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 (JRT/JFD) **PETITIONER'S REPLY IN SUPPORT OF MOTION TO ENFORCE ORDER GRANTING PETITION FOR WRIT OF HABEAS CORPUS AND FOR CONTEMPT**

INTRODUCTION

In its order granting Petitioner's petition for habeas corpus, the Court enjoined Respondents "from re-detaining Petition under this same statutory theory, absent materially changed circumstances." ECF No. 7 ("Order"). Having now done this very thing, Respondents audaciously assert that this Court's Order is moot, and that the Court has no authority to enforce its own order. Neither assertion is supported in law or fact. Respondents further demonstrate no material change in circumstances occurred because (1) they rely on removal proceedings initiated prior to the issuance of the first order, and (2) do not attempt to justify their failure to appeal the Court's Order, rendering *Avila* an immaterial change. Lastly, Respondents ignore the mountain of authority granting habeas petitions to immigrant detainees with deferred action. The Court should grant Petitioner's

motion, order his immediate release and issue an order to show cause on the contempt portion of the motion.

ARGUMENT

I. The *Ongoing* Detention of Petitioner in Violation of this Court's Order is Anything but Moot

Respondents' primary argument is that this Court lacks the authority to enforce its own order because the case is moot. Federal Respondents' Response to Motion to Enforce ("Respondents' Br.") at 4-8. Out of the gate, this argument fails. As Judge Bryan observed in the habeas context, after a judgment is entered, a district court "retains ancillary jurisdiction to 'manage its proceedings, vindicate its authority, and effectuate its decrees.'" *Emilio P. v. Bondi*, No. 26-CV-850 (JMB/SGE), 2026 WL 593785, at *4 (D. Minn. Mar. 2, 2026) (citing *Jenkins v. Kan. City Mo. Sch. Dist.*, 516 F.3d 1074, 1081 (8th Cir. 2008) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 380 (1994)). "After all, if this was not the case, 'the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution.'" *Id.* (citation omitted).

Respondents first suggest that the Court's order was somehow limited to Petitioner's "original detention" and that when he was released from custody, he no longer had a live controversy in which the Court could enforce orders. *Id.* First, Petitioner is being indefinitely detained. It is hard to imagine a less moot issue than a person currently having their constitutional rights violated through unlawful detention. Second, this spurious interpretation would render the Court's prohibition on Respondents re-detaining Petitioner *meaningless*.

Rather, the law is clear that Courts have the authority to enforce their own habeas corpus orders. *Emilio P.*, 2026 WL 593785, at *4; *Oacyr Gava Jr. v. Bondi*, 26-cv-02260, ECF No. 14 (W.D. Tex. Aug. 14, 2026) (granting motion to enforce habeas order based on re-detention of Petitioner one month after initial release and ordering immediate release).[1]

Respondents cite one single case for their remarkable assertion that this Court lacks the authority to enforce its own injunction, but *Kargbo v. Brott* is readily distinguishable from the facts here, and in any case does not support the conclusions for which Respondents cite it. In *Kargbo,* the petitioner received a removal order and filed a habeas petition to challenge his post-removal-order detention, requesting that the court release him from custody subject to conditions, namely that he can be re-detained pursuant to the removal order if ICE finds "a third country willing to accept [him] into their borders on a permanent basis[.]" *Kargbo v. Brott*, No. 15–CV–2713 (PJS/LIB), 2016 WL 3676162, at *1 (D. Minn. July 6, 2016). Prior to an order on the petition, ICE released petitioner from custody pursuant to 8 C.F.R. § 241.13(i)(2), which provides that individuals with active removal orders may have their release revoked if "there is a significant likelihood that the alien may be removed in the reasonably foreseeable future."). The district court found that, because the habeas petition asked for relief that was identical to the conditions imposed by ICE as a matter of statute, the petition and R&R were moot. *See id.*, at *2-3 (even if the Court granted the petition, "Kargbo would find himself in *precisely* the situation in which he

[1] Because Petitioner's habeas case is not moot, he need not address why it fits into an exception to the mootness doctrine, to which Respondent's devote the lion's share of their brief. *See* Resps' Br. at 5-8.

already finds himself. Absolutely nothing would change. This is the very definition of mootness."

