

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

Jorge Fernandez Gomez	)	
Petitioner	)	
	)	
v.	)	
	)	
David Easterwood , Director of St. Paul	)	
Enforcement and Removal Operations,	)	
Immigration and Customs Enforcement;	)	
Markwayne Mullin , Sec'ty of the Dep.	)	
Homeland Security; Mike Jambor ,	)	
Administrator of the Kandiyohi County	)	
Jail; Todd Lyons , Acting Director, U.S.	)	
Immigration and Customs Enforcement;	)	
Todd Blanche , Attorney General of the	)	
United States	)	
	)	
Respondents.	)	

	PETITION FOR WRIT OF HABEAS CORPUS
	CASE No: 0:26-cv-02360

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Jorge Fernandez Gomez is a native and citizen of Mexico who has lived in the United States for almost 27 years, has no criminal history, and has an active grant of deferred action and work authorization issued by United States Citizenship and Immigration Services in connection with his pending U-nonimmigrant visa petition. Despite that grant of deferred action, Respondents arrested Petitioner, provided no meaningful explanation for the detention, did not serve him with the paperwork supposedly justifying custody, and have not identified any concrete or lawful basis

showing that his removal is significantly likely in the reasonably foreseeable future, despite being put on notice of the Petitioner's protection through his U Visa application.

JURISDICTION

1. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) because Petitioner is in custody in violation of the Constitution and laws of the United States.
2. The Court also has jurisdiction under 28 U.S.C. § 1331 (federal question), the APA, 5 U.S.C. § 701 et seq., and Article I, § 9, clause 2 of the United States Constitution (Suspension Clause).
3. Nothing in the INA bars judicial review of Petitioner's challenge to the lawfulness of her civil detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–41 (2018) (holding that 8 U.S.C. §§ 1252(b)(9) and 1226(e) do not bar constitutional challenges to immigration detention).

VENUE

4. Venue lies in this District pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), because Petitioner is detained within the jurisdiction and Respondents may be reached for service of process here.
5. Venue is also proper under 28 U.S.C. § 1391(e) because Respondents are officers of the United States and a substantial part of the events giving rise to this petition occurred within this District.

PARTIES

6. Petitioner is a native and citizen of Mexico and the spouse of a U Visa applicant and the father of two (2) U.S. citizen children.
7. Respondent David Easterwood is the Field Office Director for Enforcement and Removal Operations in this jurisdiction and is Petitioner's immediate custodian. He is sued in his official capacity.
8. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is responsible for the agency's enforcement policies and custodial decisions. He is sued in his official capacity.
9. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security and has authority over ICE and its policies. He is sued in his official capacity.
10. Respondent Todd Blanche is the Attorney General of the United States and has authority over the Executive Office for Immigration Review. He is sued in his official capacity.
11. Respondent Mike Jambor is the Captain/ Jail Administrator of the Kandiyohi County Jail and is the direct custodian of the Petitioner. He is sued in his official capacity.

FACTUAL ALLEGATIONS

12. Petitioner is a native and citizen of Mexico. Petitioner has lived in the United States for almost 27 years and has established deep family and community ties here.
13. Petitioner is the father of two United States citizen children, ages 18 and 15, both of whom reside with him and depend on him for emotional and financial support. Petitioner's sister is also a lawful permanent resident of the United States.
14. Petitioner is the derivative beneficiary of his spouse's U nonimmigrant visa petition and has independently obtained a bona fide determination ("BFD") from United States Citizenship and Immigration Services ("USCIS"). As a result of that determination, USCIS has affirmatively granted Petitioner deferred action and issued him valid employment authorization, effective May 14, 2024. Petitioner has relied on that grant of deferred action to live and work lawfully in the United States while his U visa petition remains pending.
15. Prior to the events giving rise to this petition, Petitioner had no active encounters with Immigration and Customs Enforcement ("ICE") and had not been placed in removal proceedings based on any recent enforcement action.
16. Petitioner was driving near Hudson, Wisconsin, on his way to pick up a friend when he was stopped by ICE. During that encounter, Petitioner presented his valid employment authorization document, evidencing his deferred action status granted

by USCIS. Despite this, officers informed him that he would nevertheless be taken into custody and processed for immigration purposes.

17. Petitioner was arrested without a warrant. At no time did officers present a judicial warrant, administrative warrant, or any other documentation authorizing his arrest. When he arrived at the facility, Petitioner waited while officers did a lot of paperwork, but he was not served with any of those documents.
18. Following his arrest, Petitioner was placed in immigration detention. He has no criminal history. He has never been convicted of any offense, has never posed a danger to the community, and has long demonstrated compliance with the law. Petitioner's detention has caused significant hardship to his United States citizen children and his spouse, who depend on him for daily support.
19. Petitioner does not have a final order of removal. He is currently in proceedings, with a scheduled hearing on June 13, 2026.
20. Petitioner sought release from custody through a bond request, which was denied. He was informed that bond was unavailable based on jurisdiction. Petitioner also previously sought habeas relief; however, that petition was denied. Review of that Petition shows that the petition was filed and sought under the wrong basis of relief.¹
21. Petitioner now brings this petition to ensure that the Court considers the full factual and legal context of his detention, including his active grant of deferred

¹ *Jorge F.G. v Bondi, et al*, 0:26-cv-00747 (D. Minn., Feb 23, 2026).

action, his lack of a criminal record, the absence of any lawful arrest authority, and the government's failure to establish any basis for his continued detention or removal.

LEGAL FRAMEWORK

8 U.S.C. § 1357

22. Section 1357 strictly governs the circumstances under which immigration officers may arrest a noncitizen without a warrant by issuing an I-200 administrative arrest warrant, authorized for use by immigration enforcement officers only under carefully proscribed circumstances. Those circumstances are extremely limited due to the extraordinary nature of this process. It allows arresting officers to issue their own warrants, a rare exception to the traditional practices in American law. U.S. Const. Amend. IV; *cf. Walker v. City of Birmingham*, 388 U.S. 307, 320–21, (1967) (“[I]n the fair administration of justice no man can be judge in his own case, however exalted his station [or] righteous his motives.”).
23. It permits warrantless arrests only where the officer has “reason to believe” the individual is removable and is “likely to escape before a warrant can be obtained.” 8 U.S.C. § 1357(a)(2). These requirements are mandatory statutory constraints on executive power, not discretionary guidelines.
24. An agency “literally has no power to act... unless and until Congress confers power upon it.” *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986). When

officers act outside the bounds of § 1357, they act without statutory authorization, and their actions must be set aside under the APA.

