IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Rosa VASQUEZ SALGUERO, individually and on behalf of minor child [redacted],

Petitioners,

v.

Pamela Jo BONDI, in her official capacity as Attorney General of the United States;

Kristi NOEM, in her official capacity as Secretary of the Department of Homeland Security;

Todd LYONS, in his official capacity as Acting Director of United States Immigration and Customs Enforcement;

David EASTERWOOD, in his official capacity as Acting Director, St. Paul Field Office, U.S. Immigration and Customs Enforcement;

Peter SALINAS, in his official capacity as Sheriff of Frio County;

Respondents.

Case No.

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

INTRODUCTION

1. This case seeks the immediate release of Rosa Vasquez Salguero ("Parent Petitioner") and her six-year-old child [redacted] ("Child Petitioner") (together, "Petitioners") from unlawful immigration detention by the Department of Homeland Security's ("DHS") U.S. Immigration and Customs Enforcement ("ICE"). ICE has been detaining Petitioners since at least January 23, 2026—first at the Whipple Federal Building in Fort Snelling, Minnesota and now at the South Texas Family Detention Center in Dilley, Texas.

2. Petitioners are citizens of Guatemala who have resided in the United States for almost seven years. Although they initially entered the United States without permission and were detained, they were immediately released on recognizance. Petitioners sought U Nonimmigrant Status (U-Visa) on March 13, 2023, and were placed in deferred action on February 20, 2025. Ex. A, USCIS Bona Fide Determination Notices dated February 20, 2025. After being placed in deferred action, USCIS issued Petitioners Employment Authorization valid from February 19, 2025 through February 18, 2029 (for Parent Petitioner) and March 19, 2025 through March 18, 2029 (for Child Petitioner). Ex. B, Employment Authorization Document Approval Notices dated February 20, 2025 and March 20, 2025.

3. Under well-settled precedent, Petitioners' status as U-Visa deferred action recipients protects them from removal from the United States.

4. On information and belief, federal agents arrested Petitioners without a warrant or probable cause. Petitioners were detained at a regularly scheduled ICE check-in meeting.

5. Petitioners' detentions are unlawful for at least four reasons.

6. First, the government has no legitimate interest in detaining Petitioners when they are neither a flight risk nor a danger—the only two constitutionally permissible reasons for immigration detention. Accordingly, their detention violates their substantive due process rights, requiring their immediate release.

7. Second, Petitioners have received grants of deferred action by Respondents that are valid at least until February 2029 and Respondents have provided no information

indicating that deferred action has been revoked. Petitioners are unlikely to be removed in the reasonably foreseeable future because their deferred action status precludes their removal, and such status cannot be revoked without adequate notice and process. Accordingly, Petitioners' detentions violate their substantive and procedural due process rights, requiring their immediate release.

8. Third, the government's position that Petitioners are 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 Petitioners. *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 Petitioners' current detentions unlawful from their inception, in violation of the Immigration and Nationality Act ("INA") and Petitioners' due process rights.

9. Fourth, Petitioners' warrantless arrest violates their Fourth Amendment rights, as well as statute and regulation, similarly mandating their 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)).

10. For these reasons, Petitioners respectfully ask this Court to declare that their detention is unlawful and order their immediate release.

JURISDICTION & VENUE

11. 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").

12. 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.

13. 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 Petitioners seek to challenge their custody as a violation of the U.S. Constitution, laws, and/or treaties of the United States, jurisdiction is proper in this Court.

14. Petitioners were apprehended within the State of Minnesota, conferring jurisdiction upon this Court. Ex. C, *Sue H. v. Donald J. Trump, et al.*, Case No. 26-cv-0416 (MJD/ECW) at ECF No. 3 (D. Minn. Jan. 20, 2026). Respondents' subsequent decision to remove Petitioners from the jurisdiction to frustrate their efforts to exercise their due process rights and obtain habeas relief does not divest this Court of jurisdiction. *Id.*

15. Venue lies in this District because it is the judicial district in which Petitioners reside and were initially detained. Venue is also proper in this Court under 28 U.S.C. § 1391(b)(2), (e)(1)(A)-(B) because Respondents are employees, officers, and agents of the United States, because a Respondent resides in this District, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

