

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Elias Mencho Lopez, Petitioner, v. Todd Blanche, Acting Attorney General, Markwayne Mullin, Secretary, U.S. Department of Homeland Security, Todd M. Lyons, Acting Director of Immigration and Customs Enforcement, and David Easterwood, Acting Director, St. Paul Field Office Immigration and Customs Enforcement, Defendants.	Case No. <u>VERIFIED PETITION FOR WRIT OF HABEAS CORPUS</u> Expedited Handling Requested
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INTRODUCTION

1. Petitioner Mr. Elias Mencho Lopez (“Mr. Lopez”), by and through the undersigned attorney, hereby files this petition for a writ of habeas corpus and a complaint for declaratory and injunctive relief to require U.S. Immigration and Customs Enforcement (“ICE”) to release him from ICE detention.

2. Mr. Lopez’s detention is an unlawful deprivation of his constitutional rights to substantive and procedural due process and a violation of the Immigration and Nationality Act (“INA”) among other statutes and regulations.

JURISDICTION AND VENUE

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1361 (federal employee mandamus action); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the U.S. Constitution (“Suspension Clause”); 5 U.S.C. § 702 (waiver of sovereign immunity); and 28 U.S.C. § 2201 (Declaratory Judgment Act).

4. Federal question jurisdiction exists because Mr. Lopez seeks to challenge this custody as a violation of the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

5. 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 Department of Homeland Security (“DHS”). *Demore v. Kim*, 538 U.S. 510 516-17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-41 (2018); and *Nielsen v. Preap*, 139 S. Ct. 954, 961-63 (2019).

6. This court has jurisdiction because Mr. Lopez was apprehended within the State of Minnesota. *Mamadou B. v. Easterwood*, No. 26-CV-01221 (MJD/ECW), 2026 WL 486688, at *1 n.3 (D. Minn. Feb. 13, 2026), *report and recommendation adopted*, No. CV 26-01221 (MJD/ECW), 2026 WL 487852 (D. Minn. Feb. 22, 2026). This court would retain jurisdiction even if Respondents’ subsequently later remove Mr. Lopez from the jurisdiction to frustrate his efforts to exercise his due process rights and to obtain habeas relief. *See Jose v. Easterwood*, No. 26-CV-597 (DSD/LIB), 2026 WL 222175 at *3 (D. Minn. Jan. 28, 2026); *Jose A. v. Noemi*, No. 26-CV-480 (JMB/ECW), 2026 WL 172524, at *2 (D. Minn. Jan. 22, 2026).

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2), (e)(1)(A)-(B), and 2241(d) because Respondents are employees, officers, and agencies of the United States, because a Respondent resides in this District, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

8. Venue is also proper in this District because the equitable factors make this District the appropriate venue to adjudicate the instant petition. The arrest occurred in Minnesota, and Mr. Lopez was initially detained in Minnesota. *See Jose A. v. Noem*, No. 26-CV-480 (JMB/ECW), 2026 WL 172524, at *2 (D. Minn. Jan. 22, 2026) (finding venue not improper “simply because a petitioner was unable to file their petition prior to transfer, particularly when that transfer was not at petitioner’s request, is wholly outside of their control, and occurs in a very short time after arrest.”).

PARTIES

9. Mr. Lopez is a Guatemalan national and a resident of Minneapolis, Minnesota. Mr. Lopez has been indefinitely detained by Respondents since his arrest on or about May 5, 2026, and upon information and belief, remains under the direct control of Respondents.

10. Respondent Todd Blanche is being sued in his official capacity as the Acting Attorney General of the United States and the head of the Department of Justice.

11. Todd Blanche shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Mullin. Acting Attorney General Blanche a legal custodian of Mr. Lopez.

12. Respondent Markwayne Mullin is being sued in his official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Mullin 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 Mr. Lopez's detention and removal. As such, Respondent Mullin is a legal custodian of Mr. Lopez.

13. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Mr. Lopez's detention.

14. Respondent David Easterwood is being sued in his official capacity as the Acting Field Office Director for the Fort Snelling Field Office for ICE within DHS. In that capacity, Field Director Easterwood has supervisory authority over the ICE agents responsible for detaining Mr. Lopez.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

15. Mr. Lopez is a resident of Minneapolis, Minnesota and a Guatemalan national.

16. Petitioner has lived in the United States for more than six years.

17. Mr. Lopez entered the United States before 2019. On information and belief, he was admitted to the United States at such time.

