**UNITED STATES DISTRICT COURT**
**FOR DISTRICT OF MINNESOTA**

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Case No. 26-1780

IVAN LEONARDO CUDEMUS REYES,

*Petitioner*,

v.

KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States; TODD LYONS, in his official capacity as Acting Director, United States Immigration and Customs Enforcement; DAVID EASTERWOOD, in his official capacity as St. Paul Field Office Director, United States Immigration and Customs Enforcement; ERIC TOLLEFSON, in his official capacity as Sheriff of Kandiyohi County.

*Respondents.*

**PETITION FOR WRIT OF HABEAS CORPUS**

**EXPEDITED HANDLING REQUESTED**

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## INTRODUCTION

1. This case challenges the unlawful detention of Ivan Leonardo Cudemus Reyes ("Petitioner") by U.S. Immigration Customs and Enforcement ("ICE").

2. Petitioner entered the United States lawfully on May 31, 2023, by enrolling in Respondent DHS's CBP One Program. He was inspected by immigration officials, ordered to appear before an immigration judge almost two years later, and allowed into the

country on humanitarian parole without any conditions other than to apply for relief. In 2024, Petitioner was granted Temporary Protected Status ("TPS") and obtained work authorization to support himself, his partner, and their minor daughter. Petitioner is law-abiding, too: he has no criminal history, and since entering the United States has incurred no civil or criminal infractions of the law. Yet when Petitioner was unlawfully detained in October 2025, Respondents did not let him go—they shipped him to Minnesota for prolonged detention.

3. Respondents' detention of Petitioner violates the Due Process Clause of the Fifth Amendment to the United States Constitution, the Immigration and Nationality Act and implementing regulations, and the Administrative Procedure Act. Petitioner brings this action for habeas, injunctive relief, and/or declaratory relief ordering Respondents to release Petitioner from detention. Only this Court can stop Respondents' violations of Petitioner's constitutional rights.

## JURISDICTION & VENUE

4. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1361 (federal employee mandamus action); U.S. Const. art. I, § 9, cl. 2 (the Suspension Clause); the Administrative Procedure Act, 5 U.S.C. § 701 et seq.; and 5 U.S.C. § 702 (waiver of sovereign immunity).

5. Further, an actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief. *Id.* §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.

6. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by the U.S. Department of Homeland Security ("DHS"). 28 U.S.C. § 2241; *see also Nielsen v. Preap*, 586 U.S. 392, 401–03 (2019); *Jennings v. Rodriguez*, 583 U.S. 281, 292–95 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003).

7. Venue is proper in this District pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within the District of Minnesota.

8. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A), because Respondents are operating in this District.

## PARTIES

9. Petitioner is citizen of Venezuela, and was, before his detention, a resident of Chicago, Illinois. Upon information and belief, Petitioner is currently being held at the Kandiyohi County Jail in Willmar, Minnesota. Petitioner is under the direct control of Respondents.

10. Respondent Kristi Noem is being sued in her official capacity as the DHS Secretary. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the District of Minnesota, supervises the Fort Snelling ICE Field Office, and is legally responsible for pursuing Petitioner's detention and removal. As such, Respondent Noem is a legal custodian of Petitioner.

11. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the U.S. Department of Justice ("DOJ"). Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Petitioner.

12. Respondent Todd Lyons is named in his official capacity as the Acting Director of ICE. In this capacity, he is responsible for the administration and enforcement of the immigration laws of the United States, routinely transacts business in Minnesota, is legally responsible for pursuing any effort to detain and remove the Petitioner, and, as such, is a custodian of Petitioner.

13. Respondent David Easterwood is named in his official capacity as ICE's Field Office Director for St. Paul Field Office. In this capacity, David Easterwood is responsible for the administration of the Immigration and Naturalization Act ("INA"), including the execution of detention and removal determinations.

14. Respondent Eric Tollefson is the Kandiyohi County Sheriff. In this capacity, Eric Tollefson has present physical custody over Petitioner pursuant to a contract with ICE. The address for the Kandiyohi County Jail is 2201 NE 23rd St, Suite 101, Willmar, MN 56201.

15. Respondents are immediate custodians of Petitioner and are sued in their official capacities.

## FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

16. Petitioner is a resident of Illinois and a citizen of Venezuela. Petitioner has been living in Illinois since June 2023.

17. Petitioner left his home country of Venezuela in 2021, fleeing political persecution. [redacted].

18. Petitioner entered the United States on or about May 31, 2023. He had previously registered with CBP One[1] and attended an appointment with immigration officials, at which point he was inspected and allowed into the country on humanitarian parole. Petitioner was charged with inadmissibility under INA § 212(a)(7)(A)(i)(I), issued a Notice to Appear, and released into the country that same day. (Exhibit A).[2]

19. Petitioner was issued no conditions of release other than to apply for relief once in the United States and attend all court hearings—he was simply ordered to appear for a hearing in removal proceedings on January 22, 2025. (*See id.*) When Petitioner

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[1] CBP One is a U.S. Customs and Border Protection mobile application launched in 2020, serving as a single portal for migrants to submit information to immigration officials in advance of their entry into the United States. The application primarily allows noncitizens to schedule appointments for secure, orderly processing at ports of entry.

[2] Personally identifying information has been redacted from the submitted exhibits.

appeared for his January 22, 2025 hearing, however, the matter was continued and Petitioner was ordered to appear for a new hearing date on February 5, 2027.

20. Upon information and belief, Petitioner's CBP One admission expired on or about May 29, 2025. Petitioner applied for and was approved for Temporary Protected Status ("TPS"), which expired on April 2, 2025; Petitioner submitted a renewal application but has received no response from the federal government. (*See* Exhibit B.)[3]

21. Petitioner was detained in Chicago on or about October 17, 2025. While buying food and supplies for his family at a local store, immigration agents approached Petitioner to inquire about his identity and arrested him. Upon learning Petitioner's immigration status, the officers immediately transferred Petitioner to the Kandiyohi County Jail in Willmar, Minnesota, where he has been held by Respondents to this day.

22. The officers that arrested and detained Petitioner had no warrant—judicial or otherwise. Upon information and belief, the agents did not comply with the requirements for a warrantless arrest. *See* 8 U.S.C. § 1357(a)(2). Petitioner had appeared at the most recent hearing in his removal proceeding and had not been ordered to reappear until February 5, 2027.