16. Venue is further proper under 28 U.S.C. § 2241(d) because Petitioners were initially detained at a facility within this District, and then unlawfully removed from this

District while this Court had proper jurisdiction. *See Jose V. v. Easterwood*, No. 26-CV-597 (DSD/LIB), 2026 U.S. Dist. LEXIS 15375, at *3 (D. Minn. Jan. 28, 2026) (finding venue remains proper in Minnesota where a habeas petitioner has lived in Minnesota for multiple years, was arrested in Minnesota, and was initially detained in Minnesota); *see also Jose A. v. Noem*, No. 26-CV-480 (JMB/ECW), 2026 WL 172524, at *2 (D. Minn. Jan. 22, 2026) (considering equitable factors to determine that venue remains proper in Minnesota even when a petitioner was transferred to Texas).

PARTIES

17. Petitioners, Rosa Vasquez Salguero and her six-year-old child [redacted], has lived in the United States for almost seven years. Prior to their detention on or about January 23, 2026, they resided in White Bear Lake, Minnesota. Petitioners were initially detained at the Whipple Federal Building and are currently detained at the South Texas Family Detention Center. Petitioners are being detained under the direct control of Respondents.

18. 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.

19. 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 Petitioners' ultimate legal custodian.

20. 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 Petitioners.

21. 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, Respondent Easterwood has supervisory authority over the ICE agents responsible for detaining Petitioners. In his official capacity, Respondent Easterwood is a legal custodian of Petitioners.

22. Respondent Peter Salinas is sued in his official capacity as Sheriff of Frio County. As Sheriff of Frio County, Respondent Salinas oversees the South Texas Family Residential Center, the facility where Petitioners are presently detained, and is therefore one of their legal custodians.

REQUIREMENTS OF 28 U.S.C. § 2243

23. The Court must grant this Petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless Petitioners are 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.*

24. 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).

25. Due to the nature and inherent exigencies of this proceeding, Petitioners ask this Court to expedite proceedings in this case as necessary and practicable to further justice.

EXHAUSTION OF LEGAL REMEDIES

26. 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).

27. It would be futile for Petitioners to seek a custody redetermination hearing before an Immigration Judge ("IJ") because of the Board of Immigration Appeals' ("BIA") recent decision holding that anyone who entered the United States without inspection is now considered an "applicant 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)).

28. Additionally, the IJ does not have jurisdiction to review Petitioners' claims

of unlawful custody in violation of their due process rights, and it would therefore be futile 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

29. The Immigration and Nationality Act ("INA") prescribes essentially three forms of detention for noncitizens in removal proceedings.

30. 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 IJs may review custody determinations made by DHS), 1236.1(d) (providing the same).

31. 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).

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

33. 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).

34. 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.").

35. 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. § 1226(a) 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)).

36. In July 2025, however, DHS contravened this longstanding legal framework by beginning to assert that all individuals who entered the country without inspection are classified as "seeking admission" and therefore subject to the mandatory-detention provision of 8 U.S.C. § 1225(b)(2)(A). *See* ICE, 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.

37. 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).

38. 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.

39. 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 detained under § 1225(b)(2)(A), but rather under § 1226(a). *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

40. 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.

41. 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)).

42. By specifying that inadmissibility for entry without inspection falls within the ambit of 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 admission or parole.

43. 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).

44. 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 Petitioners who were apprehended in the interior of the country almost seven years after entering the country, clearly precluding consideration that Petitioners are actively "seeking admission" or "coming . . . into the United States" after years spent building a life within the borders of the United States. *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.").

45. Additionally, Petitioners have received deferred action pursuant to the "U

Visa" program.

46. In 2000, Congress passed the Victims of Trafficking and Violence Protection Act (VTVPA"). VTPVA, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified at 22 U.S.C. §§ 7101 et seq.). The purpose of the VTVPA, generally, was to "combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude, [and] to reauthorize certain Federal programs to prevent violence against women." *Id.* To that end, the VTVPA contained the Violence Against Women Act of 2000, which included the Battered Immigrant Women Protection Act ("BIWPA"). *See id.* at 1491, 1518–37. Congress created the U nonimmigrant classification as part of the BIWPA. *Id.* at 1533–37 (codified in part at 8 U.S.C. §§ 1101(a)(15)(U), 1184(p)).