18. On or about May 28, 2019, Mr. Lopez applied for a U -1 Visa as a crime victim. He was granted bona fide deferred action status in April 2024. (*See* Ex. A.)

19. Mr. Lopez works as a mechanic in Minneapolis and has developed a strong network of social ties in the United States.

20. Mr. Lopez and his wife live in Minneapolis. They are the primary caretakers of their two children, who attend school in Minneapolis.

21. On May 5, 2026, Mr. Lopez was detained outside of the Hibachi Grill in on Lake Street in Minneapolis.

22. As of approximately 9:25 P.M. on May 6, 2026, when Mr. Lopez's name or A number and country of origin are entered into the Online Detainee Locator System maintained by Respondent ICE, it states "Your search has returned zero (0) matching records," as shown in the following screen capture:

Search Results: 0

Your search has returned zero (0) matching records. Please re-check the search terms you entered to ensure they are correct and try your query again. Please remember the system does not provide information for detainees under the age of 18.

If you conducted a name-based search, please remember that only exact matches to the name you entered will be returned. You may want to try searching any name or spelling variants used by the detainee.

If you conducted an A-Number search you may want to try conducting a name-based search instead.

If you are unable to find the detainee using the Online Detainee Locator System, please contact your [local field office](#).

For more information on the Missing Migrant Program please visit [link](#).

[BACK TO SEARCH >](#)

23. Upon information and belief, Mr. Lopez remains indefinitely detained in ICE custody in Bloomington, Minnesota.

24. Attempts to contact ICE are unavailing.

25. In connection with Operation Metro Surge and ICE enforcement activities throughout Minnesota, Respondents have transported detained immigrants across the country

with increasing frequency and magnitude, making it difficult if not impossible to identify the precise location of detained individuals, let alone facilitate access to counsel. *See, e.g.,* Ellie Roth, *Observer: ICE Detainee Flights Increase at MSP as Enforcement Action Ramps Up*, MPR News (Jan. 14, 2026, 4:00 A.M.), <https://www.mprnews.org/story/2026/01/14/ice-detainee-flights-leaving-msp-increase-as-surge-continues>.

26. People detained by Respondents are generally brought to the Whipple Building at Fort Snelling, where they are detained in cramped quarters and then frequently sent to remote locations across Minnesota or to facilities as far away as Texas, sometimes in a matter of mere minutes or hours and without notice. *See generally, Advocs. for Hum. Rts. v. U.S. Dep't of Homeland Sec.*, No. 26-CV-749 (NEB/DLM), 2026 WL 850270 (D. Minn. Mar. 26, 2026). While at the Whipple Building, immigrant detainees are routinely denied access to counsel. *Id.*

27. Upon information and belief, given the volume of people currently being detained by ICE, Respondents and/or their agents are failing or refusing to comply with both orders by federal judges of this Court enjoining transfers of detained immigrants as well as their own internal regulations governing processing, documentation, and transportation of detained individuals. Since January 1, 2026, for example, ICE has violated at least “96 court orders ... in 74 cases.” *Juan T.R. v. Noem, et al.*, Case No. 26-CV-0107 (PSJ/DLM). At least in some instances, ICE agents have admitted to transporting people by airplane before processing them for detention and without allowing attorneys to visit them. The ICE online detainee locator has become an increasingly unreliable way to locate detained immigrants, and it is becoming increasingly common that Respondents lose track of who is in their custody.

28. Upon information and belief, frequently moving detained immigrants from one

federal judicial district to another serves as a means to frustrate meritorious legal claims for release and forum shop away from the District of Minnesota, where claims for relief that are the same or similar to those presented in the instant Petition frequently have been granted in whole or in part.

29. Upon information and belief, frequently moving detained immigrants with meritorious habeas claims also serves as a way to isolate them from their communities, their loved ones, and their counsel, in an attempt to demoralize people and encourage them to waive their legal rights and sign voluntary deportation agreements.

30. For people with pending immigration cases, moving detained immigrants outside their home District creates significant barriers to litigating their claims in immigration court. In many of these cases, a person's immigration case is transferred to the jurisdiction in which the person is newly detained, which creates a secondary forum shopping incentive for rapidly transporting detainees. Regardless, moving detainees with pending immigration cases creates significant legal barriers and disadvantages, as it becomes significantly more difficult to communicate with counsel, loved ones, and community supporters, and gather evidence to support their claims.