25. Nor may the government cure this defect by invoking *post hoc* justifications or recharacterizing Petitioner's detention under a different statutory scheme. The APA prohibits agencies from disregarding statutory constraints or substituting after-the-fact rationalizations for contemporaneous compliance with the law.

Castañon Nava v. Dep't of Homeland Sec., 806 F. Supp. 3d 823, 853-4 (N.D. Ill. 2025) (N.D. Ill. Oct. 7, 2025).

Fourth Amendment U.S. Constitution

26. The Fourth Amendment affords "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

27. A Fourth Amendment violation occurs where an individual is seized without reasonable suspicion or probable cause, or where evidence is obtained through exploitation of that unlawful seizure. Evidence, including identity-related evidence such as fingerprints, must be suppressed unless the government demonstrates that the connection between the illegality and the

evidence is sufficiently attenuated. *See Wong Sun v. United States*, 371 U.S. 471, 488 (1963); *Brown v. Illinois*, 422 U.S. 590, 603–04 (1975); *Hayes v. Florida*, 470 U.S. 811, 815 (1985); *United States v. Guevara-Martinez*, 262 F.3d 751, 755–56 (8th Cir. 2001).

28. A stop that escalates into physical restraint, violent arrest, and transport into immigration custody is a full seizure that must be supported by lawful authority and individualized cause. *See Hayes v. Florida*, 470 U.S. 811, 815 (1985).
29. The Eighth Circuit likewise recognizes that evidence and detention flowing from an unlawful seizure are infirm unless the connection has been meaningfully attenuated. *See United States v. Guevara-Martinez*, 262 F.3d 751, 755–56 (8th Cir. 2001).

Interaction between 8 U.S.C. § 1225 detention and 8 U.S.C. § 1357/ Fourth Amendment

30. Although the government may invoke 8 U.S.C. § 1225 to argue that detention is “mandatory” following a determination that a noncitizen is an applicant for admission, that provision does not displace the Fourth Amendment or the statutory limitations imposed by 8 U.S.C. § 1357 governing the manner in which a person may be seized in the first instance. The Constitution and governing statutes regulate the threshold question of how the government obtains custody, and § 1225 does not authorize arrest or seizure in violation of those requirements.

31. Section 1225 governs the inspection and processing of applicants for admission and provides that certain noncitizens “shall be detained” following inspection. 8 U.S.C. § 1225(b). However, the statute is silent as to arrest authority and does not authorize immigration officers to seize individuals in the first instance without complying with the requirements set forth in 8 U.S.C. § 1357 and the Fourth Amendment.
32. Congress has separately and expressly delineated the authority to arrest in 8 U.S.C. § 1357. That provision establishes the exclusive statutory framework governing warrantless immigration arrests and imposes mandatory conditions, including the requirement that the officer have “reason to believe” the individual is removable and “is likely to escape before a warrant can be obtained.” 8 U.S.C. § 1357(a)(2). Reading § 1225 to independently authorize warrantless arrests would render § 1357 superfluous, in violation of the settled principle that statutes must be construed to give effect to every provision. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001).
33. Courts must interpret statutes in a manner that avoids surplusage and harmonizes related provisions. *Id.* Accordingly, § 1225 cannot be read to displace or override the specific limitations Congress imposed on arrest authority in § 1357. Rather, § 1225 presupposes a lawful apprehension and governs only what occurs after a noncitizen has been properly taken into custody.
34. Moreover, interpreting § 1225 to authorize warrantless seizures without the constraints of § 1357 would raise serious constitutional concerns. The Fourth

Amendment requires that seizures be supported by probable cause or a valid warrant, subject only to narrow and well-defined exceptions. U.S. Const. amend. IV. Section 1357 reflects Congress's effort to codify those constitutional limits in the immigration context. Construing § 1225 to allow arrest without those safeguards would effectively eliminate any meaningful constraint on immigration officers' authority to seize individuals, contrary to both statutory design and constitutional requirements.

35. Consistent with these principles, courts evaluating immigration arrests analyze their legality under § 1357 and the Fourth Amendment, not § 1225. *See, e.g., United States v. Aragon-Ruiz*, 551 F. Supp. 2d 904, 913–14 (D. Minn. 2008) (assessing whether agents had “reason to believe” under § 1357(a)(2) and probable cause to arrest). Section 1225 does not provide an independent basis to justify an otherwise unlawful seizure.
36. The Eighth Circuit has made clear that the legality of custody cannot be justified by evidence obtained through an unlawful seizure. Evidence derived from an illegal arrest—including statements, fingerprints, and immigration records—must be excluded unless the government demonstrates that it is “sufficiently distinguishable to be purged of the primary taint.” *United States v. Flores-Sandoval*, 422 F.3d 711, 714–15 (8th Cir. 2005).
37. Nor may the government rely on post-arrest information to retroactively justify the seizure or the detention that follows. The Eighth Circuit has rejected attempts to bootstrap lawful custody from evidence obtained after an unlawful arrest, holding

that the government may not rely on such tainted evidence to establish probable cause or justify continued detention. *United States v. Guevara-Martinez*, 262 F.3d 751, 754–56 (8th Cir. 2001).

38. Accordingly, even where the government asserts that detention is authorized under § 1225, it must establish that the underlying seizure was lawful and that the facts supporting detention were obtained independently of any constitutional violation. Section 1225 does not permit the government to disregard statutory arrest requirements, cure an unlawful seizure, or rely on evidence obtained through that seizure to justify continued custody.

39. This limitation reflects a fundamental principle of constitutional law: the government may not accomplish indirectly what it is prohibited from doing directly. Where custody is obtained in violation of § 1357 and the Fourth Amendment, the government cannot invoke § 1225 to legitimize detention that is the direct product of that unlawful conduct.