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[3] DHS previously attempted to vacate the government's previous extension of TPS for Venezuela (which had extended that status through October 2, 2026) and terminate Venezuela's TPS effective April 3, 2025. The U.S. Court of Appeals for the Ninth Circuit recently affirmed a lower court judgment setting aside those actions under the Administrative Procedure Act. *Nat'l TPS Alliance v. Noem*, 166 F.4th 748, 749 (9th Cir. 2026) (noting DHS's "unlawful actions have had real and significant consequences for the hundreds of thousands of Venezuelans and Haitians in the United States who rely on TPS").

23. Petitioner applied for asylum on or about October 21, 2025. The Immigration Judge presiding over Petitioner's removal proceedings denied his asylum application on or about February 22, 2026. Petitioner filed an appeal of the Immigration Judge's decision on March 3, 2026. That appeal is currently pending.

24. Petitioner has not been arrested, charged, cited, or convicted of any crime or civil infraction. Petitioner has no criminal history.

25. Petitioner is in ICE detention and, based on the last contact he had with his family, is present at the Kandiyohi County Jail in Willmar, Minnesota.

26. Because of his warrantless detention, Petitioner has languished in Kandiyohi County Jail for more than four months for no reason other than his status as a non-citizen. Despite the fact that Petitioner complied with the government's rules for seeking admission—enrolling in the CBP One program, presenting himself to immigration officials, and entering the country only with permission—the government now seeks to rip him away from the life he has built here.

27. Petitioner poses no flight risk. He resided lawfully in the country with TPS for almost three years and has been granted a work permit as a result of being paroled.

28. Nor is Petitioner a danger to the community. He has never been convicted of a crime.

29. Detaining Petitioner is an expensive and pointless endeavor for the government. *See Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (noting that, in 2017, "[t]he costs to the public of immigration detention are 'staggering': $158 each day

per detainee, amounting to a total daily cost of $6.5 million. Supervised release programs cost much less by comparison: between 17 cents and 17 dollars each day per person.").

30. Respondents are routinely removing detainees from Minnesota to other jurisdictions hundreds of miles away after federal habeas cases are initiated, complicating and giving further urgency to legal efforts to challenge their detainment and uphold their constitutional rights. *See, e.g.*, Ellie Roth, MPR News, *Observer: ICE Detainee Flights Increase at MSP as Enforcement Action Ramps Up*, https://shorturl.at/YIZ3N (Jan. 14, 2026); Beenish Ahmed, NPR, *ICE is Deporting Some Immigrants so Quickly, Their Attorneys are Left Scrambling*, https://shorturl.at/3otTm (Dec. 26, 2025); Joey Peters & Cynthia Tu, Sahan Journal, *ICE Enforcement Prompts Relocation of Detainees Outside of Minnesota, Worrying Attorneys about Access, Rights*, https://2cm.es/1in9V (Dec. 16, 2025).

31. Given the circumstances, immediate legal intervention is necessary. Accordingly, pending the adjudication of this Petition, Petitioner further seeks an order restraining Respondents from transferring Petitioner to a location outside of the State of Minnesota, so that the jurisdiction of this Court is not impeded, and so that Petitioner remains accessible to legal counsel and loved ones.

## LEGAL STANDARD

32. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The "Great Writ" has been referred to by U.S. courts as "perhaps the most important writ known to the constitutional law of England, 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), *abrogated in part on other grounds by Wainwright v. Sykes*, 433 U.S. 72 (1977).

33. A petitioner may seek a writ of habeas corpus when their custody violates the U.S. Constitution or a federal law, 28 U.S.C. § 2241(c)(3), which should be granted if the petitioner meets their burden of proof—a preponderance of evidence. *Eliseo A.A. v. Olson*, Civ. No. 25-3381 (JWB/DJF), --- F. Supp. 3d ---, 2025 WL 2886729, *2 (D. Minn. Oct. 8, 2025).

34. Detained immigrants petitioning under 28 U.S.C. § 2241 face no statutory exhaustion requirements. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 965–66 (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.

35. Other courts in the Eighth Circuit have similarly declined to require prudential exhaustion when evaluating a detained immigrant's habeas corpus petition under similar circumstances—to address a question of statutory interpretation that does not require developing a factual record, and where the agency is demonstrably unlikely to reverse its course. *Giron Reyes v. Lyons*, 801 F. Supp. 3d 797, 803 (N.D. Iowa 2025).

**Due Process**

36. "[T]he Due Process Clause applies to all 'persons' within the United States, including [immigrants], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

37. Immigration detention is civil and must "bear[] a reasonable relation to the purpose for which the individual [is detained]" so that it is "nonpunitive in purpose and effect." *Id.* at 690 (cleaned up). There are only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See id.* at 683; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). "Retribution and deterrence are not legitimate nonpunitive governmental objectives." *Bell v. Wolfish*, 441 U.S. 520, 539 n.20 (1979).

**Asylum and Immigration Detention Framework**

38. Congress created asylum as a domestic protection remedy. By statute, only a noncitizen who is "physically present in the United States or who arrives in the United States . . . irrespective of such alien's status" may apply. 8 U.S.C. § 1158(a)(1). There is no statutory mechanism for a person who remains outside the United States to file an affirmative asylum application with USCIS or to invoke the jurisdiction of an immigration court.

39. The INA reflects a deliberate congressional design: individuals who fear persecution may reach the United States or its border—even without prior authorization—to invoke the asylum process. The statute does not require lawful entry as a prerequisite. To the contrary, it expressly provides that eligibility exists "irrespective of status." *Id.*

40. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRAIRA") establishes two pathways for removing noncitizens deemed ineligible to immigrate to the United States. *See* Pub. L. 104-208, 110 Stat. 3009, 3009-546 (1996). First, the "usual" process is found in IIRAIRA Section 240, codified at 8 U.S.C. § 1229a,

and affords noncitizens an evidentiary hearing before an immigration judge and the opportunity for a noncitizen to show why they should not be removed. *See Coal. For Humane Immigrant Rts. v. Noem* ("*CHIR*"), 805 F. Supp. 3d 48, 58–59 & n.4 (D.D.C. 2025). Congress enacted the legislation to "streamline[]" noncitizens "*already present in the U.S.*" *Id.* at *3 (emphasis added) (quoting H.R. Rep. 104-469, at 12, 107–08 (1996)).

