

**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, Joel Brott, Sheriff, Sherburne County, Respondents.	Case No. 0:26-cv-2519 (JMB/DLM) <u>AMENDED VERIFIED PETITION FOR WRIT OF HABEAS CORPUS</u> Expedited Handling Requested
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INTRODUCTION

1. This case seeks the immediate release of Elias Mencho Lopez from unlawful immigration detention by the Department of Homeland Security's ("DHS") U.S. Immigration and Customs Enforcement ("ICE"). Mr. Lopez entered the United States in or around August 2014, when he was only 16 years old. Approximately two months later, an immigration court entered an order of removal for Mr. Lopez based on his failure to attend a hearing. In 2019, Mr. Lopez applied for a U-1 visa as a victim of a crime, and he was later granted deferred action status in April 2025.

2. On May 5, 2026, ICE detained Mr. Lopez without a warrant for arrest, and have been detaining him ever since. Upon information and belief, ICE is currently holding Mr. Lopez at the Sherburne County Jail in Elk River, Minnesota.

3. Mr. Lopez filed an initial petition for writ of habeas corpus on May 6, 2026, alleging that his detention was not supported by either 8 U.S.C. § 1225 or § 1226. Respondents have since disclaimed that they are detaining Mr. Lopez under either of those statutes. Rather, Respondents have asserted that they are relying on 8 U.S.C. § 1231 to detain Mr. Lopez, based on a final order of removal entered *in absentia* in October 2014.

4. Mr. Lopez, by and through the undersigned attorney, hereby files this amended petition for a writ of habeas corpus and a complaint for declaratory and injunctive relief to require ICE to immediately release him from detention.

5. 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.

6. **First**, the government does not have authority to detain Mr. Lopez under Section 1231—the only basis upon which the government now relies. Respondents have no basis to detain Mr. Lopez under § 1231(a)(1) because he is outside of the removal period. Section 1231(a)(1) “does not provide Respondents the authority to detain Petitioner years after the In Absentia Order became final.” *Parra v. Favro, et al.*, No. 9:26-CV-00363 (AMN), 2026 WL 1030870, at *4 (N.D.N.Y. Apr. 16, 2026). And detention under § 1231(a)(6) violates Respondents' own regulations and *Zadyvdas* because Mr. Lopez “is not likely to be violent, to pose a threat to the community, to flee if released, or to violate

the conditions of release.” *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001) (citing 8 C.F.R. § 241.4).

7. **Second**, Mr. Lopez’s receipt of deferred action status created a protectable interest in his continued liberty requiring pre-deprivation process before any detention, and the grant of deferred action demonstrates a prior finding that he poses no flight risk or danger to the community. Since deferred action was granted, support for that determination has only strengthened. Mr. Lopez’s detention without any pre-deprivation process violates his procedural due process rights and this alone warrants his immediate release.

8. For these reasons, Mr. Lopez respectfully asks this Court to declare that his detention is unlawful and order his immediate release.¹

JURISDICTION AND VENUE

9. 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).

10. 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.

¹ Mr. Lopez’s original habeas petition from May 6 outlined the reasons that neither 28 U.S.C. § 1225 nor § 1226 support his detention. Respondents have since disclaimed those statutes as bases for his detention. Mr. Lopez nevertheless reserves the right to resurrect those arguments to the extent Respondents attempt to rely on those statutes in future.

11. 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).

12. 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).

13. 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.

14. Venue is also proper in this District because the equitable factors make this District the appropriate venue to adjudicate the instant petition. 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

15. Mr. Lopez is a Guatemalan national and has been a resident of Minneapolis, Minnesota since approximately August 2014. Mr. Lopez has been indefinitely detained by Respondents since May 5, 2026, and upon information and belief, remains under the direct control of Respondents at Sherburn County Jail.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. Respondent Joel Brott is being sued in his official capacity as Sheriff of Sherburne County. As Sheriff of Sherburne County, Respondent Joel Brott oversees the Sherburne County Jail, the facility where Petitioner is presently detained, and is therefore one of his legal custodian.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

22. Mr. Lopez originally lived in Guatemala with his father, at least one brother, and at least two sisters. At some point in or around 2010 or 2011, Mr. Lopez's father and brother left Guatemala to resettle in Minnesota.

23. In or around August 2014, when he was 16 years of age, Mr. Lopez was smuggled into the United States as an unaccompanied minor by a "coyote." He was abandoned, apprehended by border patrol agents, and then transferred to Minnesota where he was reunited with his father and brother. Mr. Lopez was released on an order of recognizance on August 22, 2014.

24. On information and belief, once reunited, Mr. Lopez's father moved him to separate housing and he was not permitted to attend immigration hearings related to his entry into the United States as an unaccompanied minor.