Foreseeability of Removal

40. Detention in the immigration context is lawful only insofar as it serves its limited, nonpunitive purpose: effectuating removal. As the Supreme Court made clear, immigration detention “bear[s] a reasonable relation to the purpose for which the individual was committed,” and becomes unlawful where that purpose cannot be achieved. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Thus, where removal is

not “significantly likely in the reasonably foreseeable future,” continued detention is not authorized by statute or the Constitution. *Id.* at 699–701.

41. That principle is not limited to post-final-order detention. It reflects a broader constitutional limitation: civil detention must be tied to a real, non-speculative objective. Where the government cannot actually carry out removal, detention ceases to be regulatory and becomes impermissibly punitive.
42. Even assuming arguendo that § 1225 applies, detention under that provision must still satisfy constitutional limits. As courts have repeatedly held, “where an individual is protected from removal through deferred action, their detention serves no valid purpose.” *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *11 (W.D. Tex. Oct. 2, 2025); *see also Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025) (“Detention ... can be lawful only in aid of deportation,” and where deferred action prevents removal, “the Government has no legal basis to detain”).
43. As the Supreme Court explained, deferred action means that “no action will thereafter be taken to proceed against an apparently deportable alien.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999).
44. Consistent with *Zadvydas*, numerous district courts have granted habeas petitions or ordered release where the petitioner demonstrated the existence of a legal or practical barrier to removal that rendered removal not reasonably foreseeable. For example, in *Sepulveda Ayala v. Bondi*, the court held that where “the Government’s sole basis for detaining [the petitioner] is that it may do so in order

to remove him,” and deferred action prevents that removal, “the Government has no legal basis to detain.” *Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025).

45. Similarly, in *Guerra Leon v. Noem*, the court ordered release of a SIJS beneficiary subject to a final order of removal where deferred action remained in effect. (“[C]ourts have granted habeas relief where the government seeks to remove noncitizens whose deferred action status remains in effect. *See, e.g., Sepulveda...* (granting habeas relief to petitioner with deferred action status); *Guerra Leon v. Noem* (W.D. La. Oct. 30, 2025).”. Numerous courts have reached the same conclusion. Where deferred action remains active, “there is no significant likelihood of ... removal in the reasonably foreseeable future,” and continued detention is improper. *See, e.g., Nevarez Jurado v. Freden*, 2025 WL 3687264, at *8–9 (W.D.N.Y. Dec. 19, 2025); *Loja Chogllo v. Warden*, 2026 WL 393137 (D. Neb. Feb. 11, 2026); *Chavez Rascon v. Noem*, 2026 WL 800684 (D. Utah Mar. 23, 2026).

46. In *Sepulveda Ayala v. Bondi*, the court granted relief under the Zadvydas framework where the petitioner had a grant of deferred action and the government’s asserted basis for detention depended on removal that could not proceed while deferred action remained in effect. 2025 WL 2209708, at *4. (“The Government’s sole basis for detaining Sepulveda Ayala is that it may do so in order to remove him. ... cf. *Phan v. Reno*, 56 F. Supp. 2d 1149, 1156 (1999) (‘Detention by the INS can be lawful only in aid of deportation.’). For the reasons

above, the Court finds that Sepulveda Ayala's deferred action status prevents removal. As a result, the Court concludes that the Government has no legal basis to detain Sepulveda Ayala and that Sepulveda Ayala has met his burden on his habeas petition.").

47. Other courts have also recognized that where removal is prevented by an unexpired grant of deferred action, detention may raise significant foreseeability concerns under *Zadvydas*. See, e.g., *Forsah R-Z- v. Noem*, 2026 WL 310069 (E.D. Cal. Feb. 5, 2026) (Ordering immediate release of SIJS beneficiary with final removal order and deferred action, reasoning that since he could not be removed given unexpired deferred action, his detention violated due process. Also prohibiting govt from "impos[ing] any additional restrictions on Petitioner, unless that is determined to be necessary at a future pre-deprivation/custody hearing" and permanently enjoining government "from re-arresting or re-detaining Petitioner absent compliance with constitutional protections, which include, at a minimum, pre-deprivation notice describing the change of circumstances necessitating Petitioner's arrest and detention").

48. The Court in *Zadvydas* found "... interpreting the statute to avoid a serious constitutional threat, we conclude that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute. See *E. Coke, Institutes* *70b ("*Cessante ratione legis cessat ipse lex*") (the rationale of a legal rule no longer being applicable, that rule itself no longer applies)." See *Zadvydas*, 533 U.S. at 699.

49. In addition,

“... the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no [700] longer authorized by statute. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions. *See supra*, at 695 (citing 8 U. S. C. §§ 1231(a)(3), 1253 (1994 ed., Supp. V); 8 CFR § 241.5 (2001)).”

50. The *Zadvydas* Court thought it “practically necessary to recognize some

presumptively reasonable period of detention.”. *See Id.* at 701. Said

‘presumptively reasonable’ period was deemed to be six (6) months, but for many reasons, this presumption can be rebutted and should be rebutted in this case.

51. The *Zadvydas* Court’s language makes it evident that this was not a hard and fast rule. (“We realize that recognizing this necessary Executive leeway will often call for difficult judgments...” *Id.* at 700 and “The application of the “reasonable time” limitation is subject to federal-court review. The basic federal habeas statute grants the federal courts authority to determine whether post-removal-period detention is pursuant to statutory authority. In answering that question, the court must ask whether the detention exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's purpose of assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized.” *Id.* at Syllabus).

52. Even assuming the Court had not expressly stated that the application of reasonable time is subject to judicial review, in the context of *Zadvydas*, the presumptive period made sense. The Court was asked to consider two (2) fact patterns, being *Zadvydas*, who was an alien with a long criminal record, involving drug crimes, attempted robbery, attempted burglary, and theft, as well as flight from criminal and immigration proceedings, who the government attempted to remove (unsuccessfully) to four (4) different countries, and Kim Ho Ma, who was convicted of a gang related manslaughter, challenged his detention beyond the removal period after Cambodia refused to take him, because government found they were not satisfied that he would not be violent beyond the release period. *See Id.* at 686.

53. In these cases, there was nothing preventing or blocking the removal of the individuals in question, and thus the Court’s reasoning in giving “leeway” (*Id.* at 700) to the government in a presumptively lawful period of detention of six (6) months was also in concert with the fact that the government could continue to make such efforts without affecting some other lawful statute.