31. Detaining Mr. Lopez is an expensive, cruel, and pointless endeavor.

32. Mr. Lopez respectfully seeks the opportunity to return home and continue following the legal processes set up by Congress and DHS for immigrants to seek status in this country.

STANDARD OF LAW

33. Courts have long recognized the significance of the habeas statute in protecting

individuals from unlawful detention. The “Great Writ” has been referred to by US 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) (emphasis added). A petitioner may seek a writ of habeas corpus when their custody violates the US Constitution or a federal law. 28 U.S.C. § 22441(c)(3), which should be granted if the petitioner meets their burden of proof—a preponderance of evidence. *Aditya W. H. v. Trump*, 782 F. Supp. 3d 691, 703 (D. Minn. 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 (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*, 2025 WL 2712427 at *3 (N.D. Iowa Sept. 23, 2025).

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. In July of 2025, Respondent DHS began ignoring the decades-long consensus of how 8 U.S.C. § 1225(b)(2) should be interpreted, which the Board of Immigration Appeals

(“BIA”) articulated in a subsequent ruling. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025). Respondents suddenly claim that individuals who have been residing continuously within the United States are somehow metaphorically “seeking admission,” simply because they may have pending claims for asylum or other forms of status. The Eighth Circuit recently agreed with Respondent’s interpretation of 8 U.S.C. § 1225(b)(2). *Avila v. Bondi*, 170 F.4th 1128, 1135 (8th Cir. 2026). At least one other circuit has disagreed with the conclusion in *Avila*. *Cunha v. Freden*, No. 25-3141-PR, 2026 WL 1146044, at *4 (2d Cir. Apr. 28, 2026).

38. Still, even if Mr. Lopez qualifies as an “applicant for admission” and is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), “it does not follow that Petitioner can be arrested and detained pursuant to § 1225(b)(2) without first complying with 8 U.S.C. § 1357(a), which addresses federal immigration officials’ authority to make warrantless arrests.” *Francisco MA v. Blanche, et al.*, No. CV 26-2032 (JRT/EMB), 2026 WL 1229701, at *2 (D. Minn. May 5, 2026). This “requires that the officer must have “reason to believe” that (1) the noncitizen is in the United States illegally and (2) the noncitizen is “likely to escape before a warrant can be obtained for his arrest.” *Jefferson GHL v. Blanche, et al.*, No. CV 26-2344 (JRT/ECW), 2026 WL 1229623, at *3 (D. Minn. May 5, 2026). As such, the government is not entitled to continue holding Mr. Lopez where “the record is void of evidence that Petitioner was likely to escape before a valid warrant could be obtained and properly executed. Just because a noncitizen is unlawfully present in the United States does not mean that he or she is likely to escape.” *Id.*

39. But even if it does not follow that Mr. Lopez can be arrested and detained

pursuant to § 1225(b)(2) without first complying with 8 U.S.C. § 1357(a), which addresses federal immigration officials' authority to make warrantless arrests.

40. This Court and the majority 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 whose detention is discretionary and governed by 8 U.S.C. § 1226(a). *Eliseo A.A. v. Olson*, Civ. No. 25-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Mayamu K. v. Bondi*, Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819 (D. Minn. Oct. 20, 2025); *Khalid B.Q. v. Bondi*, Civ. No. 25-4584 (JWB/DJF), Doc. No. 10 (D. Minn. Dec. 18, 2025); *Xuseen A. v. Bondi*, Civ. No. 25-4514 (JWB/DJF), Doc. No. 16 (D. Minn. Dec. 19, 2025); *Vedat C. v. Bondi*, Civ. No. 25-4642 (JWB/DJF), Doc. No. 9 (D. Minn. Dec. 19, 2025).

41. Here, on information and belief, Mr. Lopez was admitted to the United States around or before 2019. Then, more than six years later, on or about May 5, 2026, Mr. Lopez was apprehended within the United States, not at a border while seeking entry. He has resided in the United States for more than six years and has been granted bona fide deferred action status in April 2024. (*See* Ex. A.)

42. Further, the Unknown Custodian Rule articulated in *Rumsfeld v. Padilla*, 542 U.S. 426, 450 n. 18 (2004) governs jurisdiction and venue in the instant case. *Id.* ("When a prisoner is held in an undisclosed location by an unknown custodian, it is impossible to apply the immediate custodian and district of confinement rules."). At the time of the filing of this Petition, the ICE Online Detainee Locator has not yet been updated to reflect Mr. Lopez's current custodian.