25. On October 2, 2014, a United States Immigration Court issued an order of removal for Mr. Lopez after he failed to attend a removal hearing. At the time, Mr. Lopez

was a 16-year-old minor who was living with, and under the care of, his natural father.

26. At some point in 2014 or 2015, upon information and belief, Mr. Lopez's father and brother returned to Guatemala, but did not permit him to accompany them. Mr. Lopez was left to fend for himself in Minnesota. He then found a place to live and a job.

27. On or about 2019, Mr. Lopez was assaulted while in Minnesota. Shortly thereafter, he applied for a U -1 Visa. In April 2025, ICE sent Mr. Lopez a notice that "the evidence submitted with your petition appears to demonstrate you have established the eligibility requirements for U nonimmigrant status" but that the cap for U-1 visas had been reached for that year. (*See* Ex. A.) In that same notice, ICE informed Mr. Lopez that he had been granted deferred action. *Id.*

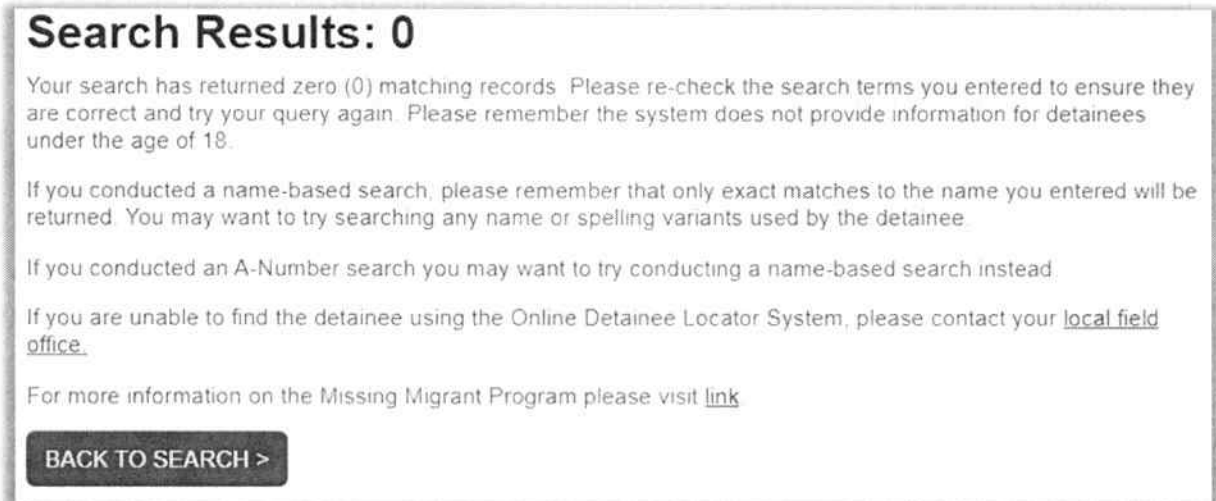
28. Mr. Lopez's April 2025 notice from ICE, granting deferred action, identifies him with the same A-number as the order finding him removable in 2014. And it lists the same address at which he currently lives, where he has resided for many years.

29. Mr. Lopez works as a mechanic in Minneapolis and has developed a strong network of social ties in the United States. He lives with his partner and their son in Minneapolis. His son attends public school at Whittier Elementary.

30. On May 5, 2026, ICE arrested Mr. Lopez, without a warrant, while he was driving his car. Documents received from ICE state that the agents ran a plate check on Mr. Lopez's car while surveilling the area, waited for Mr. Lopez to enter his car and drive off, and then conducted the traffic stop and arrested him without incident.

31. As of approximately 9:07 A.M. on May 14, 2026, when Mr. Lopez's 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:



32. Upon information and belief, Mr. Lopez remains indefinitely detained in ICE custody in Elk River, Minnesota.

33. 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>.

34. 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.*

35. 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.

36. 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.

37. 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.

38. 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.

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

40. 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, particularly given the finding that he satisfies the requirements for a U visa and has already been granted deferred action by DHS in April 2025 (more than a decade after he, as a 16-year-old boy, was found removable given the failure to attend a hearing).

STANDARD OF LAW

41. 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).

42. 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.

43. 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).

44. “[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).

A. No Authority To Detain Mr. Lopez Under § 1231

45. The INA prescribes essentially three forms of detention for noncitizens in removal proceedings.

46. The government has stated that it is not relying on two of those forms of detention, under 8 U.S.C. § 1225 or § 1226. *See* ECF No. 9 at 1 (“this is not one of the now-familiar petitions being filed in this Court challenging detention under 8 U.S.C. § 1225 or even § 1226. . . . Petitioner’s current detention arises under § 1231.”).