54. Other Courts have considered this issue, finding that,

“By delaying the burden shift until after the six-month period expires, the Supreme Court “limit[ed] the occasions”—but, crucially, did not *eliminate* the occasions—when courts will need to make the ultimate determination of whether a Petitioner is reasonably likely to be removed in the foreseeable future. The question of whether “continued” detention is authorized is a question that can be asked, and must be resolved, for detention under § 1231(a)(6) to be constitutional, regardless of whether the six-month period has ended.”

See Cruz-Medina v. Noem et al, No. 1:2025cv01768 (D. Md. 2025) (emphasis in original).

55. And, “the point here is that any presumption that removal is reasonably foreseeable during the six-month period is just that, a presumption, one that can be rebutted upon a showing that removal is not reasonably foreseeable.” *Id* at 15, ft note 5.

Victims of Crime

56. Congress created the U visa as a victim-centered form of humanitarian protection designed to strengthen law enforcement’s ability to detect, investigate, and prosecute domestic violence, sexual assault, trafficking, and other serious crimes, while simultaneously protecting noncitizen victims who assist in those efforts. *See* 8 U.S.C. § 1101(a)(15)(U); New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,014–15 (Sept. 17, 2007). The entire structure of the U-visa scheme reflects Congress’s judgment that public safety is advanced, not hindered, when survivors can report crime and cooperate with authorities without fearing immediate immigration detention and deportation.

57. Under that framework, USCIS first reviews whether a petition is bona fide, then adjudicates waiting-list eligibility when visa numbers are unavailable, and finally adjudicates the petition for U nonimmigrant status when a visa becomes available. Because Congress capped the number of principal U visas that may be issued

annually, it expressly contemplated that many meritorious applicants would wait years before final adjudication. *See* 8 C.F.R. § 214.14(d)(2).

58. To prevent that backlog from nullifying the statute’s purpose, the regulations require USCIS to place eligible petitioners on a waiting list when they are not granted U-1 status “due solely to the cap.” 8 C.F.R. § 214.14(d)(2). The regulation then provides the protection that matters here: USCIS “will grant deferred action or parole” to such waiting-list recipients and “may authorize employment.” *Id.* That is not incidental. It is the regulatory mechanism that carries out Congress’s intent that qualifying crime victims not be removed simply because administrative delay prevents immediate visa issuance.

59. USCIS later implemented an additional front-end protection through the Bona Fide Determination process. As courts have recognized, that process is not a meaningless clerical step. It reflects that USCIS has determined that the petition is properly supported for initial review, that the petitioner warrants a favorable exercise of discretion, and that the petitioner has passed the relevant background and security screening. *See, e.g., Victor G. v. Lyons*, No. 26-cv-119 (ECT/SGE) (D. Minn. Jan. 17, 2026) (noting that USCIS “determines whether the petitioner poses a risk to national security or public safety” and conducts “background and security checks”); *see also B.D.A.A. v. Bostock*, No. 6:25-cv-02062, 2025 WL 3484912, at *5 (D. Or. Dec. 4, 2025); USCIS Policy Manual, Vol. 3, Pt. C, Ch. 5. When USCIS grants deferred action and work authorization through that process, it is conferring an affirmative protection while the petition remains pending.

60. The District of Minnesota has now repeatedly adopted that framework. In *Marcos L.*, the court explained that where “nothing in the record supports any argument that Respondents revoked [the petitioner’s] employment authorization or terminated his deferred-action status,” “there is no basis for his detention.” *Marcos L. v. Noem*, No. 26-cv-676 (MJD/SGE) (D. Minn. Feb. 3, 2026). Likewise, *Victor G.* held that where the record contained no indication that USCIS had revoked the grant of deferred action, the petitioner remained protected from removal and was entitled to release. *Victor G. v. Lyons*, No. 26-cv-119 (ECT/SGE) (D. Minn. Jan. 17, 2026). *Juan M.* is to the same effect. There, ICE arrested a U-visa deferred-action recipient despite his valid work permit and deferred-action grant, and the court ordered immediate release. *Juan M. v. Att’y Gen.*, No. 26-cv-266 (ECT/JFD) (D. Minn. Jan. 17, 2026).
61. That result follows directly from the governing regulations. The same regulation that provides deferred action to U-visa waiting-list recipients also allocates the authority to terminate that protection to USCIS. See 8 C.F.R. § 214.14(d)(3). In other words, the regulatory framework does not allow ICE to accomplish through arrest and removal what the regulation assigns to USCIS to decide through the adjudicatory process. Where USCIS has granted deferred action and has not revoked it, ICE may not treat that protection as though it never existed. *See id.*; *see also Nevarez Jurado*, 2025 WL 3687264, at *9 n.10 (“USCIS apparently has done nothing to terminate [petitioner’s] deferred action.”).

Due Process

62. Immigration detention is civil in nature, and the Fifth Amendment places substantive and procedural limits on the Government's ability to detain noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).
63. The Due Process Clause prohibits detention that is arbitrary, indefinite, or not reasonably related to its purported purpose. *Zadvydas*, 533 U.S. at 690; *Kansas v. Hendricks*, 521 U.S. 346, 358 (1997).
64. Procedurally, the Due Process Clause requires a meaningful opportunity to challenge detention and an individualized assessment of dangerousness or flight risk when liberty is at stake. *See Mathews v. Eldridge*, 424 U.S. 319, 332–35 (1976); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 28–29 (1st Cir. 2021) (requiring individualized bond hearings for prolonged detention). The adequacy of process is determined by balancing (1) the private interest affected, (2) the risk of erroneous deprivation through the procedures used, and (3) the government's interest. *Id.* at 335.
65. Courts have found that detaining a U visa deferred-action recipient without prior notice and hearing “nullified” the petitioner's bona fide U visa determination and its attendant benefits, including work authorization and deferred action. *B.D.A.A. v. Bostock*, No. 6:25-CV-02062-AA, 2025 WL 3484912, at *7 (D. Or. Dec. 4, 2025). Consistent with that principle, courts have held that where a noncitizen is

protected from removal through deferred action, detention lacks a valid regulatory purpose and raises serious due process concerns. See *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *11 (W.D. Tex. Oct. 2, 2025) (“Where an individual is protected from removal through deferred action, their detention serves no valid purpose.”).

