UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Riky Morales Lopez,

Petitioner,

v.

Todd Blanche, Attorney General, United States Department of Justice,

Markwayne Mullin, Secretary, U.S. Department of Homeland Security,

Todd M. Lyons, Acting Director of Immigration and Customs Enforcement,

Respondents.

Case No. 0:26-cv-01429

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO ENFORCE ORDER GRANTING PETITION FOR WRIT OF HABEAS CORPUS AND FOR CONTEMPT

INTRODUCTION

Respondents ***again*** illegally re-detained Petitioner. In doing so, they violated this Court's Order enjoining them from "re-detaining Petitioner under this same statutory theory, absent materially changed circumstances." ECF No. 7 at 4 ("Order"). Respondents actions represent the latest in an "ongoing failure to comply with the Court's orders." ECF No. 42 at 4.

Respondents claimed change in material circumstances is the Eighth Circuit's decision in *Avila v. Bondi*, and the fact that – this time – ICE got a warrant. But Respondents also agree that there are no changes in material circumstances with respect to anything *specific to Petitioner*. This falls far short of what the law and this Court's order requires as a predicate for Petitioner's re-detention. Indeed, under Respondents' theory, any of the thousands of immigrants who were released pursuant to habeas

decisions in this District could be redetained at any time, without any material change in circumstances specific to that individual.

Respondents' attempts to justify their disregard for this Court's orders are meritless for myriad reasons. First, the 1-200 warrant detained Petitioner under 1226(a), not 1225(b)(2), so *Avila* is irrelevant. Second, Respondents did not appeal the Order and cannot collaterally attack it through re-detention – *Avila* notwithstanding. Third, a material change in circumstances must be specific to Petitioner. Fourth, Petitioner's detention violates the due process clause. Fifth, Petitioner has deferred action status, meaning he cannot be deported. If he cannot be deported, he should not be detained.

After being illegally detained for more than 30 days earlier this year, Petitioner has been detained for another 5 days and counting. Petitioner respectfully asks the Court to immediately release Petitioner from custody and hold Respondents in contempt for their willful violation of this Court's Order.

STATEMENT OF FACTS

This motion arises from Petitioner's Petition for Writ of Habeas Corpus. Petitioner filed his Petition for Writ of Habeas Corpus on February 13, 2026. ECF No. 1. On February 17, 2026, the Court granted Petitioner's Petition for a Writ of Habeas Corpus and ordered that Respondents were "ENJOINED from re-detaining Petitioner under this same statutory theory, absent materially changed circumstances." Order at 4. ICE issued a Notice to the Court on March 6, 2026, that all conditions of release with respect to Petitioner were not revoked. ECF No. 15. Petitioner was illegally detained for over 30 days prior to release. ECF No. 1.

Respondents first violated the Order by failing to return Petitioner's property, necessitating a contempt hearing. As the Court observed, "The Court remains troubled that its intervention was necessary to compel compliance with its orders, and to ensure the safety, liberty, and well-being of persons who were subject to unlawful arrest and detention. The Court regrets the hardship imposed on Petitioners by the United States Government." ECF No. 42 at 6.

On August 12, 2026, Petitioner pled guilty in Dakota County Court to a gross misdemeanor carrying of a BB gun in a public place in violation of Minnesota Statute 624.7181.2, as well as driving without a license. Declaration of Joshua J. Rissman ("Rissman Decl."), Exhibit 1. Petitioner was sentenced to probation and time served. *Id.* ICE issued a detainer to Dakota County, and custody of Petitioner was transferred to ICE. Petitioner was arrested by ICE pursuant to a Form 1-200 warrant. Rissman Decl. Exhibit 2. The warrant states that "Any immigration officer authorized pursuant to sections 236 [8 U.S.C. § 1226] and 287 [8 U.S.C. § 1357] of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations." *Id.* Petitioner is currently detained at the Sherburne County jail. Rissman Decl. ¶ 3.

Counsel for Respondents met and conferred with the undersigned Friday, August 14, 2026. *Id.* ¶ 4. Respondents confirmed that the misdemeanor charges are not a material change in circumstances that to or are relevant to the re-detention. *Id.* ¶ 7. Respondents stated their position was the subsequent *Avila* v. *Bondi* decision from Eighth Circuit, and ICE obtaining a warrant this time, was the material change in circumstances that allowed

them to re-detain Petitioner under 1225(b)(2). *Id.* ¶ 8. Respondents were unaware of any cases where a Petitioner with a successful habeas petition was re-detained under these circumstances. *Id.* ¶ 9.

At the time of this filing, Respondents have still not released Petitioner.