Petitioner, unlike *Kargbo*, is currently in custody and the relief requested – his immediate release – *would* be the opposite of his current situation. There is simply no analogy between *Kargbo* and the case at hand.[2]

II. Nothing Material with Respect to Petitioner Has Changed

The Court's order enjoined Respondents from re-detaining under "the same statutory theory absent a change in material circumstances." First, Respondents confirm that they are operating under the same statutory theory: 1225(b)(2) mandatory detention under *Avila.* In the words of Respondents, "both legal and factual material changed circumstances exist: the Eighth Circuit's ruling in *Avila*. . . The sole basis for Court concluding that Petitioner's arrest was unlawful has now been invalidated." Respondents' Br. at 9.[3]

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[2] Respondents' lengthy quotation to *Kargbo* on page 7 of their brief omits crucial context. Kargbo's operative habeas petition related to his detention following his receiving a removal order. 2016 WL 3676162, at *1. Assuming that the government would not seek a second removal order, the only reason the government could re-detain Kargbo would be due to a violation of his conditions of release or circumstances changed and his removal became significantly likely – grounds for detention that are categorically different from the grounds of his original detention, removal proceedings. *See id.* at *2. This is in stark contrast to Petitioner who was first detained for removal proceedings which "remain pending," and then *again detained for removal proceedings*. *See* Respondents' Br. at 2-3.

[3] The fact the warrant references 1226(a) does not change the theory by which Respondents justify detention, but further demonstrates that *Avila* is not a material change in circumstances because *Avila* deals with detention under 1225(b)(2).

Second, Respondents confirm the purported material change in circumstances consists of two things: 1) the change in legal landscape in *Avila*, and 2) the issuance of a warrant justified by removal proceedings initiated on February 15, 2026. Respondents Brief, at 9. Neither of these are a material change in circumstances.

Respondents are seeking to undo the Court's Order by circumventing *res judicata*. In their words, "The aggrieved harm which the Court remedied by ordering release – ongoing unlawful detention under what was then-determined-to-be a flawed reading of INA § 1225(b)(2) – no longer exists." Respondents Br., at 9. For the first time, Respondents "object" to being enjoined from re-detaining Petitioner as "an overly broad remedy in a habeas proceeding." *Id.* The remedy for such complaints was an appeal. Indeed, *Avila* was issued by the Eighth Circuit during Respondents' 60-day appeal period. *Compare* ECF No. 7 (February 17, 2026) and *Avila* (March 25, 2026). Respondents do not even attempt to contest, and thereby waive, the basic *res judicata* principle that a final, un-appealed order cannot be disturbed even by contradictory controlling precedent. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981). The un-appealed final Order stands and must be enforced, *Avila* notwithstanding.

Second, the pendency of removal proceedings is no change at all. Respondents justified their warrant based on the NTA issued February 15. Respondents Br., at 9. The warrant expressly states the basis for detaining Petitioner is "the pendency of ongoing removal proceedings against the subject." Exhibit D, ECF No. 66-4. Fatal for Respondents, the Court granted the habeas petition two days *after* the NTA was issued, on February 17. ECF No. 7. Thus, the NTA for the present detention was in place when the Court ordered

Petitioners release and enjoined Respondents from re-detention *absent a change in material circumstances. Id; Roble v. Bondi,* 803 F.Supp.3d 766 (granting habeas where no changed circumstances existed because "removal is [no] more likely than the day he was released").

Further, Petitioner's misdemeanor convictions are only relevant insofar as Petitioner's brief detention in Dakota County allowed ICE the opportunity to apprehend Petitioner. The convictions themselves are irrelevant as conceded by Respondents.[4] Rissman Decl., ECF No. 56, at ¶ 7.