47. In 2006, Congress enacted the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006), which directed the DHS to promulgate regulations to implement the provisions of the BIWPA, *id.* at 3066. DHS published an interim rule the next year explaining that the purpose of the U nonimmigrant classification is "to strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons, while offering protection to [noncitizen] crime victims in keeping with the humanitarian interests of the United States." New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53014, 53014 (Sept. 17, 2007) (codified at 8 C.F.R. § 214.14) [hereinafter U-Visa Interim Rule].

48. A noncitizen is eligible for "U-1" nonimmigrant status upon a showing that the noncitizen: (1) has suffered substantial physical or mental abuse as a result of having

been a victim of certain criminal activity that was in violation of the laws of the United States or occurred within the United States; (2) possesses information about the criminal activity and has been or is likely to be helpful to law enforcement in investigating or prosecuting the criminal activity; and (3) is admissible to the United States or has had all grounds of inadmissibility waived. *See* 8 U.S.C. §§ 1101(a)(15)(U), 1182(a); 8 C.F.R. §§ 214.1(a)(3)(i), 214.14(b).

49. To obtain U-1 nonimmigrant status, a noncitizen must file a petition with USCIS certifying that these requirements are satisfied. *See* 8 U.S.C. § 1184(p). If a U-visa petition is granted, the petitioner receives lawful U-1 nonimmigrant status and employment authorization for up to four years. *See* 8 U.S.C. § 1184(p)(6); 8 C.F.R. §§ 214.14(c)(7), (g)(1). The number of U visas that may be issued each year is statutorily capped at 10,000, 8 U.S.C. § 1184(p)(2)(A), and USCIS adjudicates petitions on a first-come, first-served basis. U-Visa Interim Rule at 53033–34; *see* 8 C.F.R. § 214.14(d)(2). Once the cap has been reached, "eligible petitioners who, due solely to the cap, are not granted U-1 nonimmigrant status must be placed on a waiting list" until USCIS can conduct a final adjudication on their petitions. 8 C.F.R. § 214.14(d)(2).

50. Because final adjudications on U-visa petitions can take many years, in 2021, USCIS implemented a "bona fide determination" ("BFD") policy as an alternative waiting list process. *See* U.S. Citizenship & Immig. Servs., Policy Manual, Vol. 3, Part C, Ch. 5, https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited February 4, 2026) (the "U-Visa BFD Policy"). Under the U-Visa BFD Policy, USCIS first determines whether a U-1 petitioner has submitted a "bona fide" petition, meaning that the petitioner

has complied with initial evidence requirements and successfully completed a background check. *Id.* If so, USCIS may exercise its discretion to grant the petitioner employment authorization and deferred action. *Id.*

FACTUAL ALLEGATIONS

51. Petitioners are citizens of Guatemala, residents of White Bear Lake, Minnesota, and have resided in the United States since May 2019.

52. Petitioners were the subjects of Petitions for Qualifying Family Member of U-1 Recipient filed on March 13, 2023. On February 20, 2025, Petitioners were placed in deferred action status after USCIS found "the evidence demonstrates that [Petitioners]…petition for U nonimmigrant status is bona fide, and that they warrant a favorable exercise of discretion to receive employment authorization and deferred action." Ex. A. The sole reason Petitioners were not granted U-1 nonimmigrant status was because the fiscal year limit had been reached, and their petition was placed on a waiting list. *Id.*

53. Once in deferred action, Petitioners became eligible for work authorization during the validity period of deferred action. *Id.* They filed for and received Employment Authorization, valid from February 19, 2025 through February 18, 2029 (for Parent Petitioner) and March 19, 2025 through March 18, 2029 (for Child Petitioner). Ex. B.