ARGUMENT

I. The Court has Inherent Authority to Enforce its Own Order

This Court has authority to enforce its Order Granting Writ of Habeas Corpus and to fashion relief that gives that order practical effect. The All Writs Act authorizes federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions." 28 U.S.C. § 1651(a). Section 2243 similarly directs habeas courts to "dispose of the matter as law and justice require." 28 U.S.C. § 2243. Courts have recognized that, when a habeas petitioner moves to enforce a prior habeas order, the court must determine whether the detaining authority "complied with the remedy designed by the district court in the underlying habeas proceedings," and whether noncompliance entitles the petitioner to release. *Rose v. Guyer*, 961 F.3d 1238, 1246 (9th Cir. 2020); *see also Gentry v. Deuth*, 456 F.3d 687, 692 (6th Cir. 2006) ("A federal district court retains jurisdiction to determine whether a party has complied with the terms of a conditional order in a habeas case."); *Diaz Ortiz v. Smith*, 384 F.Supp.3d 140, 142–43 (D. Mass. 2019) (considering motion to enforce conditional habeas writ in immigration detention context).

Where custody is unlawful, release is the ordinary habeas remedy. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("Habeas is at its core a remedy for unlawful executive detention. The typical remedy for such detention is, of course, release."); *see also Fay v. Noia*, 372

U.S. 391, 401–02 (1963) ("[I]f the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release."), (overruled in part on other grounds by *Wainwright v. Sykes*, 433 U.S. 72 (1977)). Accordingly, this Court has the authority to find that Respondent has violated its order and to order Petitioner's immediate release.

II. There has Been No Material Change in Circumstances

Respondents have defied the Court's order to not redetain Respondent on the same statutory authority absent a material change in circumstances. *See generally* Order. Respondents concede they did re-detain Petitioner on the same statutory authority, but that *Avila* and issuance of a warrant are the material change in circumstances. Their argument is meritless.

A. Petitioner's arrest warrant was issued under 1226(a), not 1225(b)(2).

Petitioner was arrested pursuant to a Form 1-200 warrant. Rissman Decl. Exhibit 2. This Court has determined that the 1-200 warrant invokes the discretionary detention features of 1226(a), not the mandatory detention issue present in *Avila*. *Francisco M.A. v. Blanche*, No. CV 26-2032 (JRT/EMB), 2026 WL 1229701, at *1 (D. Minn. May 5, 2026) ("Because Respondents represented to Petitioner that his arrest was based on § 1226(a), the Court will hold Respondents to those representations.") The warrant here parrots exactly the language in *Francisco*: The warrant was directed to: "Any immigration officer authorized pursuant to sections 236 [8 U.S.C. § 1226] and 287 [8 U.S.C. § 1357] of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations." Compare Rissman Decl. Exhibit 2

with *Francisco*, 2026 WL 1229701, at *1.

The only purported change in circumstance was *Avila*, but Petitioner was not arrested under the mandatory detention provision 1225(b)(2). That is, the purported change in circumstances was not applicable to Petitioner. Therefore, the Court's Order enjoining Defendants is being violated; the analysis can and should end there with Petitioner's release.

B. The subsequent *Avila* decision is Not itself a material change in circumstances.

Respondents elected to not appeal this Court's decision granting habeas relief and enjoining re-detention. Respondents cannot collaterally attack the judgment and Order by rearresting Peittioner. Respondents' reliance on *Avila* flies in the face of black letter principles of *res judicata*. The Supreme Court has long held the *res judicata* consequences of a final, unappealed judgment on the merits are not "altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case." *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981). A judgment based on "an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause of action." *Id.* (internal citation and quotation omitted). Respondents had the opportunity to appeal and did not. Respondents cannot now collaterally attack the Order through rearrest and indefinite detention. The rearrest is nothing more than pursuing the same statutory theory without a change in material circumstances.

C. Nothing material has changed for Petitioner

A "material change in circumstances" can only occur if something happened unique to Petitioner. Nothing has transpired with respect to Petitioner that would constitute a change in circumstances, let alone a material change. Respondents admit that their purported change has nothing to do with Petitioner. Their spurious reasoning amounts to providing "zero reasons as to *what* changed circumstances exist." *Roble v. Bondi*, 803 F. Supp. 3d 766, 771 (D. Minn. 2025) (concluding mere recitation of the language of the regulation does not satisfy the Government's obligation to provide the 'reasons' why Petitioner's Order of Supervision was revoked.). Without any change in circumstances – let alone a material change – Respondents acted without any legal basis to re-detain Petitioner.

III. The Re-Arrest and Indefinite Detention of Petitioner Violates the United States Constitution

Even if the Order did not technically violate the Court's order, Petitioner's re-detention violates due process. First, Respondents previously removed all conditions of Petitioner's release. ECF No. 15. Respondents cannot now revoke that release without providing notice, and an opportunity to be heard – in addition to demonstrating a material change in circumstances, as described *supra*. *Roble*, 803 F. Supp. 3d at 771. The government concedes that nothing changed vis-à-vis Petitioner. Accordingly, they cannot revoke his release without due process.