Administrative Procedure Act

66. Petitioner’s detention is also reviewable under the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 et seq.

67. Under § 706(2)(A), a reviewing court shall “hold unlawful and set aside agency action, findings, and conclusions” that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

68. Agency detention decisions that disregard statutory limits, fail to consider less-restrictive alternatives, ignore relevant factors, or rely on post hoc justifications are arbitrary and capricious.

69. Section 706(1) further authorizes courts to “compel agency action unlawfully withheld or unreasonably delayed,” including legally-required custody reviews and fear screenings under 8 C.F.R. §§ 241.4 and 241.13.

70. The APA applies because neither § 1231 nor its implementing regulations preclude judicial review of custody decisions, and constitutional claims fall outside any INA channeling provisions. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 839–41 (2018).

71. In the context of prolonged detention, the APA reinforces constitutional limits and confirms that detention must remain tethered to removal and grounded in individualized assessment, rather than automatic or indefinite confinement.

ARGUMENT

I. Respondents' detention of Petitioner is unlawful because it rests on a warrantless arrest that did not comply with 8 U.S.C. § 1357 and cannot be salvaged by later reliance on § 1225.

72. Respondents' custody of Petitioner began with a warrantless arrest. Petitioner was driving near Hudson, Wisconsin, when ICE stopped him, took him into custody, and processed him for immigration detention despite the fact that he presented valid USCIS-issued employment authorization reflecting his active deferred action. *Supra* ¶¶ 11–12. At the time of arrest, Respondents did not present a judicial warrant, an administrative warrant, or any other document authorizing the arrest. *Supra* ¶ 12. That matters because Congress did not give immigration officers freestanding authority to seize anyone they later believe may be removable. Congress imposed specific conditions for warrantless immigration arrests, and those conditions were not satisfied here.

73. Section 1357(a)(2) required Respondents to have both reason to believe Petitioner was in the United States in violation of law and reason to believe he was “likely to escape before a warrant can be obtained.” 8 U.S.C. § 1357(a)(2). Respondents cannot satisfy the second requirement. Petitioner has lived in the United States for

almost twenty-seven years, has two United States citizen children, has a lawful permanent resident sister, has no criminal history, and had an active USCIS grant of deferred action and employment authorization at the time of the stop. *Supra* ¶¶ 7–13. But no inquiry was even made as to these facts, so the individualized assessment required was not carried out.

74. Even if it was, those facts negate, rather than support, any claim that he was likely to disappear before officers could obtain a warrant. *See Nava v. Dep't of Homeland Sec.*, 435 F. Supp. 3d 880, 885 (N.D. Ill. 2020) (“Mere presence within the United States in violation of U.S. immigration law is not, by itself, sufficient to conclude that an alien is likely to escape before a warrant for arrest can be obtained.”); *Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 U.S. Dist. LEXIS 156344, at *31–33 (D. Ariz. Aug. 11, 2025) (finding § 1357(a)(2) not satisfied where the petitioner had lived openly in the United States for years and the government failed to show likelihood of escape).
75. Respondents may attempt to bypass § 1357 by arguing that Petitioner is now detained under § 1225. That argument fails because § 1225 is not an arrest statute. It does not authorize ICE to seize a person in the interior without a warrant, and it does not erase the statutory conditions Congress placed in § 1357. Reading § 1225 as an independent warrantless arrest authority would make § 1357’s escape requirement meaningless. That is not a permissible reading of the INA. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) (courts should give effect, if possible, to every clause and word of a statute).

76. Nor can Respondents cure the unlawful arrest through post-arrest processing. The Eighth Circuit has already rejected that kind of bootstrapping. In *United States v. Flores-Sandoval*, the court held that evidence obtained through unlawful detention must be excluded unless the government shows it was “sufficiently distinguishable to be purged of the primary taint,” and specifically rejected the idea that continued custody itself cures the violation: “there is nothing about sitting in jail that sufficiently purges the primary taint of the illegal arrest.” 422 F.3d 711, 714–15 (8th Cir. 2005). Likewise, in *United States v. Guevara-Martinez*, the Eighth Circuit held that identity-related evidence, including fingerprints and immigration records, may be suppressed where obtained through unlawful arrest and detention for investigative purposes. 262 F.3d 751, 754–56 (8th Cir. 2001).
77. That principle defeats the anticipated § 1225 response. Respondents cannot arrest Petitioner without satisfying § 1357, discover or generate custody paperwork after the seizure, and then claim that the later paperwork independently validates the detention. The current custody is not separate from the arrest. It is the direct consequence of it. Petitioner is detained because ICE stopped him, arrested him, transported him, processed him, and placed him into detention. *Supra* ¶¶ 11–15. There has been no intervening final order of removal, no independent lawful process, and no attenuation sufficient to break the chain between the unlawful seizure and the present confinement. *See Flores-Sandoval*, 422 F.3d at 714–15; *Guevara-Martinez*, 262 F.3d at 755–56; *Rosado*, 2025 U.S. Dist. LEXIS 156344, at *32–36.

78. Accordingly, even if Respondents invoke § 1225, that provision does not answer the threshold question: how did the government lawfully obtain custody over Petitioner in the first place? Because Respondents did not comply with § 1357 and because Petitioner's detention flows directly from that unlawful seizure, his custody is unlawful under § 1357, the Fourth Amendment, and the APA. See 5 U.S.C. § 706(2)(A), (C), (D); *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986).

II. Petitioner's removal is not reasonably foreseeable because his deferred action remains active and unrevoked.

79. Petitioner's detention is unlawful for an independent reason: Respondents cannot presently remove him. Petitioner has a valid U visa bona fide determination, active deferred action, and employment authorization effective May 14, 2024. *Supra* ¶ 9. Respondents have not alleged that USCIS has revoked that deferred action, terminated his employment authorization, or determined that the BFD was granted in error or is no longer warranted. *Supra* ¶¶ 9, 16.

80. That matters because deferred action has legal effect. It is not merely a favorable notation in a file. The Supreme Court has described deferred action as a decision that, for humanitarian reasons, "no action will thereafter be taken to proceed against an apparently deportable alien." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999). Thus, while deferred action remains in effect,

Respondents cannot lawfully proceed as though Petitioner were immediately removable.