54. Parent Petitioner works at a restaurant in Roseville, Minnesota and is an active member of her community church.

55. Child Petitioner is six years old.

56. Upon information and belief, Petitioners have never been placed in removal proceedings.

57. Respondent ICE arrested Petitioners on or about January 23, 2026, in or around Fort Snelling, Minnesota. Petitioners were attending a pre-scheduled ICE check-in meeting in compliance with their employment authorization requirements when they were detained. Without presenting a warrant and without probable cause, federal agents detained Petitioners.

58. Upon information and belief, Parent Petitioner's husband and Child Petitioner's father was detained at the same time as Petitioners and transported to Texas but was released almost immediately based on his status as a U-visa-based deferred action recipient.

59. Petitioners—who are also U-Visa-based deferred action recipients—remain unlawfully detained at the South Texas Family Detention Center in Dilley, Texas.

CLAIMS FOR RELIEF

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

60. Petitioners repeat and re-allege the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

61. 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.

62. 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)).

63. 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).

64. 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.

65. 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.

66. Neither purpose is served by Petitioners' detentions. Respondents have not made any claim that Petitioners present a flight risk or a danger to the community, nor could they.

67. Because the government is not detaining Petitioners to serve legitimate interests in protecting against danger or flight risk, their detention violates substantive due process under the Fifth Amendment, and this Court should order their immediate release.

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

68. Petitioners repeat and re-allege the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

69. Because Petitioners' removals are not reasonably foreseeable and there is no other justification for their detentions, their detentions are not related to any legitimate government interest, in violation of the substantive due process protections of the Fifth Amendment.

70. The government cannot remove Petitioners because Petitioners have a valid grant of deferred action, which precludes their removal. *See Victor G. v. Lyons*, No. 26-cv-119, 2026 WL 127733, at *2 (D. Minn. Jan. 17, 2026) ("[A]n ever-growing number of district courts across the country have concluded[ ] that an unrevoked grant of deferred action prevents removal."). They were granted deferred action on February 20, 2025, which remains valid for at least four years and that grant has not been revoked. Because Petitioners' unrevoked grants of deferred action has not expired, there is no significant likelihood of removal in the reasonably foreseeable future and their detention is unlawful.

71. Additionally, removing Petitioners (regardless of their deferred action grant) would contravene the very purpose of the U-visa statutory scheme. The purpose of the U-visa program is "to strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons, while offering protection to [noncitizen] crime victims in keeping with the humanitarian interests of the United States." New Classification for Victims of Criminal Activity;

Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53014, 53014 (Sept. 17, 2007) (codified at 8 C.F.R. § 214.14). The government has already concluded, in granting Petitioners' bona fide determinations on their U-visa applications, that Petitioners' presence in the United States would aid in the prosecution of serious crimes and/or further the humanitarian interests of the United States. Removing Petitioners after this determination would eviscerate Congress' goal in creating the status in the first place.

72. Accordingly, Petitioners' detentions violate their substantive due process rights, and this Court should order their immediate release.

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

73. Petitioners repeat and re-allege the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

74. 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.

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

76. In order to detain a noncitizen with a valid grant of deferred action, due

process requires the government to first provide notice and an opportunity to be heard.

77. Under the familiar *Mathews* due process test, the government's decision to arrest Petitioners without notice or an opportunity to be heard, and continue to detain them without any opportunity to meaningfully challenge that detention, violates their procedural due process rights.

78. The first *Mathews* factor weighs heavily in Petitioners' favors. Petitioners have a strong liberty interest in light of their valid grants of deferred action and employment authorization. To receive bona fide determinations on U-visa applications, Petitioners demonstrated compliance with stringent eligibility criteria; and upon receiving a grant of deferred action and employment authorization, Petitioners had the reasonable expectation that they could build a life here without risking arbitrary arrest, detention, and removal that would strip them of the security Congress created the U-visa program to provide victims of crime—victims like Petitioners. *See Nevarez Jurado v. Freden*, No. 25-CV-943, 2025 WL 3687264, at *3–4 (W.D.N.Y. Dec. 19, 2025). And this is precisely what Petitioners did—build a home; work and contribute to their community; and make plans for the future.

79. Second, the risk of erroneously depriving Petitioners of that interest is severe. They reside at their home in Minnesota and Child Petitioner attends an elementary school in their community. Despite their best efforts to pursue the American dream, Petitioners' detentions create sudden uncertainty. Petitioners have been afforded absolutely no process, let alone constitutionally sufficient process, prior to or since deprivation of their freedom, making the value and necessity of additional process high. *See Mathews*, 424 U.S. at 343.