41. The IRRAIRA also includes an expedited removal process in § 1225(b) which "substantially shorten[s] and speed[s] up the removal process." *Make the Rd. New York v. Wolf*, 962 F.3d 612, 618–19 (D.C. Cir. 2020). "Generally, § 1225 governs the inspection and expedited removal of arriving aliens." *Belsai D.S. v. Bondi*, -- F. Supp. 3d --, No. 25-cv-3682, 2025 WL 2802947, at *1 (D. Minn. Oct. 1, 2025).

42. Section 1226 of the INA applies to the detention of noncitizens who, like Petitioner, are already in the country pending the outcome of full removal proceedings. *See Jennings*, 583 U.S. at 289. It is the "default rule" applicable to noncitizens already in the country. *Id.* at 288. Under this default rule, an immigration officer initially determines to either detain or release the noncitizen. If detained, the noncitizen may request a bond hearing before an immigration judge. 8 C.F.R. § 1236.1(c)(8), (d)(1). But if paroled, immigration judges "may not redetermine conditions of custody." 8 C.F.R. § 1003.19(h)(1)(i)(B).

**Petitioner is Being Wrongfully Detained**

43. In July 2025, Respondent DHS began ignoring the decades-long consensus regarding 8 U.S.C. § 1225(b). Neither novel interpretation of § 1225(b) commonly advanced by Respondents, however, applies to Petitioner. The Court should reject any

argument by Respondents asserting that Petitioner is being detained pursuant to 8 U.S.C. § 1225(b).

44. Section 1225(b)(1) is an "expedited removal statute" that "only mandates detention of noncitizens arriving in the United States during the pendency of expedited removal proceedings and the credible fear interview and review process." Order at 3–4, *Jeiker Josue M. Q. v. Bondi*, No. 26-cv-505 (LMP/ECW) (D. Minn. Feb. 27, 2026), ECF No. 12 (quoting *Jimenez v. FCI Berlin, Warden*, 799 F. Supp. 3d 59, 68–69 (D.N.H. 2025)); *see also Portillo-Argueta v. Simon*, No. 1:25-cv-2285 (AJT-WEF), 2026 WL 184194, at *4 (E.D. Va. Jan. 23, 2026).

45. Courts have held that § 1225(b)(1) only applies to noncitizens if

> (1) they "[are] arriving in the United States," and thereby fall into what is known as the "Arriving Aliens Provision"; and/or (2) they "have not been admitted or paroled" into the United States and have "not affirmatively shown" to an immigration officer's satisfaction that they have been "physically present in the United States continuously for [a] 2-year period . . . ," and thereby fall into what is known as the "Designation Provision."

*Rodriguez-Acurio v. Almodovar*, --- F. Supp. 3d ---, No. 2:25-cv-6065, 2025 WL 3314420, at *9 (E.D.N.Y. Nov. 28, 2025) (alterations in original) (quoting 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(II)). Section 1225(b)(1) does not authorize Petitioner's detention because the statute imposes clear limitations on the statute's reach—the requirement that a noncitizen be "arriving" or not "paroled." Congress expressly intended a *different* statutory provision to apply to noncitizens who are "already present in the U.S.," *CHIR*, 805 F. Supp. 3d at 59, which is § 1226. Furthermore, under either provision, a noncitizen is not

removable on an expedited basis if they express an intent to apply for asylum or have an asylum application pending. 8 U.S.C. § 1225(b)(1)(B)(i).

46. Courts in this District have already considered and rejected Respondents' anticipated argument that § 1225(b)(1) applies to noncitizens like Petitioner more than a half dozen times in the past month. *See Bashir K.A. v. Klang*, No. 25-cv-4559, 2026 WL 452353, at *7 (D. Minn. Feb. 17, 2026) (concluding noncitizen paroled into the country over a year earlier "is not subject to mandatory detention under § 1225(b)(1)"); *Abdourahim A.F. v. Bondi*, No. 26-cv-1319, 2026 WL 413743, at *2 (D. Minn. Feb. 14, 2026) (holding § 1225(b)(1)(B)(ii) "does not mandate detention of asylum seekers who have been present in the United States for years"); *Alan C.E. v. Bondi*, No. 26-cv-1286, 2026 WL 413742, at *2 (D. Minn. Feb. 14, 2026) (same); *Davidson A.V.C. v. Bondi*, No. 26-cv-1094, 2026 WL 369844, at *2 (D. Minn. Feb. 10, 2026) (same); *Mervis E.A.M. v. Noem*, No. 26-cv-861, 2026 WL 323636, at *1 (D. Minn. Feb. 6, 2026) (same); *Joffre A.J.L. v. Bondi*, No. 26-cv-962, 2026 WL 323699, at *2 (D. Minn. Feb. 6, 2026) (same); *Joana J. v. Bondi*, No. 26-cv-892, 2026 WL 327935, at *2 (D. Minn. Feb. 4, 2026) (noting that § 1225(b)(1)(B)(ii) did not apply to petitioner because they "*arrived* in the United States more than a year-and-a-half ago").

47. And Minnesota is no outlier. Courts around the country have concluded that, in general, § 1225(b)(1) "does not apply to aliens who are *already present in the country*."

*Lopez v. Lyons*, No. 25-cv-03174, 2025 WL 3124116, at *2 (E.D. Cal. Nov. 7, 2025) (citation omitted).[4]

48. Petitioner cannot be subject to detention under § 1225(b)(1) because he "can no longer be classified as a noncitizen 'who is arriving in the United States'" despite initially detained as such in May 2023. *Rodriguez-Acurio*, 2025 WL 3314420, at *20. When ICE arrested him in Chicago in October 2025—more than two years after he entered the United States and was paroled—Petitioner was not "in the process of 'arriving' in the United States." *Id.* He was already in the United States, having been released on humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). "Indeed, it would be illogical" to conclude that Petitioner is still "arriving" in the United States when he has continuously resided in the United States since 2023—even after his humanitarian parole expired. *Id.* "[W]hether a noncitizen's parole is active, or has expired or been terminated, does not matter." *Id.* at *15 (quoting *CHIR*, 805 F. Supp. 3d 83); *Bashir K.A.*, 2026 WL 452353,