81. Removal is unavailable for two independent reasons.
82. First, removing Petitioner would necessarily nullify or revoke the deferred action that USCIS already granted. USCIS granted Petitioner deferred action through the U visa bona fide determination process and authorized him to work while his petition remains pending. *Supra* ¶ 9. Respondents have not identified any USCIS decision revoking that protection. *Supra* ¶¶ 9, 16. Courts addressing this exact issue have held that the government must actually revoke deferred action before treating the person as removable. *See Jaime D.B. v. Easterwood*, No. 26-cv-891 (MJD/DTS), 2026 WL 578754, at *2 (D. Minn. Feb. 25, 2026), report and recommendation adopted, 2026 WL 592854 (D. Minn. Mar. 2, 2026) (“Although no doubt the Government has broad discretion to revoke a grant of deferred action . . . it nonetheless must actually revoke said grant before detaining and removing a noncitizen.”). ICE cannot accomplish through physical removal what USCIS has not done through revocation.
83. Second, even apart from formal revocation, removal is itself “action” against a person whom USCIS has affirmatively placed in deferred action. That is incompatible with the very definition of deferred action. *See Reno*, 525 U.S. at 484. Courts have therefore repeatedly held that an active, unrevoked grant of deferred action prevents removal and defeats the government’s claimed basis for detention. In *Sepulveda Ayala*, the court held that because deferred action

prevented removal, “the Government has no legal basis to detain.” *Sepulveda Ayala v. Bondi*, No. 2:25-cv-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025). In *Santiago*, the court stated the same principle plainly: “Where an individual is protected from removal through deferred action, their detention serves no valid purpose.” *Santiago v. Noem*, No. EP-25-cv-361-KC, 2025 WL 2792588, at *11 (W.D. Tex. Oct. 2, 2025). And in *Loja Chogllo*, the court granted release because “where a detainee’s deferred action remains active, he is protected from removal, and there is no significant likelihood of his removal in the reasonably foreseeable future.” *Loja Chogllo v. Warden*, No. 8:26-cv-54, 2026 WL 393137 (D. Neb. Feb. 11, 2026).

84. Those authorities are not limited to cases with final orders. They rest on the legal effect of deferred action itself: while deferred action remains active, removal cannot lawfully proceed. *See Godinez Hernandez v. Mullin*, No. 3:26-cv-00219-ART-CSD, 2026 WL 937393, at *1 (D. Nev. Apr. 7, 2026) (“A person with a valid grant of deferred action cannot be removed.”); *Espinoza Cruz v. English*, No. 3:25-cv-919-CCB-SJF, 2025 WL 3676992, at *4 (N.D. Ind. Dec. 18, 2025) (holding that USCIS’s U visa bona fide determination and grant of deferred action “takes precedence” and may be enforced).
85. Future removal depends on a chain of contingencies: USCIS would have to revoke deferred action, the government would have to provide whatever process is required, and only then could Respondents attempt removal. That is not a present,

lawful, reasonably foreseeable path to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001).

86. Because Petitioner’s deferred action remains active and because no final removal order exists, removal is not significantly likely in the reasonably foreseeable future. His continued detention is therefore not reasonably related to effectuating removal and serves no valid civil purpose. *See Zadvydas*, 533 U.S. at 690, 699–701; *Sepulveda Ayala*, 2025 WL 2209708, at *4; *Santiago*, 2025 WL 2792588, at *11.

IV. Petitioner’s detention violates procedural due process because Respondents deprived him of liberty and the protections of deferred action without notice, a hearing, or any individualized determination.

87. Petitioner’s procedural due process claim is not limited to the denial of a bond hearing. Respondents deprived him of physical liberty and effectively stripped him of the protections flowing from his U visa BFD, deferred action, and work authorization without any meaningful process. *Supra* ¶¶ 9, 11–16. That is the same defect courts have repeatedly identified in cases involving deferred-action recipients.
88. The private interest is at its highest. Petitioner is not seeking a discretionary convenience. He seeks freedom from physical incarceration. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by due process. *Zadvydas*, 533

U.S. at 690. That interest is especially strong where, as here, Petitioner has lived in the United States for almost twenty-seven years, supports two United States citizen children, has no criminal history, and had an active USCIS protection from removal at the time of arrest. *Supra* ¶¶ 7–13.

89. The risk of erroneous deprivation is extraordinary because Respondents detained Petitioner without first deciding the legally relevant questions. They did not determine whether his deferred action remained valid; it did. *Supra* ¶ 9. They did not determine whether USCIS had revoked it; it had not. *Supra* ¶¶ 9, 16. They did not provide notice or a hearing before depriving him of the benefits of the BFD. *Supra* ¶¶ 11–16. They did not make an individualized finding that he was dangerous or likely to flee. *Supra* ¶¶ 7–13. And they did not identify any lawful path to removal while deferred action remains active. *Supra* ¶¶ 9, 14, 16.

90. Courts have found due process violations on materially similar facts. In *B.D.A.A.*, the court held that respondents violated due process by detaining a U visa BFD recipient without prior notice and hearing because doing so “nullified” the BFD and its attendant benefits. 2025 WL 3484912, at *7. In *Ligario Hernandez*, the court held that U visa BFD recipients may not be deprived of deferred action without meaningful pre-deprivation notice and an opportunity to be heard. 2026 WL 846037, at *6–7. In *Santiago*, the court found detention unconstitutional where deferred action protected the petitioner from removal and the government failed to articulate an individualized reason for detention. 2025 WL 2792588, at *11. In *A.T. v. Baltazar*, the court ordered immediate release of a deferred-action

recipient because continued detention was indefinite and violated substantive and procedural due process. No. 26-cv-00925-NYW, 2026 WL 962595, at *1 (D. Colo. Apr. 9, 2026).