Second, indefinite detention violates due process for the reasons outlined in Petitioner's initial Petition for Habeas Corpus. *See* ECF No. 1. This Court found as much in *Axel J.M.C. v. Stanski*, a substantially similar case where the Court concluded that the

petitioner's continued detention violates the Due Process Clause of the Fifth Amendment. No. CV 26-2281 (JRT/EMB), 2026 WL 1171344, at *4 (D. Minn. Apr. 29, 2026). Although a bond hearing was ordered in that case, the Court's reasoning in *Axel J.M.C* order weighs heavily in favor of immediate release in this case.

IV. Petitioner is not Otherwise Deportable Because He Has "Deferred Action" Status

As described in the Petition for Writ of Habeas Corpus Petitioner, ECF No. 1, Petitioner applied for a U-1 VISA as a crime victim and was given "bona fide" deferred status by USCIS. Rissman Decl. Exhibit 3; ECF No. 7 at 2. As explained by the Supreme Court, if a U visa petition is deemed bona fide, USCIS grants the petitioner "deferred action," along with work authorization. "Deferred action" refers to an "exercise in administrative discretion" under which "no action will thereafter be taken to proceed" with the applicant's removal from the United States. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) (citation omitted). Petitioner was granted deferred action status which is still in effect and which Courts have found constitutes "the Government's decision *not* to proceed with removal." *Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901, 906 (W.D. Wash. 2025). Thus, his continued detention – which is based on Defendants' intention to remove him– lacks any legal basis and violates Petitioner's due process rights. *Id.* at 911-914 (granting habeas relief to petitioner with deferred action status). Several courts in this district have granted habeas relief "where the government seeks to remove noncitizens whose deferred action status remains in effect." *Walter A. v. Berg,* No. 25-CV-4720 (SRN/LIB), 2025 WL 3707593 (D. Minn. Dec. 22, 2025) (citing *Sepulveda Ayala*); *Victor G. v. Lyons* No. 26- cv-119, 2026 WL 127733, at *2-3 (D. Minn. Jan. 17, 2026)

(explaining deferred action); *see also Guerra Leon v. Noem,* No. 3:25-cv- 01495- TAD-KDM, ECF No. 21 (W.D. La. Oct. 30, 2025) (same).

Deferred action is "not simply a nonenforcement 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).

Respondents failed to respond to the deferred action argument raised in the Petition, thereby waiving the issue. *Juan M. v. Bondi*, No. 26-CV-266 (ECT/JFD), 2026 WL 129059, at *2 (D. Minn. Jan. 17, 2026) ("Respondents did not respond to Juan's arguments about deferred action… meaning Respondents waived any challenge to these arguments."). Due to the waiver and on the merits, Petitioner is not removable. Therefore, there is no basis to detain him regardless of *Avila v. Bondi* or the warrant. Even if *Avila* is a material change in circumstances, the Order still stands, or the Court should consider and grant habeas relief based on the grounds raised by in the Petition.

V. Respondents Should be Held in Contempt

Federal courts possess statutory authority to impose contempt sanctions for disobedience of court orders in civil cases. *See* 18 U.S.C. § 401 (granting courts of the United States the power to punish by fine for contempt of its authority, including "[d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command."); *see also* Fed. R. Civ. Pro. 70 (granting courts authority hold disobedient parties in contempt

for failure to comply with judgment as ordered by the court).

Courts in this circuit have recognized that appropriate sanctions include monetary fines and the issuance of a writ of body attachment for incarceration until the contempt is purged. *See Fischer v. Marubeni Cotton Corp.*, 526 F.2d 1338, 1340 (8th Cir. 1975) (awarding the movant costs, including attorneys' fees, as a sanction for the other party's contempt of court); *Int'l Brotherhood of Electrical Workers, Local Union No. 545 v. Hope Electrical Corp.*, 293 F.3d 409, 418 (8th Cir. 2002) ("[a]s a general matter, when a litigant refuses to respect the authority of the court, it is not an abuse of discretion for the court to hold the litigant in contempt and impose a sanction to coerce compliance."); *Painters Dist. Council No. 2 v. Paragon Painting of Missouri, LLC,* 2011 WL 4759772 (E.D. Mo. Sept. 1, 2011) (monetary fine of $200 per day).

"A district court may impose civil contempt sanctions for one of two purposes: to compensate parties aggrieved by contumacious conduct or to coerce compliance with the court's orders." *Chaganti & Assocs., P.C. v. Nowotny*, 470 F.3d 1215, 1224 (8th Cir. 2006). Petitioner has lost his liberty due to Respondents' non-compliance with the Court's order, which is but the latest instance of Respondent's willful disobedience of court orders in this case and others. Although no exact price can be put on liberty, Petitioner suggests that $1000 per day be payable to Petitioner for each day he was wrongfully detained.

Petitioner further requests that Respondents be ordered to pay Petitioner's attorney fees and costs in bringing this motion. To the extent the Court wishes to have a hearing on the contempt, Petitioner requests he first be released and the contempt be dealt with subsequently to avoid any prolonged detention.

Dated: August 18, 2026

s/Joshua J. Rissman
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