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[4] *See also Navarette v. Noem*, No. 26-cv-00320, 2026 WL 538365 at *6 (M.D. Pa. Feb. 26, 2026) (noting that "[s]ection 1225(b)(1) explicitly applies to 'aliens arriving in the United States and certain other aliens who have not been admitted or paroled'"); *Mohd v. Noem*, 26-cv-680, 2026 WL 363525, at *2 (E.D.N.Y. Feb. 9, 2026) (holding that § 1225(b)(1) does not apply to petitioner because he had been "been continuously residing here" and was paroled); *Diaz v. Noem*, 26-cv-00066, 2026 WL 323257, at *7 (E.D. Cal. Feb. 6, 2026) (granting habeas petition and noting that "the plain language of § 1225(b)" did not apply to petitioners who had resided in the United States for several years); *Gutierrez v. Garcia*, No. 25-cv-001145, 2026 WL 310064, at *5 (D.N.M. Feb. 5, 2026) ("Courts across jurisdictions have consistently rejected the proposition that current residents of the United States may be retroactively reclassified as arriving aliens for purposes of mandatory detention under § 1225(b) (collecting cases)); *Mercado v. Lyons*, No. 25-cv-1623, 2025 WL 3654268, at *6 (W.D. Tex. Dec. 11, 2025) ("[I]n general, § 1225(b)(1) 'does not apply to aliens who are *already present in the country*.'").

at *5 (adopting *Rodriguez-Acurio*'s reasoning). Thus, the plain language of § 1225(b)(1) forecloses any argument that § 1225(b)(1) authorizes Petitioner's detention.

49. Moreover, a noncitizen who is already in "full" or standard removal proceedings like Petitioner cannot be placed into expedited removal proceedings under § 1225(b)(1). *See Jeiker Josue M. Q.*, No. 26-cv-505, ECF No. 12 at 4; *see also Patel v. Tindall*, No. 3:25-cv-373-RGJ, 2025 WL 2823607, at *5 (W.D. Ky. Oct. 3, 2025) ("[A]n individual cannot be in two removal proceedings simultaneously."); *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at *7 (N.D. Cal. Sep. 12, 2025) ("The Government concedes that Ms. Salcedo Aceros is currently in full removal proceedings under Section 1229, and that while those proceedings are live, she cannot be simultaneously subjected to Section 1225(b)(1)'s expedited removal proceedings."); *Munoz Materano v. Arteta*, 804 F. Supp. 3d 395, 413 (S.D.N.Y. 2025) ("Respondents therefore expressly concede that, while Munoz Materano's appeal is pending, he remains in Section 240 removal proceedings subject to § 1229a, not expedited removal pursuant to § 1225(b)(1)."). Because Petitioner is already in "full" removal proceedings under 8 U.S.C. § 1229a, he cannot also be in expedited removal proceedings under § 1225(b)(1). *See Jeiker Josue M. Q.*, No. 26-cv-505, ECF No. 12 at 4; *Patel*, 2025 WL 2823607, at *5; *Salcedo Aceros*, 2025 WL 2637503, at *7; *Munoz Materano*, 2025 WL 2630826, at *11. What is more, Petitioner has not yet undergone a credible fear interview. "[A] noncitizen may be detained under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) only if they have (1) undergone a credible fear interview, 8 U.S.C. § 1225(b)(1)(A)(ii), and (2) have been found not to have a credible fear of persecution, 8 U.S.C. § 1225(b)(1)(B)(iii)(I)." *Jeiker Josue M. Q.*,

No. 26-cv-505, ECF No. 12 at 4. Petitioner has not been afforded a credible fear interview, and Respondents have not determined that he lacks a credible fear of persecution under 8 U.S.C. § 1225(b)(1)(B)(iii). For all these reasons, Respondents cannot plausibly invoke § 1225(b)(1) to justify Petitioner's detention, and any such argument should be rejected.

50. Section 1225(b)(2) likewise does not apply to justify Respondents' detention of Petitioner. This Court and the majority of courts around the country have made clear that 8 U.S.C. § 1225(b)(2) only authorizes detention for noncitizens who are at the border seeking physical entry at the time of detention, not those who are already in the country and thus their detention is discretionary and governed by 8 U.S.C. § 1226(a). *E.g.*, *Velasco Hurtado v. Bondi*, No. 0:26-CV-546, 2026 WL 184884 (D. Minn. Jan. 24, 2026); *Eliseo A.A.*, 2025 WL 2886729, at *3; *Mayamu K. v. Bondi*, Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819, at *3 (D. Minn. Oct. 20, 2025) (collecting cases); *Khalid B.Q. v. Bondi*, Civ. No. 25-4584 (JWB/DJF), ECF No. 10 at 1–2, 4–5 (D. Minn. Dec. 18, 2025); *Xuseen A. v. Bondi*, Civ. No. 25-4514 (JWB/DJF), ECF No. 16 at 5–6 (D. Minn. Dec. 19, 2025); *Vedat C. v. Bondi*, Civ. No. 25-4642 (JWB/DJF), ECF No. 9 at 4–6 (D. Minn. Dec. 19, 2025). "The fact that [a noncitizen] has applied for asylum does not change the conclusion." *Mahad S. v. Noem*, No. 26-cv-476, 2026 WL 177860, at *3 (D. Minn. Jan. 22, 2026).

51. Respondents' own regulations also bar Petitioner's detention. Respondents "may not redetermine conditions of custody imposed by the Service" with respect to noncitizens "in removal proceedings, including persons paroled after arrival pursuant to [8 U.S.C. § 1182(d)(5)(A), INA § 212(d)(5)(A)]." 8 C.F.R. § 1003.19(h)(1)(i). Respondents'

arrest and continued detention of Petitioner effectively amounts to a re-determination of custody status, in violation of the law.