91. The government's interest does not justify the absence of process. Respondents have no legitimate interest in detaining a person they cannot presently remove, who has no criminal history, who has deep family ties, and who has already been vetted by USCIS through the BFD process. *Supra* ¶¶ 7–13. If Respondents believed Petitioner's deferred action was no longer warranted, the constitutionally permissible course was to provide notice and a meaningful opportunity to respond through the proper agency channel. *See Ligario Hernandez*, 2026 WL 846037, at *6–7. They did not do so.
92. Accordingly, each Mathews factor favors Petitioner. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Respondents deprived him of a profound liberty interest, created a severe risk of erroneous deprivation by ignoring the operative deferred-action grant, and have no sufficient interest in bypassing basic process. Petitioner's detention therefore violates the Fifth Amendment.

V. Respondents' actions are arbitrary, capricious, contrary to law, and in excess of statutory authority under the APA.

93. The same facts independently establish an APA violation. Respondents acted outside the limits Congress imposed in § 1357, disregarded the legal effect of USCIS's U visa BFD and deferred action, and attempted to justify custody through

a post hoc reliance on § 1225 that does not authorize the underlying arrest. That is agency action “not in accordance with law,” “in excess of statutory jurisdiction,” and undertaken “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (C), (D).

94. The § 1357 violation alone is sufficient. An agency “literally has no power to act . . . unless and until Congress confers power upon it.” *La. Pub. Serv. Comm’n*, 476 U.S. at 374. Congress authorized warrantless immigration arrests only where the officer has reason to believe the person is removable and likely to escape before a warrant can be obtained. 8 U.S.C. § 1357(a)(2). Respondents made no such showing here. *Supra* ¶¶ 11–13. They therefore acted outside the authority Congress conferred.

95. The deferred-action violation is equally significant. USCIS granted Petitioner deferred action and work authorization through the U visa BFD process. *Supra* ¶ 9. Respondents did not revoke that grant, identify a USCIS revocation decision, or provide any process before depriving Petitioner of its practical protection. *Supra* ¶¶ 9, 11–16. Courts have repeatedly held that where USCIS has granted deferred action and has not revoked it, detention and removal efforts are unlawful. *See Victor G.*, No. 26-cv-119 (ECT/SGE); *Juan M.*, 2026 WL 129059; *Jaime D.B.*, 2026 WL 578754, at *2; *Nevarez Jurado*, 2025 WL 3687264, at *8–9.

96. Respondents’ likely reliance on § 1225 does not cure these defects. Section 1225 does not authorize warrantless arrest, does not repeal § 1357, and does not permit ICE to disregard active deferred action granted by USCIS. Nor may an agency

defend unlawful action through post hoc rationalization. *See Castañon Nava v. Dep't of Homeland Sec.*, 806 F. Supp. 3d 823, 853–54 (N.D. Ill. 2025).

97. Respondents' action is therefore unlawful under the APA for the same reason it is unconstitutional: the detention began outside statutory authority, continues despite an active USCIS protection from removal, and serves no lawful civil purpose. The Court should set it aside and order Petitioner's immediate release.

CLAIMS FOR RELIEF

COUNT I — VIOLATION OF 8 U.S.C. § 1357

98. Petitioner realleges and incorporates the foregoing paragraphs.

99. Section 1357(a)(2) authorizes warrantless immigration arrests only where the officer has reason to believe the person is in the United States in violation of law and is likely to escape before a warrant can be obtained. 8 U.S.C. § 1357(a)(2).

100. Petitioner was arrested without a judicial warrant, administrative warrant, or any other document authorizing his arrest.

101. Respondents have not identified any facts showing that Petitioner was likely to escape before a warrant could be obtained.

102. The facts known to Respondents at the time of arrest showed the opposite. Petitioner has lived in the United States for almost twenty-seven years, has two United States citizen children, has a lawful permanent resident sister, has no

criminal history, and presented valid USCIS-issued employment authorization reflecting his active deferred action.

103. Respondents therefore acted outside the limited warrantless arrest authority conferred by § 1357(a)(2).

104. Because Petitioner's detention is the direct product of an arrest that exceeded statutory authority, his continued detention violates the INA and is unlawful.

COUNT II — VIOLATION OF THE FOURTH AMENDMENT

105. Petitioner realleges and incorporates the foregoing paragraphs.

106. The Fourth Amendment protects Petitioner from unreasonable seizures.

107. Petitioner was seized, arrested, transported, and placed into immigration detention without a warrant and without lawful authority.

108. Respondents did not have a valid warrant, did not establish that Petitioner was likely to escape before a warrant could be obtained, and did not identify any individualized basis supporting a warrantless arrest.

109. Petitioner's continued custody flows directly from that unlawful seizure.

110. Respondents may not rely on information obtained through the unlawful seizure to justify the seizure itself or the detention that followed. *See Wong Sun v. United States*, 371 U.S. 471, 488 (1963); *Brown v. Illinois*, 422 U.S. 590, 603–04

(1975); *United States v. Guevara-Martinez*, 262 F.3d 751, 755–56 (8th Cir. 2001); *United States v. Flores-Sandoval*, 422 F.3d 711, 714–15 (8th Cir. 2005).

111. Petitioner’s arrest and continued detention therefore violate the Fourth Amendment.

**COUNT III — VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
BASED ON RESPONDENTS’ DISREGARD OF 8 U.S.C. § 1357; 5 U.S.C. §
706(2)(A), (C), AND (D)**

112. Petitioner realleges and incorporates the foregoing paragraphs.
113. The Administrative Procedure Act requires courts to hold unlawful and set aside agency action that is arbitrary, capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority, or taken without observance of procedure required by law. 5 U.S.C. § 706(2)(A), (C), (D).
114. Immigration officers may arrest a noncitizen without a warrant only under the limited circumstances authorized by 8 U.S.C. § 1357(a)(2).
115. Section 1357(a)(2) required Respondents to have reason to believe both that Petitioner was removable and that he was likely to escape before a warrant could be obtained.
116. Respondents arrested Petitioner without a warrant and without identifying any facts showing that he was likely to escape before a warrant could be obtained.

117. Respondents' disregard of § 1357(a)(2)'s warrantless-arrest limitations was agency action not in accordance with law, in excess of statutory authority, and without observance of procedure required by law.

118. Respondents cannot cure that unlawful agency action by later invoking 8 U.S.C. § 1225. Section 1225 governs inspection and detention following lawful custody; it does not confer independent arrest authority and does not eliminate § 1357(a)(2)'s mandatory limits on warrantless immigration arrests.

