IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Robin Rivero ANTONIO

Petitioner,

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;

Respondents.

Case No. 26-cv-1709

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

INTRODUCTION

1. This case seeks the immediate release of Petitioner Robin Rivero Antonio ("Petitioner") from unlawful immigration detention by the Department of Homeland Security's ("DHS") U.S. Immigration and Customs Enforcement ("ICE"). ICE has been unlawfully detaining Petitioner since at least January 17, 2026 at El Paso Camp East Montana.

2. Because ICE has unlawfully transferred Petitioner out of the District of Minnesota, this petition also requests that the Court's Order to Show Cause ("OSC") immediately order Respondents to return Petitioner to the District of Minnesota.

3. Petitioner is a citizen of Venezuela who has resided in the United States for more than 2 years after entering without inspection. Petitioner sought asylum in the United States, because he and his family members were the targets of political persecution.

4. Petitioner entered the United States near Eagle Pass, Texas, on or about October 3, 2023. Upon entry, Petitioner presented himself to U.S. Border Patrol agents seeking asylum from political persecution and violence in Venezuela. On or around October 5, 2023, an Immigration Judge released Petitioner on his own recognizance, in accordance with section 236 of the Immigration and Nationality Act.

5. Petitioner has complied with all applicable immigration laws and regulations and has attended all required hearings related to his removal proceedings. Petitioner has no criminal history in the United States or Venezuela.

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

7. First, the government has no legitimate interest in detaining Petitioner when he is neither a flight risk nor a danger—the only two constitutionally permissible reasons for immigration detention. Accordingly, the detention violates his substantive due process rights, requiring his immediate release.

8. Second, due process requires that the government show, in a pre-deprivation hearing, materially changed circumstances before re-detaining Petitioner. When the government released Petitioner 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.

Petitioner's detention without any pre-deprivation process violates his procedural due process rights and this alone warrants his immediate release.

9. Third, the government's apparent position that Petitioner 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 Petitioner. *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 Petitioner's current detention unlawful from its inception, in violation of the Immigration and Nationality Act ("INA") and Petitioner's due process rights.

10. Fourth, Petitioner'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, Petitioner 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 Petitioner 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. This Court has jurisdiction because "habeas jurisdiction attaches at the time of the Petitioner's apprehension," and is "not defeated by any subsequent decisions by Respondents to transfer Petitioner to another state." Slip Op. 2-3, *Sue H. v. Trump*, No. 26-cv-416 (D. Minn. Jan. 20, 2026). Petitioner is a Minnesota resident who was detained in the District. Any removal designed to frustrate Petitioner's ability to avail himself of the Court's jurisdiction cannot divest this Court of jurisdiction. *Id.* at 2.

16. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2), (e)(1)(A)-(B) because Respondents are employees, officers, and agencies of the United States, because Petitioner resides in this District, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

17. Venue is also proper under 28 U.S.C. § 2241(d) because Petitioner was detained at a facility within this District, and then unlawfully removed from this District while this Court had proper jurisdiction. See *Alex H. v. Bondi*, No. 26-CV-1255

(JMB/DTS), 2026 WL 381688, at *2 (D. Minn. Feb. 11, 2026) ("[V]enue should not be transferred simply because a petitioner was unable to file their petition prior to transfer, particularly when that transfer was not at a petitioner's request, was without notice to counsel, is wholly outside of their control, and can occur in a very short time after arrest.").

PARTIES

18. Petitioner Robin Rivero Antonio is a native and citizen of Venezuela. Petitioner has lived peacefully in the United States for nearly two and a half years and has a pending asylum application. Prior to his detention on or about January 17, 2026, he was residing in Shakopee, Minnesota. Petitioner is currently detained at El Paso Camp East Montana, in the direct control of Respondents.

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

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 Petitioner'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 Petitioner.

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 Petitioner. In his official capacity, Respondent Easterwood is a legal custodian of Petitioner.

REQUIREMENTS OF 28 U.S.C. § 2243

23. 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.*

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 of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for 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 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)).

28. 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."); *Mayamu K. v. Bondi*, No. 25-3035 (JWB/LIB), 2025 WL 3641819, at *7 (D. Minn. Oct. 20, 2025) ("The [BIA] cannot decide constitutional questions . . . .").

LEGAL FRAMEWORK

29. The 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 Immigration Judges 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 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.

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 considered to be 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 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.

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 excludes noncitizens like Petitioner who are initially apprehended in the interior of the country over two 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 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.").

FACTUAL ALLEGATIONS

45. Petitioner is resident of Shakopee, Minnesota and a citizen of Venezuela and has resided in the United States since October 2023.

46. Petitioner came to the United States to escape political persecution and violence in Venezuela. Among other things, when Petitioner reported the failure of a local

Venezuelan official to repay a proper legal loan that Petitioner and others had made, Petitioner was subjected to harsh retribution, including him and his family being imprisoned simply for attempting to enforce a proper loan.

47. After Petitioner entered the United States, he presented himself to U.S. Border Patrol agents. On October 5, 2023, Petitioner was detained and placed in removal proceedings. Respondents released Petitioner on his own recognizance after finding that he was not a flight risk or a danger to the community.

48. Petitioner filed his asylum application on September 27, 2024. While his asylum application is pending, Petitioner has attended all immigration court hearings.[1]

49. Respondents detained Petitioner on or about January 17, 2026 in Shakopee, Minnesota. Petitioner was on his way to work when two ICE vehicles blocked his car. The ICE agents instructed Petitioner to step out of his car, and then kicked him at the knees to force Petitioner to the ground. Although Petitioner said he was not a criminal, the ICE agents proceeded to confiscate Petitioner's identification and other belongings, handcuffed him, and took him to be detained.