There is no change in circumstances, let alone any material change. If Respondents may ignore the Court's order here, they could re-detain any successful habeas petitioner regardless of a court order enjoining them from doing so based solely on learning that individual's location. Respondents have provided no authority allowing ICE to re-detain under these purported changes in circumstances, which are likely applicable to every successful habeas petitioner in the district. This Court should not be the first to allow ICE to ignore a federal court order.

[4] Despite labeling it a "gun crime", possession of a BB gun in a public place is not a deportable crime under the immigration statute because a BB gun is not a firearm. Section 1227(a)(2)(C) makes an alien deportable if convicted of possessing "any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of Title 18)" Under 18 U.S.C. § 921(a)(3), a "firearm" means "any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive." BB guns use compressed air or gas pressure to propel projectiles, not explosive action, and therefore fall outside this definition.

III. Respondents Indefinite Detention Violates Due Process

Petitioner's indefinite detention violates due process and Respondents barely say otherwise. Respondents only respond to the first of two distinct due process arguments that Petitioner was not given notice, and an opportunity to be heard *prior* to his release being revoked, as new arguments. A second argument, to which Respondents ignore, is that indefinite detention itself violates due process. That argument was made squarely in the first petition, and this Court has granted petitions on the same grounds. ECF No. 1 at 19-20; *Axel J.M.C. v. Stanski*, No. CV 26-2281 (JRT/EMB), 2026 WL 1171344, at *4 (D. Minn. Apr. 29, 2026).

IV. Respondent Must be Released Because He Has Deferred Action

Respondents concede Respondents' deferred action status and do not contest they waived the arguments by failing to respond in the original Petition. ECF No. 7, at 2, n.2. Still Respondents suggest they could still initiate removal proceedings against Petitioner. That argument was squarely rejected in *Nevarez Jurado v. Freden*, 813 F. Supp. 3d 376, 390 (W.D.N.Y. 2025), which held the grant of deferred action demonstrated "there is no significant likelihood of his removal in the reasonably foreseeable future." Without a likelihood of removal, there is no basis to detain. *Id.*; *Victor G. v. Lyons*, No. 26-CV-119 (ECT/SGE), 2026 WL 127733, at *3 (D. Minn. Jan. 17, 2026). Respondents attempt only to distinguish *Walter A.*, 25-cv-4720, but ignore the factually similar *Victor G.* and *Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901, 906 (W.D. Wash. 2025). Indeed, cases are legion granting habeas petitions to immigrants with deferred action status. *Jaime D.B. v. Easterwood*, No. 26-CV-891, 2026 WL 578754, at *2 (D. Minn. Feb. 25, 2026), *R&R*

adopted, 2026 WL 592854 (D. Minn. Mar. 2, 2026) ("The Court agrees with 'an ever-growing number of district courts across the country. . .that an unrevoked grant of deferred action prevents removal.'"); *Marcos L. v. Noem*, No. CV 26-CV-676, 2026 WL 327953, at *2 (D. Minn. Feb. 3, 2026), *R&R adopted,* 2026 WL 331418 (D. Minn. Feb. 8, 2026). Respondents cite no authority denying a habeas petition to a detained immigrant with deferred action status. This Court should not be the first to do so.

Courts in this District order immediate release, and not a bond hearing, for petitioners with deferred action status. *Victor G.*, 2026 WL 127733, at *3, *Marcos L.*, 2026 WL 327953, at *3; *Jaime D.B.*, 2026 WL 578754, at *3. As Judge Tostrud observed in *Victor G.*, "USCIS has already determined that [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." *Victor G.*, 2026 WL 127733, at *3. Judge Tostrud concluded that entitlement to a bond hearing under 1226(a) is not relevant to a petition on deferred action grounds. *Id.*, at *3, n. 4. Petitioner should be immediately released, not granted a bond hearing.

CONCLUSION

Petitioner respectfully requests this Court grant the motion to enforce, order his immediate release, and issue an order to show cause why Respondents should not be held in contempt.

Dated: August 20, 2026

Respectfully submitted,

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