52. Here, Petitioner is not "seeking admission" within the meaning of § 1225(b)(2) He was inspected at the border and paroled into the country almost *three years* ago. Since then, Petitioner has resided in the United States building a life for his family without issue. He has maintained gainful employment through his TPS work authorization and has at all times complied with the law. He has filed a claim for asylum, which is pending on appeal. Because Petitioner's appeal of the final order of removal is pending, it is not yet a final action. *See Inaldo L. v. Noem*, No. 26-CV-142 (ECT/SGE), 2026 WL 161322, at *2 (D. Minn. Jan. 21, 2026); *see also* 8 C.F.R. § 1241.1 (specifying when an order of removal becomes final). There is no basis for redetermination of custody or for detaining Petitioner under § 1225(b)(2). *See Victor Hugo D. P. v. Olson*, No. 25-cv-4593 (LMP/DTS), 2025 WL 3688074, at *2 (D. Minn. Dec. 19, 2025) (quoting *United States ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929)); *see, e.g., Roberto M. F. v. Olson*, No. 25-cv-4456 (LMP/ECW), 2025 WL 3524455, at *4 (D. Minn. Dec. 9, 2025) (holding that "a noncitizen who is present in the United States" for several years "is not 'seeking admission'" under Section 1225(b)(2)); *Belsai D.S.*, 2025 WL 2802947, at *6 ("One who is 'seeking admission' is presently attempting to gain admission into the United States.").

53. Further, when, as here, an individual is arrested without notice after living in the country and engaging in the asylum process, 8 U.S.C. § 1226(a) applies. Respondents' novel position that Petitioner is "seeking admission" into the United States under § 1225(b)(2) has been rejected time and again. *See, e.g., Abdirashid H.M. v. Noem*,

2026 WL 127698, at *3 (holding that, when the petitioner was previously released and engaging in the asylum process, § 1225(b)(1) "does not authorize mandatory detention of [a] noncitizen once they have been paroled into the country and released"); *Avila v. Bondi*, No. 25-3741 (JRT/SGE), 2025 WL 2976539, at *5–6 (D. Minn. 2025) (applying § 1226 where the petitioner "has lived in the country for years without seeking any lawful immigration status" prior to being detained without notice or a bond hearing); *Victor S.M. v. Noem*, 2026 WL 161445, at *2 (D. Minn. 2026) ("With this holding, the Court joins the chorus of compelling opinions from throughout the country holding that § 1225(b) does not apply to noncitizens already present in the country."). Therefore, any detention of Petitioner could only be pursuant to 8 U.S.C. § 1226(a), which would also require a warrant but was not provided here.

**The Appropriate Remedy for Petitioner's Unlawful Detention is Release**

54. When a habeas petitioner's detention is without legal basis, the typical remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

55. Respondents may argue, as they have in similar cases, that if the Court rules that Petitioner should have been detained pursuant to § 1226, instead of § 1225, then the remedy is a bond hearing as opposed to outright release. This argument is meritless.

56. Section 1226(a) provides that an alien may be arrested and detained "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226(a). Thus, "[i]ssuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a)." *Joaquin Q.L. v. Bondi*, No. 26-cv-233, 2026 WL 161333, at *2 (D. Minn. Jan. 21, 2026) (Provinzino, J.) (quoting *Ahmed M. v. Bondi*, No. 25-cv-4711, 2026 WL 25627, at *3

(D. Minn. Jan. 5, 2026)); *accord Diego L. v. Bondi*, No. 26-cv-382, 2026 WL 145206, at *3 (D. Minn. Jan. 20, 2026); *Juan R. v. Bondi*, No. 26-cv-252, 2026 WL 125255, at *2–3 (D. Minn. Jan. 16, 2026). "It follows that absent a warrant a noncitizen may not be arrested and detained under section 1226(a)." *Ahmed M.*, 2026 WL 25627, at *3 (quoting *Chogllo Chafla v. Scott*, 804 F. Supp. 3d 247, 264 (D. Me. 2025)). Furthermore, § 1226 requires that noncitizens "receive bond hearings at the outset of detention." *Jennings*, 583 U.S. at 302. That time has long since passed.

57. Petitioner was detained without a warrant, and has not been given a bond hearing despite being detained for more than four months. Under such circumstances, courts in this District have held immediate release, and not a bond hearing, is the appropriate remedy:

> Where that authority has not been invoked or established, ordering a bond hearing would treat the absence of statutory authority as a mere procedural irregularity rather than a substantive defect . . . Where the record shows Respondents have not identified a valid statutory basis for detention in the first place, the remedy is not to supply one through further proceedings.

Order on Pet. for Writ of Habeas Corpus at 6–7, *Ahmed A. v. Bondi,* Civ. No. 25-cv-04776 (D. Minn. Jan. 6, 2026), ECF No. 12. The same principle holds true here. The Court should order Petitioner released.

## CLAIMS FOR RELIEF

### COUNT ONE

### Fifth Amendment Procedural Due Process

*Respondents are Confining Petitioner Without Any Semblance of Due Process.*

58. Petitioner realleges and incorporates by reference the allegations contained above.

59. Petitioner has due process rights as a resident of the United States. *Zadvydas*, 533 U.S. at 693. 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. *Id.*; *Mathews v. Diaz*, 426 U.S. 67, 77 (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.

60. Moreover, the Due Process Clause applies regardless of whether a noncitizen's presence is lawful, unlawful, temporary, or permanent—and regardless of whether detention is purportedly authorized by Sections 1225 or 1226. *Hernandez*, 872 F.3d at 990 n.17 ("[I]t is well-established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority." (citing *Zadvydas*, 533 U.S. at 695)). A noncitizen's interest in freedom from physical restraint "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

61. Federal courts use the three-part test in *Matthews v. Eldridge* to determine whether civil detention violates a detainee's due process rights. 424 U.S. 319 (1976). The elements of this test are: (1) the private interest that the official action affects; (2) the risk that the procedures used will result in an erroneous deprivation of the private interest, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest in following the existing procedures, both in achieving their objectives and in the potential burdens of an alternate procedure. *Id.* at 335.

62. Here, all three factors favor Petitioner.

63. *First*, Petitioner has a significant private interest at stake. A person's interest in freedom from physical detention is "the most elemental of liberty interests." *Hamdi*, 542 U.S. at 529; *see also Zadvydas*, 533 U.S. at 690 ("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."). Petitioner is wrongfully confined, representing a direct attack on Petitioner's liberty interests. Petitioner has lived in the United States for almost three years. He has built a life here. But he was seized and detained without any process and without any individualized assessment or explanation. This wrongful deprivation is even more acute in this case, since Petitioner had been permitted to enter and live in the United States at liberty, with parole. Under these circumstances, Petitioner plainly possesses a constitutionally protected interest in remaining free from arbitrary confinement.