---

[1] Petitioner's most recent hearing had been scheduled for February 11, 2026, but Petitioner's immigration attorney was the only individual who showed up at the scheduled time. Respondents, who by then had unlawfully detained Petitioner, failed to produce him for the immigration court hearing. Nor did the immigration judge appear. Although Petitioner's lawyer waited for over an hour and made multiple attempts to find out why the scheduled hearing was not commencing, the hearing did not take place. A continuance has been issued for the hearing.

50. Petitioner was taken to the Bishop Henry Whipple Federal Building in this District. Within twenty-three hours and without notice to his attorney, Petitioner was summarily transported to El Paso, Texas.

51. Petitioner is now detained at the El Paso Camp East Montana detention facility.

52. At no point did the ICE agents present any judicial or administrative warrants, offer notice, or give any explanation to justify the detention.

53. Respondents have confiscated Petitioner's personal property and effects, including but not limited to his phone, wallet, and identification documents.

54. Petitioner is being held without bond in deplorable conditions. Detaining Petitioner is an expensive, pointless, and cruel endeavor. Petitioner respectfully seeks the opportunity to return home to Minneapolis and continue working with his counsel to follow the legal process set up by Congress and Department of Homeland Security for immigrants to seek status in this country.

CLAIMS FOR RELIEF

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

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

56. 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.

57. 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)).

58. 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).

59. 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.

60. 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.

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

62. Since then, Petitioner'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). Petitioner worked three different jobs in Minnesota, at a local car wash and driving deliveries to plant facilities. And he remains without any criminal record.

63. Because the government is not detaining Petitioner 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.

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

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

65. 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.

66. 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.

67. The first *Mathews* factor weighs heavily in Petitioner's favor. Petitioner has a strong liberty interest in light of his prior release.

68. The second *Mathews* factor also weighs in Petitioner's favor. Petitioner was previously released from detention after being found that he is neither a danger nor a flight risk, and his re-detention—without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond—make the risk of erroneous deprivation of liberty not just high, but certain. Petitioner's 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 Petitioner's favor.

69. The third *Matthews* factor favors Petitioner as well. Petitioner's erroneous detention imposes high fiscal and administrative burdens on Respondents. Releasing Petitioner 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.

70. Respondents violated procedural due process by re-detaining Petitioner 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). Therefore, this Court should

order Petitioner'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 III
Violation of the Immigration and Nationality Act and Procedural Due Process

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

72. 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).

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

74. 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).

75. 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).

76. Respondents claim that Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). But courts across the United States have overwhelmingly concluded that noncitizens like Petitioner 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.").

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

COUNT IV
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

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

79. 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).

80. 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).

81. 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).

82. Petitioner'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, Petitioner had been in the United States for over two years and built strong ties to his community. Moreover, Petitioner fully complied with the ICE officers and in no way tried to disobey or flee. Therefore, no officer could have probable cause that Petitioner was likely to escape before a warrant could be obtained.

83. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Petitioner. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. He received no such judicial determination, yet his detention has continued well beyond 48 hours, rendering it presumptively unconstitutional.

84. 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, Petitioner has received no such custody determination.

85. Petitioner'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.

86. 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).

87. Respondents' warrantless re-arrest of Petitioner 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

88. The appropriate remedy for Respondents' unlawful conduct is Petitioner's immediate release.

89. 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)).

90. 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").

91. 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)).

92. Here, § 1226(a) would not 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. Requiring Respondents to immediately release Petitioner from custody;

b. Ordering that Petitioner's release can only be effectuated by Petitioner's return to the District;

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. Order that upon Petitioner's release, Respondents must return to Petitioner any personal property, including his phone, wallet, and personal identification documents;

5. Order that Respondents are prohibited from re-arresting and detaining Petitioner pending further order;

6. Order that upon Petitioner's release in Minnesota, Respondents will not issue any new instruments that either impose new conditions of supervision or restraint or restates previously imposed conditions, as such will be considered null and void;

7. 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

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

Respectfully submitted,

Dated: March 3, 2026

/s/Martin S. Chester
Martin S. Chester (#031514X)
Emilie M. Erickson (#0403558)
Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center, 90 South 7th Street
Minneapolis, Minnesota 55402
(612) 766-7000
Martin.chester@faegredrinker.com
Emilie.erickson@faegredrinker.com

ATTORNEYS FOR PETITIONER

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. I have discussed the factual assertions in this petition with Petitioner. 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 3rd day of March, 2026.

/s/*Martin S. Chester*
Martin S. Chester
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that on March 3, 2026, a copy of the attached document was served by Certified U.S. Mail on:

Pamela Bondi
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530

Kristi Noem
Secretary of Department of Homeland Security
Department of Homeland Security
2801 Nebraska Ave NE
Washington, D.C. 20528

Office of General Counsel
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave SE
Mail Stop 0485
Washington, D.C. 20528-0485

Daren K. Margolin
Director
Executive Office for Immigration Review
5107 Leesburg Pike
Falls Church, VA 22041
Todd M. Lyons
Acting Director
U.S. Immigration and Customs Enforcement (ICE)
500 12th Street SW
Washington, D.C. 20536

David Easterwood
Acting Field Office Director
U.S. Immigration and Customs Enforcement (ICE) - St. Paul Field Office
1 Federal Drive
Suite 1601
Fort Snelling, MN 55111
United States

/s/Martin S. Chester
Martin S. Chester
Faegre Drinker Biddle & Reath LLP