43. Respondents have demonstrated a pattern of attempting to strip the District of Minnesota of jurisdiction to hear habeas petitions through a “practice of rapidly transferring detainees out of state without an opportunity to consult with counsel.” *Advocates for Human Rights v. U.S. Dep’t of Homeland Security*, No. 26-cv-749, Doc. No. 95, 30. This practice is directly responsible for Mr. Lopez’s current unknown district of confinement and has already been found by courts in this district to be “unconstitutionally excessive.” *Id.*

44. The Unknown Custodian Rule has been applied in similar cases in the District of Minnesota where the principles of equity weigh in favor of retaining jurisdiction. *Jose A. v. Noemi*, No. 26-CV-480 (JMB/ECW), 2026 WL 172524, at *2 (D. Minn. Jan. 22, 2026) (“The decision to arrest and detain Jose A was directed to personnel within this District Jose A was, for at least some time, actually detained within this District. Jose A has lived in Minnesota for many years. . . .”); *Jorge M. v. Bondi*, Doc. 3, No. 26-CV-0609 (MJD/JFD) (D. Minn. Jan. 24, 2026) (“[H]abeas jurisdiction attached at the time of Petitioner’s apprehension in this District. . . .”). Here, Mr. Lopez was arrested in Minnesota and, on information and belief, was initially detained in the State before disappearing from the ICE Online Detainee Locator entirely.

45. Moreover, Respondents can be reached by service of process here in Minnesota, a core consideration in habeas jurisdictional analysis. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 495–500 (1973) (rejecting an “inflexible jurisdictional rule” and holding that as “long as the custodian can be reached by service of process, the court can issue a writ within its jurisdiction even if the prisoner himself is confined outside the court’s territorial jurisdiction.”). Therefore, jurisdiction is proper.

CAUSES OF ACTION

FIRST CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the US. Constitution Substantive Due Process

46. Mr. Lopez realleges and incorporates by reference the allegations contained above.

47. 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. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). And “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

48. Because “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception,” the government may imprison people as a preventive measure only within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

49. Immigration detention is civil detention and must “bear a reasonable relation to the purpose for which the individual was committed” so that it remains “nonpunitive in purpose and effect.” *Zadvydas*, 533 U.S. at 690 (citation modified); *see also Schall v. Martin*, 467 U.S. 253, 264-69 (1984) (finding detention must be a proportional—not excessive—response to a legitimate state objective).

50. Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk pending removal and preventing danger to the community. *See Zadvydas*,

533 U.S. at 690-91.

51. To satisfy substantive due process under the Fifth Amendment, a noncitizen's detention must be tied to flight risk or a danger to the community. *Zadvydas*, 533 U.S. at 690.

52. Neither purpose is served by Mr. Lopez's detention. There is no basis to conclude that Mr. Lopez presents a flight risk or a danger to the community. Since Mr. Lopez was admitted into the United States, he has lived a quiet life and developed meaningful ties to his community. He has no criminal history.

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

SECOND CLAIM

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

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

55. The Fifth Amendment's Due Process Clause forbids the government to "depriv[e]" any "person . . . of . . . liberty . . . without due process of law." U.S. CONST. AMEND V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. Thus, even "[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner." *Salerno*, 481 U.S. at 746.

56. 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. Here, all three factors favor Mr. Lopez.

57. First, Mr. Lopez has a significant private interest at stake. A person's interest in freedom from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004); see also *Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491 ("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."). Mr. Lopez is wrongfully confined, a direct attack on his liberty interests.

58. Second, Mr. Lopez will continue to be deprived of this interest if the current procedure (detaining Mr. Lopez without a legal basis) is followed. There is no rational explanation for detaining Mr. Lopez. Respondents' purported basis for detaining people who, like Mr. Lopez, were arrested while residing in the United States, under 8 U.S.C. 1225(b)(2) has been rejected time and time again in this court. *Ahmed A v. Bondi*, Case No. 25-4776 (JWB/DJF) (January 6, 2026); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1142–48, 1150–52 (D. Minn. 2025); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 968–970 (D. Minn. 2025); *Mayamu K. v. Bondi*, Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819, at *7–8 (D. Minn. Oct. 20, 2025); *R.E. v. Bondi*, No. 0:25-cv-3946-NEB, 2025 WL 3146312 (D. Minn. Nov. 4, 2025).