64. When, as here, a noncitizen is initially released on parole and later re-detained, courts have repeatedly recognized that such individuals possess a protected

liberty interest in remaining out of custody. *See Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032–33 (N.D. Cal. 2025) (collecting cases); *Tesara v. Wamsley*, No. C25-1723-KKE-TLF, 2025 WL 3288295, at *4 (W.D. Wash. Nov. 25, 2025) (holding that mandatory detention under § 1225(b), without consideration of noncitizens' "deep financial, community, and familial ties," raises serious constitutional concerns) (quoting *Salgado v. Mattos*, No. 2:25-cv-01872-RJB-EJY, 2025 WL 3205356, at *20 (D. Nev. Nov. 17, 2025)); *Rodriguez-Acurio*, 2025 WL 3314420, at *25–31.

65. *Second*, the risk of erroneous deprivation is extraordinarily high. Petitioner was detained without any individualized assessment, without notice, and without an opportunity to be heard. Respondents' position treats a pending asylum application as meaningless and permits liberty to be withdrawn at any moment based solely on shifting policy, rather than on facts particular to the individual. And Petitioner will continue to be deprived of this interest if he continues to be detained. Respondents' purported basis for detaining Petitioner under § 1225(b)(2) has been rejected time and time again in this Court. *Ahmed A.*, No. 25-4776 (JWB/DJF), ECF No. 12 at 1; *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1149-52 (D. Minn. 2025); *Jose J.O.E.*, 797 F. Supp. 3d at 969–970; *Mayamu K.*, 2025 WL 3641819, at *3–5, 8; *R.E. v. Bondi*, No. 0:25-cv-3946-NEB, 2025 WL 3146312, at *2–3 (D. Minn. Nov. 4, 2025); *Herrera Avila v. Bondi*, No. 0:25-cv-3741 (JRT), 2025 WL 2976539, at *5–7 (D. Minn. Oct. 21, 2025). And Respondents' anticipated argument for detaining Petitioner under § 1225(b)(1) has likewise consistently been rejected by this Court. *See Bashir K.A.*, 2026 WL 452353, at *7; *Abdourahim A.F.*, 2026 WL 413743, at *2; *Alan C.E.*, 2026 WL 413742, at *2; *Davidson A.V.C.*, 2026 WL 369844, at *2;

*Mervis E.A.M.*, 2026 WL 323636, at *1; *Joffre A.J.L.*, 2026 WL 323699, at *2; *Joana J.*, 2026 WL 327935, at *2. The deprivation of Petitioner's liberty interest is erroneous, given that there was no justification for Petitioner's detention in the first place. The government has already made the determination that Petitioner poses no flight risk of danger to the community when he was inspected and paroled into the country in May 2023; there has been no material change in circumstances since that time to warrant revisiting that determination.

66. *Lastly*, the Government has no legitimate interest in refusing to follow its own rules. Petitioner poses no safety threat to the community. He has no criminal history, has been living in the United States without issue for almost three years, and was in fact detained after attending the first hearing in his removal proceedings, as he was ordered to do. Petitioner is already in removal proceedings, subject to the Immigration Court's jurisdiction, and fully available for supervision through less restrictive means. Detaining Petitioner without individualized justification does not meaningfully advance any legitimate governmental objective; it merely imposes confinement for confinement's sake. Releasing Petitioner, or at a minimum holding a bond hearing, would in fact *save* the government the resources and expense of continued detention.

67. Because Petitioner's continued detention without individualized process violates his constitutional rights to due process guaranteed in the Fifth Amendment, this Habeas Petition should be granted and Petitioner immediately released.

**COUNT TWO**

**Fifth Amendment Substantive Due Process**

*Respondents' Ongoing Detention Confines Petitioner Without Any Legitimate Reason*

68. To comply with the Due Process Clause, detention must always bear "some reasonable relation to the purpose for which the individual was committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018).

69. Petitioner's detention violates his substantive right to due process because it does not further the two legitimate purposes for immigration detention. *Zadvydas*, 533 U.S. at 690.

70. The only legitimate purposes, consistent with due process, for federal civil immigration detention is to prevent flight risk and ensure the detained person's attendance for a legal hearing adjudicating their status or potential removal, or to otherwise ensure the safety of the community. *Id.* at 690–91 (finding that immigration detention is justified in two scenarios: (1) ensuring a noncitizen's appearance during removal proceedings and (2) preventing danger to the community).

71. Here, there is no legitimate purpose for Petitioner's detention. First, Petitioner poses no flight risk because there is no reason to believe that Petitioner would not attend the hearings for his immigration proceedings. Indeed, Petitioner has not missed any hearing date. Petitioner has made a life in Illinois, living and working there with authorization for almost three years. He also has partner and a minor child who live with him. Second, Petitioner poses no safety threat to the community. Petitioner has not violated any law nor been convicted of any crime.

72. Petitioner's detention is instead punitive because it bears no "reasonable relation" to any legitimate government purpose. *Zadvydas*, 533 U.S. at 690 (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). Here, there is every indication that Petitioner's detention is not to facilitate removal, or protect against risk of flight or dangerousness, but for the purpose of "sending a message" that other immigrant families and parents must cooperate with ICE or self-deport or risk having their children separated from them.

73. Petitioner's continued detention is unrelated to the purposes justifying it as a constitutional matter, and therefore contravenes the fundamental Due Process protections in the Fifth Amendment of the Constitution and is causing Petitioner substantial and irreparable harm.

**COUNT THREE**

**Violation of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)**

*Petitioner's Ongoing Detention Pursuant to 8 U.S.C. § 1225(b)(2) is Unlawful because Petitioner Is Not "Seeking Admission" and Therefore Cannot Be Held Under that Authority*

74. Petitioner realleges and incorporates by reference each and every allegation contained above.

75. Respondents are violating the Immigration and Nationality Act by attempting to apply mandatory detention through 8 U.S.C. § 1225(b)(2), to Petitioner. Petitioner was nowhere near the border and was not "seeking admission." Rather, he was released on humanitarian parole almost three years ago. Petitioner is not subject to mandatory detention.

76. Because Petitioner's continued detention violates his statutory rights, this Habeas Petition should be granted and Petitioner immediately released.