80. Third, the government's interest in detaining Petitioners is minimal.

Petitioners cannot be deported and do not present a flight risk or danger: they are firmly settled in Minnesota where Parent Petitioner has steady work and Child Petitioner attends school. In fact, Petitioners' erroneous detentions impose high fiscal and administrative burdens on Respondents. And unlawful detention and violation of noncitizens' constitutional rights are a disservice to the public interest.

81. Respondents violated procedural due process by detaining Petitioners without adequate procedural protections before or after deprivation of their 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 Petitioners' release without any restraints on their liberty and prohibit any re-detention absent pre-deprivation process. *Id.* (ordering release on that basis); *see also Mahad S.,* 2026 WL 177860, at *3.

82. Petitioners' continued detention without notice and an opportunity to be heard violates their procedural due process rights under the Fifth Amendment of the Constitution, and this Court should order their immediate release.

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

83. Petitioners repeat and re-allege the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

84. 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).

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

86. 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.

87. 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).

88. 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).

89. Respondents claim that Petitioners are mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). But courts across the United States have overwhelmingly concluded that noncitizens like Petitioners who entered the United States without authorization 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.").

90. Accordingly, Petitioners' current detentions under 8 U.S.C. § 1225(b)(2)(A) violate both the INA and Petitioners' procedural due process rights. As this renders their detentions unlawful from their inception, they should be released.

COUNT FIVE
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

91. Petitioners repeat and re-allege the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

92. 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).

93. 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).

94. 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).

95. Petitioners' warrantless arrest occurred without probable cause that they were 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 their seizure, Petitioners had been in the United States for almost seven years and built strong ties to their community. Moreover, Petitioners were only in proximity to ICE because they were voluntarily attending a meeting with ICE in compliance with their employment authorization requirements. Therefore, no officer could have probable cause that Petitioners were likely to escape before a warrant could be obtained.

96. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Petitioners. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. They received no such judicial determination.

97. Regulations also provide that noncitizens 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, Petitioners have received no such custody determination.

98. Respondents' warrantless arrest of Petitioners, 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 their release.

REMEDY

99. The appropriate remedy for Respondents' unlawful conduct is Petitioners' immediate release.

100. 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)).

101. 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").

102. 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))

103. Section 1226(a) does not support a lawful detention in the first instance. Detention under § 1226(a) requires 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.

104. Petitioners' immediate release without any restraints is also the appropriate remedy here on the independent ground that, as recipients of U-visa-based deferred action, their detention deprived them of their constitutionally protected procedural due process rights. *B.D.A.A.*, 2025 WL 3484912, at 5-7 (ordering immediate release of petitioner because the detention of a recipient of U-visa-based deferred action violated procedural due process); *see also Mahad S.*, 2026 WL 177860, at *3 (ordering immediate release of petitioner on the independent ground that his detention violated his due process rights).

PRAYER FOR RELIEF

WHEREFORE, Petitioners request that this Court:

1. Assume jurisdiction over this matter;
2. Immediately issue an Order to Show Cause 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 Petitioners' detentions are unlawful and ordering Respondents to release Petitioners 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. Grant Petitioners any further relief that this Court deems to be just and proper.

Respectfully submitted,

Dated: February 11, 2026

<u>/s/ Samantha C. Pauley</u>
Samantha C. Pauley
Minnesota Bar No. 0505789
Ballard Spahr LLP
2000 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2438
Tel: (612) 371-3211
Email: pauleys@ballardspahr.com

Pro Bono Counsel for Petitioners

VERIFICATION

I am submitting this verification on behalf of Petitioners because I am Petitioners' attorney. My investigators and I have discussed the factual assertions in this petition with Petitioners' immigration attorney, who is also acting on Petitioners' 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 Petitioners' detention status, are true and correct to the best of my knowledge.

Executed this 11th day of February, 2026.

/s/ Samantha C. Pauley
Samantha C. Pauley
Pro Bono Counsel for Petitioners