59. Lastly, the Government has no legitimate interest in refusing to follow its own rules. Mr. Lopez poses no safety threats to the community. He has a strong network of ties to the Minnesota area and an interest in continuing to pursue his U Nonimmigrant status. Releasing him would in fact save the government the resources and expense of continued imprisonment. Mr. Lopez's unlawful detention imposes high fiscal and administrative burdens on Respondents, and the public interest is not served by continuing violations of the foundational constitutional rights in this country.

60. Respondents violated procedural due process by detaining Mr. Lopez without adequate procedural protections. This Court should order Mr. Lopez's release without any restraints on his liberty and prohibit any re-detention without proper pre-deprivation process.

THIRD CLAIM

Violation of the Immigration and Nationality Act

61. Mr. Lopez realleges and incorporates by reference each and every allegation contained above.

62. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings. First, 8 U.S.C. § 1226 "authorizes the Government to detain certain noncitizens' already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Individuals detained under Section 1226(a) are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). However, noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention under Section 1226(c). *See* 8 U.S.C. § 1226(c).

63. Second, the INA provides for brief mandatory detention of noncitizens with final

orders of removal. See 8 U.S.C. § 1231.

64. Third, the INA also provides for mandatory detention of two groups of noncitizens encountered “at the Nation’s borders and ports of entry.” *Jennings*, 583 U.S. at 288. The first group consists, generally, of those who are subject to expedited removal for being apprehended upon arrival near the border or for being unable to show that they have been physically present in the United States for more than two years until a determination has been made as to whether they have a credible fear of persecution. 8 U.S.C. § 1225(b)(1).

65. The second group subject to mandatory detention consists of anyone alleged to be an “applicant for admission” who is “seeking admission” and whom an “examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A).

66. Respondents may claim that Mr. Lopez is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). But this statute does not apply to Mr. Lopez, who was, on information and belief, previously admitted into the United States and has since then resided in this country without issue for over six years before his detention. To the extent Respondents claim that Mr. Lopez is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), they are incorrect. This statute does not apply to Mr. Lopez.

67. Courts in this District and across the United States have overwhelmingly concluded that 8 U.S.C. § 1226, not § 1225(b)(2)(A), applies to noncitizens like Mr. Lopez. *See, e.g., Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *13–14 (S.D.N.Y. Nov. 26, 2025) (tallying more than 350 cases reaching the same conclusion, and only 12 finding to the contrary); *see also Alex D.J. v. Bondi*, Case No. 26-490 (JWB/EMB) (Jan. 23,

2026); *Ahmed A v. Bondi*, Case No. 25-4776 (JWB/DJF) (Jan. 6, 2026); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1142–48, 1150–52 (D. Minn. 2025); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 968–970 (D. Minn. 2025); *Mayamu K. v. Bondi*, Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819, at *7–8 (D. Minn. Oct. 20, 2025); *R.E. v. Bondi*, No. 0:25-cv-3946-NEB, 2025 WL 3146312 (D. Minn. Nov. 4, 2025).

68. Mr. Lopez’s current detention under 8 U.S.C. § 1225(b)(2)(A), violates INA.

FOURTH CLAIM

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

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

70. 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).

71. 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).

72. 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 they would then be eligible for release on bond unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

74. Respondents through their recent administrative decision failed to articulate any reasoned explanations for this new interpretation of the Act. The Board'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.

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

REMEDY

76. An available remedy for Respondents' unlawful conduct as outlined in this complaint is for Mr. Lopez to be released.

77. 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 v. Davis*, 533 U.S. 678, 687, 690 (2001) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Detention here serves no statutory purpose, there is no indication that Mr. Lopez's detention was based on any facts that might indicate that he should be held in custody.

78. Since Section 1225 does not apply to noncitizens who are in Mr. Lopez's situation—who have been detained while residing within the United States, as opposed to those who are detained while in the process of physically entering the United States—the law that Respondents are using to detain Mr. Lopez simply does not authorize his detention. *See Eliseo A.A. v. Olson*, Civ. No. 25-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025);

Mayamu K. v. Bondi, Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819 (D. Minn. Oct. 20, 2025); *Khalid B.Q. v. Bondi*, Civ. No. 25-4584 (JWB/DJF), Doc. No. 10 (D. Minn. Dec. 18, 2025); *Xuseen A. v. Bondi*, Civ. No. 25-4514 (JWB/DJF), Doc. No. 16 (D. Minn. Dec. 19, 2025); *Vedat C. v. Bondi*, Civ. No. 25-4642 (JWB/DJF), Doc. No. 9 (D. Minn. Dec. 19, 2025).