**COUNT FOUR**

**Violation of the Administrative Procedure Act, 5 U.S.C. § 706**

*Detaining Petitioner Pursuant to an Unlawful Interpretation of 8 U.S.C. § 1225(b)(2) Violates the Administrative Procedure Act*

77. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

78. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

79. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

80. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens could properly be detained under § 1226(a) but would then be eligible for release on bond unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

81. Nonetheless, DHS has adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.

82. Respondents, through a recent administrative decision in Matter of *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), failed to articulate any reasoned explanations for new interpretation of the Act. DHS's decision represents a change in the agencies' policies and positions that negates the plain language of the Act, the will of Congress, and decades of administrative precedent. Indeed, the *Yajure Hurtado* decision was recently vacated by *Bautista v. Santacruz*, -- F. Supp. 3d --, 2026 WL 468284, at *10 (C.D. Cal. Feb. 18, 2026).

83. The application of § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

**COUNT FIVE**

**Violation of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(1)**

*Petitioner's Ongoing Detention Pursuant to 8 U.S.C. § 1225(b)(1) is Unlawful because Petitioner is Not Seeking Admission and Therefore Cannot Be Held Under that Authority*

84. Petitioner realleges and incorporates by reference each and every allegation contained above.

85. Respondents are violating the Immigration and Nationality Act by, upon information and belief, attempting to apply mandatory detention through 8 U.S.C. § 1225(b)(1) because Petitioner applied for admission at a port of entry, was granted parole, and has a pending asylum application. This is not enough to justify Respondents' detention of Petitioner, because he was not "arriving" in the country.

86. Because Petitioner's continued detention violates his statutory rights, this Habeas Petition should be granted and Petitioner immediately released.

## COUNT SIX

### Violation of the Administrative Procedure Act, 5 U.S.C. § 706

*Detaining Petitioner Pursuant to an Unlawful Interpretation of 8 U.S.C. § 1225(b)(1) Violates the Administrative Procedure Act*

87. Petitioner realleges and incorporates by reference each and every allegation contained above.

88. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

89. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

90. The mandatory detention provision at 8 U.S.C. § 1225(b)(1) does not apply to all noncitizens residing in the United States who previously applied for admission at a port of entry and were granted parole. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens could properly be detained—pursuant to a warrant—under § 1226(a), but would then be eligible for release on bond unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

91. Nonetheless, upon information and belief, DHS has adopted a policy and practice of applying § 1225(b)(1) to Petitioner and others in the same position.

92. Respondents, through their recent administrative decision, failed to articulate any reasoned explanations for new interpretation of the Act. DHS's decision represents a

change in the agencies' policies and positions that negates the plain language of the Act, the will of Congress, and decades of administrative precedent.

93. The application of § 1225(b)(1) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

**COUNT SEVEN**

**Violation of the Administrative Procedure Act, 5 U.S.C. § 706**

*Petitioner's Ongoing Detention under 8 U.S.C. § 1226 without the Opportunity for a Bond Hearing Violates His Statutory Right to a Hearing*

94. Petitioner realleges and incorporates by reference each and every allegation contained above.

95. Unlike § 1225, which operates on non-citizens entering the United States, the "default rule" is that § 1226(a) and its implementing regulations apply to noncitizens "already present in the United States" and subject to pending removal proceedings. *Jennings*, 583 U.S. at 303. Section 1226 gives discretion to "the Government to detain certain [non-citizens] already in the country pending the outcome of removal proceedings." *Id.* at 289. A noncitizen may only be arrested and detained "[o]n a warrant issued by the Attorney General," and they may be released on bond, thus entitling them to a bond hearing at the outset of their detention. *Id.* at 287 (citing 8 U.S.C. § 1226(a), (c)); *R.E.*, 2025 WL 3146312, at *2–3; *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d). To the extent Respondents contend that Petitioner is subject to mandatory detention under § 1226(a), that detention would be equally unlawful.

96. Mandatory detention of noncitizens already in the country comes under § 1226(c). The statute requires detention for those noncitizens convicted of certain crimes, as well as noncitizens in the country but ineligible for legal admission for specific reasons and arrested or charged with certain crimes. *See* 8 U.S.C. § 1226(c). Relevant here, a noncitizen in the country must be detained if (1) they face a charge of assaulting a law enforcement officer, *and* (2) they are inadmissible to the country because they were present here without admission or parole, they used fraud or willful misrepresentation to seek admission, or they lacked valid entry documents at the time of application for admission. 8 U.S.C. § 1226(c)(1)(E).

97. Petitioner is not legally detained under § 1226(c), as he has not been convicted of any crimes, and he does not fit within the three categories of inadmissible noncitizens for whom the criminal charge requires mandatory detention. *See* 8 U.S.C. § 1226(c)(1)(E) (establishing three categories of inadmissibility under § 1182(6): (1) presence without admission or parole, (2) failure to attend removal proceedings, and (3) misrepresentation—none of which apply to Petitioner here.

98. Accordingly, Petitioner's current detention must be under 8 U.S.C. § 1226(a), requiring Respondents to have a detained Petitioner only with a warrant issued by the Attorney General, and to provide Petitioner with a bond hearing at the outset of his detention. Respondents failed on both steps. Respondents lacked a warrant to arrest Petitioner at his initial detention in October 2025. Respondents have also failed to provide Petitioner with a bond hearing before an immigration judge for both detentions.

99. The remedy for Petitioner's warrantless detention is release, as the Respondents lacked the legal authority to detain Petitioner.

**COUNT EIGHT**

**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)**

*Petitioner Was Unlawfully Arrested in Violation of His Constitutional, Statutory, and Administrative Rights*

100. Petitioner re-alleges and incorporates by reference each and every allegation contained above.

101. 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).

102. 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. 25-cv-03183, 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)); *United States v. Williams*, No. 19-cr-325, 2020 WL 4228095, at *7 (D. Minn. May 13, 2020), *R&R adopted*, 2020 WL 4226865 (July 23, 2020). 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 Gerstein*, 420 U.S. at 125. It must, however, occur within forty-eight hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstances. *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

103. There is a strong preference that immigration arrests be based on warrants. *See Arizona v. United States*, 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 an individualized, pre-arrest probable cause determination 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).

