. 26-CV-476 (JMB/JFD), 2026 WL 177860, at *3 (D. Minn. Jan. 22, 2026).

COUNT THREE
Violation of the Immigration and Nationality Act and Procedural Due Process

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

74. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings. First, 8 U.S.C. § 1226 "authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Individuals detained under § 1226(a) are

generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). However, noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention under § 1226(c). *See* 8 U.S.C. § 1226(c).

75. Second, the INA provides for brief mandatory detention of noncitizens with final orders of removal. *See* 8 U.S.C. § 1231.

76. Third, the INA also provides for mandatory detention of two groups of noncitizens encountered "at the Nation's borders and ports of entry." *Jennings*, 583 U.S. at 288. The first group consists, generally, of those who are subject to expedited removal for being apprehended upon arrival near the border or for being unable to show that they have been physically present in the United States for more than two years until a determination has been made as to whether they have a credible fear of persecution. 8 U.S.C. § 1225(b)(1).

77. The second group subject to mandatory detention consists of anyone alleged to be an "applicant for admission" who is "seeking admission" and whom an "examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

78. Respondents claim that Mr. Salazar is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). But courts across the United States have overwhelmingly concluded that noncitizens like Mr. Salazar 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). This Court has concluded the same time and time again. *See, e.g.*, *Ahmed M.*, 2026 WL 25627, at *1 (D. Minn. Jan. 5, 2026) ("Every judge in this District to have addressed this question . . . has decided that § 1226(a)'s discretionary regime applies in cases like this, where the Petitioner has been in the country for some time and where his detention did not occur in connection with an attempt or request to enter the United States.").

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

COUNT FOUR
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. Mr. Salazar 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. 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).

83. 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).

84. Mr. Salazar'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, Mr. Salazar had been in the United States for over 3 years and built strong ties to his community and was the recipient of a formal grant of deferred action from DHS. Moreover, Mr. Salazar fully complied with the ICE officers and in no way tried to disobey or flee. Therefore, no officer could have probable cause that Mr. Salazar was likely to escape before a warrant could be obtained.

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

86. 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). 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. Salazar has received no such custody determination.

87. Mr. Salazar's re-detention after a prior release, without any new showing of probable cause, was also unconstitutional. When the government releases a person from detention, the purpose of their detention has been accomplished. *See Williams v. Dart*, 967

F.3d 625, 634 (7th Cir. 2020) ("It is axiomatic that seizures have purposes. When those purposes are spent, further seizure is unreasonable."). As a result, any probable cause justifying the prior arrest, if any, is extinguished.

88. Thus, under the Fourth Amendment, the government cannot re-arrest someone without changed circumstances that amount to new probable cause. *See Carlson v. Landon*, 342 U.S. 524, 546–47 (1952) (holding that re-arrest for immigration detention required a new warrant after previous release from immigration detention on bail).

89. Respondents' warrantless re-arrest of Mr. Salazar without changed circumstances, and their refusal to provide a prompt (or any) probable cause determination, violated the Fourth Amendment, the INA, and implementing regulations. Thus, this Court should order his release.

REMEDY

90. The appropriate remedy for Respondents' unlawful conduct is Mr. Salazar's immediate release.

91. Immigration detention is civil in nature, and as a result Congress must have expressly authorized it by statute, and the detention must be reasonably related to its statutory purpose. *Zadvydas*, 533 U.S. at 687, 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

92. When a habeas petitioner's detention is without legal basis, the typical remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the "typical remedy" for "unlawful executive detention").

93. To the extent that Respondents may argue, as they have in similar cases before this Court, that the appropriate remedy here is a bond hearing as opposed to outright release, this Court has squarely rejected that argument. *See, e.g.*, *Juan R. v. Bondi*, No. 26-CV-252 (SRN/DTS), 2026 WL 125255, at *3 (D. Minn. Jan. 16, 2026) ("[A] bond hearing presupposes lawful detention authority under § 1226. Where that authority has not been invoked or established, ordering a bond hearing would treat the absence of statutory power as a mere procedural irregularity rather than a substantive defect." (citation omitted))

94. 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. *See, e.g.*, *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 had no such warrant.

PRAYER FOR RELIEF

WHEREFORE, Petitioner that this Court:

1. Assume jurisdiction over this matter;
2. Immediately issue an Order to Show Cause:
   a. Enjoining Petitioner's removal or transfer outside of this District pending adjudication of this petition, if he remains in Minnesota;
   b. Requiring Petitioner's return to Minnesota with (a) all personal documents and belongings, such as driver's license, work permit, passport, other immigration documents, cell phone, and any medication (b) without conditions such as ankle monitors or tracking devices, and (d) with all

clothing and outerwear he was wearing at the time of detention, or other proper winter attire, if he has been transferred out of the state;

c. 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. 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

5. Grand Petitioner any further relief that this Court deems to be just and proper.

Dated: February 6, 2026

DORSEY & WHITNEY LLP

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Attorney for Petitioner

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

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. My colleague and I have discussed the factual assertions in this petition with Petitioner's immigration attorney who has been in regular communication with Petitioner and his family and who is also acting on Petitioner's behalf and who I understand to have personal knowledge of the facts alleged herein. 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 6th day of February, 2026.

s/ Nicole Engisch
Nicole Engisch
Attorney at Law

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant, the undersigned certifies and states that the true and correct copies of this Petition for Writ of Habeas Corpus will be served upon all counsels of record via the online CM/ECF system, on or before February 6, 2026.

s/ Nicole Engisch
Nicole Engisch