79. When a habeas petitioner's detention is without legal basis, the typical remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the "typical remedy" for "unlawful executive detention").

80. Respondents will no doubt argue, as they have in similar cases before this Court, that if the Court rules that Mr. Lopez should have been detained pursuant to § 1226, instead of § 1225, then the remedy is a bond hearing as opposed to outright release. *See, e.g., Ahmed A. Civ. No. 25-4776*, Doc. No. 9, at 9-10. However, this Court rejected this argument, saying that:

[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. *Id.* at Doc. No. 10 at 6.

81. Nor does § 1226(a) provide a lawful basis for Mr. Lopez's current detention. Detention under § 1226(a) would require a warrant issued by the Attorney General. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 961 (D. Minn. 2025). To put this plainly: "absent a warrant a noncitizen may not be arrested and detained under section 1226(a)." *See also Ahmed M. v. Bondi et al.*, 2026 WL 25627, *3 (D. Minn. Jan. 5, 2026) (quoting *Chogllo Chafila v. Scott*, ---

F. Supp. 3d ---, No. 2:25-cv-00437-SDN, 2025 WL 2688541, at *11 (D. Me. Sept. 21, 2025)).

82. This Court should similarly reject Respondents' argument and order immediate release as the appropriate remedy in this case.¹ As Judge Eric C. Tostrud recently explained in a related case, "[s]ection 1226 provides that '[o]n a warrant issued by the Attorney General, an alien may be arrested and detained.'" *See Ahmed M. v. Bondi et al.*, No. 25-CV-4711 (ECT/SGE), 2026 WL 25627, at *7 (D. Minn. Jan. 5, 2026). As Judge

83. Judge Tostrud correctly concluded, the issuance of a warrant is a necessary prerequisite to even discretionary detention under § 1226(a). *See id.* In *Ahmed M.*, like here, the petitioner was rearrested without any warrant. Thus, Ahmed M.'s detention was unlawful and release was the appropriate remedy, rather than continued illegal detention and a subsequent bond hearing. *See also Juan S.R. v. Bondi*, No. 26-cv-05 (PJS/LIB) (Order, January 12, 2026) (holding the same).

84. Mr. Lopez's detention is similarly unlawful. He was and remains detained based on an incorrect, atextual application of 8 U.S.C. § 1225. Nor was there any warrant to justify his detention under 8 U.S.C. § 1226. Release is the appropriate remedy.

REQUEST FOR ORDER TO SHOW CAUSE

85. 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.

¹ While Mr. Lopez maintains that his immediate release is the appropriate legal remedy for his unlawful detention, should this Court disagree, Mr. Lopez maintains and renews his request for a bond hearing in the alternative.

86. The undersigned attorney, on behalf of 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.

PRAYER FOR RELIEF

WHEREFORE, Mr. Lopez prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Immediately issue an Order to Show Cause:
 - a. Enjoining Mr. Lopez's removal or transfer outside the District of Minnesota pending adjudication of this petition, and, if Mr. Lopez has already been so transferred, requiring Respondents to promptly return Petitioner to Minnesota;
 - b. Requiring Respondents to show cause **within three days** as to why Mr. Lopez should not be released immediately;
- 3) Issue a Writ of Habeas Corpus declaring that Mr. Lopez's detention is unlawful and ordering Respondents to release Mr. Lopez from custody:
 - a. within 24 hours of this Court's order;
 - b. in Minnesota;
 - c. at a safe time and place communicated in advance to counsel;
 - d. with all of Mr. Lopez's personal property in Respondents' possessions, including personal identification documents;
- 4) Enjoin Respondents from implementing any conditions of release, including ICE's "Alternatives to Detention" measures, which include ankle monitors, body-worn GPS, telephonic tracking, or use of the SmartLINK Mobile Application;

- 5) Retain jurisdiction over this matter to decide any future motion for an award of reasonable attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, Local Rule 54.3(a), and on any other basis justified under law; and
- 6) Grant any other and further relief that this Court may deem just and proper.

Dated: May 6, 2026

Respectfully submitted,

/s/ Andrew J. Crowder

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Pro Bono Attorneys for Petitioner

Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

I am Mr. Lopez's attorney and submit this verification on his behalf. My investigators and I have discussed the factual assertions in this petition with Mr. Lopez's family, who are also acting on his behalf and who I understand to have personal knowledge of the facts alleged herein. I hereby verify that the factual statements made in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: May 6, 2026

/s/ Andrew J. Crowder

Andrew J. Crowder

Attorney for Petitioner