104. Petitioner's warrantless detention occurred despite his grant of parole and 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. 25-cv-3417, 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (collecting cases). When he was seized, Petitioner (a) was living at a stable home address, of which the government was fully aware, and (b) had been in the United States for a year and a half and (c) built strong ties to his community. No officer could have probable cause to believe that he was likely to escape before a warrant could be obtained.

105. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to detain Petitioner. *See Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57; *see also, e.g.*, Order at 8–9, *Garrison G. v. Bondi*, No. 26-cv-00172 (D. Minn. Jan. 15, 2026), ECF No. 6. Respondents obtained no such judicial determination.

106. Respondents' own regulations also provide that noncitizens arrested without a warrant must receive a custody determination within forty-eight 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 [noncitizen] is likely to appear for any future proceeding." 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). Upon information and belief, Petitioner has received no such custody determination.

107. Respondents' detention of Petitioner, after previously determining that the was neither a flight risk nor a danger to the community when he was inspected in May 2023, without any new showing of probable cause, violated the Fourth Amendment. When the government releases a person from detention, the purpose of their detention has been accomplished. *See S.E. v. Noem*, 26-cv-00356, 2026 WL 206085, at *2–4 (E.D. Cal. Jan. 27, 2026); *Orellana v. Noem*, 807 F. Supp. 3d 745, 755 (W.D. Ky. 2025); *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1320–24 (W.D. Wash. 2025); *Duong v. Kaiser*, 800 F. Supp. 3d 1030, 1037–43 (N.D. Cal. 2025).

108. Under the Fourth Amendment, the government cannot detain a paroled noncitizen without changing 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).

109. Respondents' warrantless detention 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 Petitioner's release.

**REMEDY**

110. An available remedy for Respondents' unlawful conduct as outlined in this complaint is for Petitioner to be released.

111. 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)). Detention here serves no statutory purpose, and there is no indication that Petitioner's detention was based on any facts that might indicate that Petitioner should be in custody for some reason.

112. Section 1225 does not apply to noncitizens who are in Petitioner's situation—those who are not currently present at the border seeking physical entry at the time of detention, who have been released on parole, and who are residing within the United States while seeking lawful status—as opposed to those who are detained while in the process of physically entering the United States. *See Eliseo A.A*, 2025 WL 2886729,

at *3–4; *Mayamu K.*, 2025 WL 3641819, at *3; *Khalid B.Q.*, ECF No. 10, at 1–2, 4–5; *Xuseen A.*, ECF No. 16, at 5–6; *Vedat C. v. Bondi*, Civ. No. 25-4642 (JWB/DJF), ECF No. 9, at 4–6.

113. Further, Petitioner had already been inspected and released on humanitarian parole pending the resolution of his immigration proceedings. Federal regulations do not allow Respondents to unilaterally reconsider the status or conditions of release absent a compelling change of circumstances. *See* 8 C.F.R. § 1003.91(h)(1).

114. When a habeas petitioner's detention is without legal basis, the typical remedy is release. *Munaf*, 553 U.S. at 693 (describing release as the "typical remedy" for "unlawful executive detention"); *see also, e.g.*, *Mayamu K.*, 2025 WL 3641819, at *8 (ordering release on recognizance where immigrant detained improperly under § 1225(b) and was instead subject to detention, if at all, under § 1226(a)(1)). Numerous courts in this district have agreed. *See, e.g.*, Order at 2–3, *Marco S. v. Noem*, No. 26-cv-663 (SRB/DLM) (D. Minn. Jan. 29, 2026), ECF No. 10 ("The Court further concludes that immediate release is the appropriate remedy. . . . The issuance of a warrant is a necessary prerequisite to even discretionary detention under § 1226(a)."); Order at 3, *Kathya M. v. Bondi*, No. 26-cv-587 (SRB/EMB) (D. Minn. Jan. 29, 2026), ECF No. 9 ("Because Respondents have not argued the existence of, or produced, a warrant directed to Petitioner, Petitioner is entitled to habeas relief and to be released from detention."); Order at 2–3, *Max A. v. Bondi*, No. 26-cv-00614 (SRB/DLM) (D. Minn. Jan. 28, 2026), ECF No. 7 ("Similarly, because the Court does not have before it the administrative warrant contemplated by § 1226, release is the correct remedy.").

115. Further, detention under § 1226(a) would require a warrant issued by the Attorney General. *Jose J.O.E.*, 797 F. Supp. 3d at 961. To put this plainly: "absent a warrant a noncitizen may not be arrested and detained under section 1226(a)." *Ahmed M. v. Bondi*, No. 25-cv-4711 (ECT/SGE), 2026 WL 25627, *3 (D. Minn. Jan. 5, 2026) (quoting *Chogllo Chafla*, 804 F. Supp. 3d at 264). Upon information and belief, Respondents had no such warrant.

116. If the Court rules that Petitioner should have been detained pursuant to § 1226, instead of § 1225, then the remedy is outright release:

> [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 authority as a mere procedural irregularity rather than a substantive defect. . . . Where the record shows Respondents have not identified a valid statutory basis for detention in the first place, the remedy is not to supply one through further proceedings.

Order at 6, *Vedat C.*, Civ. No. 25-cv-4642 (JWB/DTS), ECF No. 9.

**REQUEST FOR ORDER TO SHOW CAUSE**

117. Within three days, unless good cause for a delay is shown, "[a] court, justice or judge entering a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

118. Petitioner respectfully requests that the Court issue an Order to Show Cause directing Respondents to file a return within three days of the Court's Order, showing cause, if any, why a writ of habeas corpus should not be granted.

119. Pending the adjudication of this Petition, Petitioner further seeks an order restraining the Respondents from transferring Petitioner to a location outside of the State of Minnesota, so that the jurisdiction of this Court is not impeded, and so that Petitioner remains accessible to legal counsel and loved ones.

## PRAYER FOR RELIEF

Accordingly, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Immediately enjoin and restrain Respondents from transferring Petitioner from the jurisdiction of this District pending these proceedings;

3) Issue an Order that Petitioner be released immediately, or in the alternative, issue an Order requiring Respondents to show cause as to why Petitioner should not be released immediately;

4) Alternatively, upon evidence of a warrant, issue an Order requiring Respondents to provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;

5) Award Petitioner costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

6) Grant such further relief as the Court deems just and proper.

Respectfully submitted,

Dated: March 6, 2026

*/s/ Nathan D. Converse*

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