119. Reading § 1225 to authorize warrantless arrests without compliance with § 1357(a)(2) would render § 1357(a)(2) superfluous and would allow the agency to avoid the specific statutory limitations Congress imposed on immigration arrests.

120. Respondents' post-arrest reliance on § 1225 is therefore an impermissible post hoc rationalization for agency action that was unlawful when taken.

121. Because Respondents arrested and detained Petitioner in disregard of § 1357(a)(2), their action must be held unlawful and set aside under 5 U.S.C. § 706(2)(A), (C), and (D).

COUNT IV — VIOLATION OF THE INA AND GOVERNING U VISA REGULATIONS

122. Petitioner realleges and incorporates the foregoing paragraphs.

123. Congress created the U visa framework to protect qualifying victims of crime and to encourage cooperation with law enforcement. See 8 U.S.C. § 1101(a)(15)(U).
124. USCIS granted Petitioner a bona fide determination, deferred action, and employment authorization in connection with his pending U visa petition.
125. Petitioner's deferred action and employment authorization remain active and unrevoked.
126. USCIS, not ICE through arrest and detention, is the agency component responsible for adjudicating the U visa petition and determining whether deferred action granted through that process should remain in effect.
127. Respondents have not shown that USCIS revoked Petitioner's deferred action, terminated his employment authorization, or determined that the grant was no longer warranted or was issued in error.
128. By detaining Petitioner and treating him as removable despite active deferred action, Respondents nullified the legal effect of USCIS's grant and acted contrary to the U visa framework.
129. Respondents' detention of Petitioner therefore violates the INA and governing U visa regulations.

**COUNT V — UNLAWFUL DETENTION BECAUSE REMOVAL IS NOT
SIGNIFICANTLY LIKELY IN THE REASONABLY FORESEEABLE FUTURE**

130. Petitioner realleges and incorporates the foregoing paragraphs.
131. Civil immigration detention must remain reasonably related to its purpose.
Zadvydas v. Davis, 533 U.S. 678, 690, 699–701 (2001).
132. Petitioner does not have a final order of removal.
133. Petitioner also has active deferred action through USCIS.
134. Respondents cannot presently remove Petitioner for two independent reasons.
135. First, removal would necessarily nullify or operate as a *de facto* revocation of Petitioner’s deferred action, even though USCIS has not revoked that protection.
136. Second, deferred action means that no action will be taken to proceed against an apparently deportable person while the grant remains in effect. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999).
137. Respondents have not shown that Petitioner’s deferred action has been revoked, that revocation proceedings have been initiated, or that Petitioner has received any process regarding termination of that protection.

138. Because Petitioner has no final removal order and because his deferred action remains active, removal is not significantly likely in the reasonably foreseeable future.

139. Petitioner's continued detention therefore is not reasonably related to effectuating removal and violates the INA and the constitutional limitations recognized in *Zadvydas*.

COUNT VI — VIOLATION OF THE FIFTH AMENDMENT'S SUBSTANTIVE DUE PROCESS CLAUSE

140. Petitioner realleges and incorporates the foregoing paragraphs.

141. The Due Process Clause prohibits civil detention that is arbitrary, indefinite, or not reasonably related to a legitimate governmental purpose. *Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

142. Petitioner's detention is not reasonably related to effectuating removal because he has no final order of removal and has active, unrevoked deferred action.

143. Petitioner's detention is not reasonably related to preventing flight because he has lived in the United States for almost twenty-seven years, has two United States citizen children, has a lawful permanent resident sister, and was living openly with valid employment authorization.

144. Petitioner's detention is not reasonably related to protecting the public because he has no criminal history and Respondents have identified no individualized danger finding.

145. Respondents are therefore detaining Petitioner without a valid civil purpose.

146. Petitioner's continued detention violates substantive due process under the Fifth Amendment.

COUNT VII — VIOLATION OF THE FIFTH AMENDMENT'S PROCEDURAL DUE PROCESS CLAUSE

147. Petitioner realleges and incorporates the foregoing paragraphs.

148. The Due Process Clause requires notice and a meaningful opportunity to be heard before the government deprives a person of liberty. *Mathews v. Eldridge*, 424 U.S. 319, 333–35 (1976).

149. Petitioner had an active USCIS grant of deferred action and employment authorization at the time Respondents arrested him.

150. Respondents detained Petitioner without providing meaningful notice of why a person with active deferred action was being detained.

151. Respondents did not provide Petitioner with the paperwork supposedly authorizing his arrest or detention at the time he was taken into custody.

152. Respondents did not provide Petitioner with a meaningful pre-deprivation or prompt post-deprivation opportunity to contest the legal effect of his deferred action, the absence of revocation by USCIS, or the lack of any reasonably foreseeable removal.
153. Respondents also failed to make an individualized determination that Petitioner's detention was necessary based on danger, flight risk, or any valid removal purpose.
154. Respondents' detention of Petitioner without constitutionally adequate process violates the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Court:

- a. Assume jurisdiction over this matter;
- b. Issue an order to show cause on an expeditious schedule given special circumstances of Petitioner's family within three (3) days as to why the writ should not issue;
- c. Declare that Petitioner's arrest and subsequent detention violates 8 U.S.C. § 1357 and the Fourth Amendment of the U.S. Constitution;
- d. Declare that Petitioner's continued detention violates the Immigration and Nationality Act; the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A),

706(2)(C), 706(2)(D); and the Due Process Clause of the Fifth Amendment of the U.S. Constitution;

- e. Order Petitioner's immediate release and restrict re-detention without materially changed circumstances;
- f. Order the payment of EAJA fees; and
- g. Grant any other further relief this Court deems just and proper.

Dated: April 24, 2026

Respectfully Submitted,

/s/ Hannah Brown

Hannah Brown (MN SBN 0400017)

HB Law & Advocacy PLLC

1907 E. Wayzata Blvd., Ste. 300

Wayzata, MN 55391

(612) 439-1882

hannah@hblawadvocacy.com

Local counsel

/s/ Stacey R. Rogers

Stacey R. Rogers (WSBA 61754)

SRR Law Group LLC

600 25th Avenue S, Ste 201

St. Cloud, MN 56301

(507) 271-9405

stacey@srrlawgroup.com

Pro Hac Vice Pending

Attorneys for Petitioner