47. “The INA divides aliens subject to a final order of removal into two groups for purposes of detention: those within a 90-day removal period and those outside the removal period.” *Xiu Qing You v. Nielsen*, No. 18CIV5392GBDSN, 2020 WL 2837022, at *6 (S.D.N.Y. June 1, 2020); *see also* 8 U.S.C. § 1231(a)(1). Individuals detained within the removal period are subject to mandatory detention. 8 U.S.C. § 1231(a)(2) (“During the removal period, the Attorney General shall detain the alien.”); *Alfredo A. v. Easterwood*, No. 26-CV-1016 (PJS/DLM), 2026 WL 963292, at *1 (D. Minn. Apr. 9, 2026) (“Under § 1231, detention is mandatory during a 90-day ‘removal period’”). An alien who is outside of the removal period must be released subject to supervision, unless he falls into one of the categories of aliens outlined in § 1231(a)(6) “such as certain criminal offenders, or those ‘determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal.’” *Saengnakhone S. v. Noem*, No. 25-CV-4775 (ECT/LIB), 2026 WL 34132, at *3 (D. Minn. Jan. 6, 2026); 8 U.S.C. § 1231(a)(3); 8 U.S.C. § 1231(a)(6).

48. “The removal period begins to run on ‘[t]he date the order of removal becomes administratively final.’ *Gomez v. Albarran, et al.*, No. 26-CV-01790-NW, 2026 WL 1229590, at *5 (N.D. Cal. May 5, 2026) (quoting 8 U.S.C. § 1231(a)(1)(B)(i)). “When a removal order is issued *in absentia* . . . it is deemed to be administratively final

‘immediately upon entry.’” *Alfredo A.*, 2026 WL 963292, at *1 (quoting 8 C.F.R. § 1241.1(e)). Other courts have held that an order for removal becomes final at a later date. *See Ordonez v. Bondi*, No. 2:25-CV-02356-JHC-TLF, 2025 WL 3852444, at *5 (W.D. Wash. Dec. 19, 2025) (“case law reflects that the order in fact becomes final upon the earlier of (i) the 180-day period to file a motion to reopen expires, or (ii) the Board of Immigration Appeals (‘BIA’) affirms the order.”). Regardless of which interpretation is adopted, Mr. Lopez’s order for removal was entered *in absentia* on October 2, 2014, and either became final on that date or by mid-2015 (at the latest). Mr. Lopez is now outside the removal period. The government cannot justify detention based only on the decade-old order of removal.

49. Nor does the government have a basis to detain Mr. Lopez under the post-removal-period exceptions to detention provided in § 1231(a)(6). He continues to reside at the same residence listed in his April 2025 deferred action notice, and which was presumably listed on his 2019 U visa application. His partner and son live in Minneapolis, and his son attends a local public elementary school. And Mr. Lopez does not have a criminal record to speak of. By all accounts, he is not a flight risk or a danger to the community (as confirmed by the fact that he was granted deferred action in the first place).

B. Mr. Lopez has a Due Process Right Based On His Deferred Enforcement Status

50. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)); accord *Trump v. J.G.G.*, 605 U.S. 670, 673 (2025). “Freedom from imprisonment—from government custody, detention, or other

forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. This fundamental due process protection applies to all noncitizens within the United States, including both deportable and inadmissible noncitizens. *See id.* at 693 (explaining procedural due process applies to all “persons” within the United States, including noncitizens, “whether their presence here is lawful, unlawful, temporary, or permanent”); *Plyler v. Doe*, 457 U.S. 202, 212 (1982); *see also*, e.g., *Abdirashid H. M. v. Noem*, No. 25-4779 (JRT/EMB), 2026 WL 127698, at *4 (D. Minn. Jan. 9, 2026) (finding constitutionally protected liberty interest when petitioner had previously been “liv[ing] a productive life in the community”); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1148 (D. Minn. 2025) (finding a noncitizen had a significant constitutionally protected private interest in part based on separation from her children).

51. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risk of danger to the community and prevent flight. *Zadvydas v. Davis*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. Thus, to withstand constitutional scrutiny, the nature and duration of immigration detention must be reasonably related to these purposes. Absent adequate procedural protections, substantive due process requires a “special justification” that “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690; *accord*, e.g., *Fernandez v. Lyons*, 2025 WL 2531539, at *4 (D. Neb. Sept. 3, 2025) (describing the standard for substantive due process violation).

52. This case also implicates a grant of deferred action. “Deferred action” is an “affirmative immigration benefit” that operates to “prevent[] recipients’ removal from the

United States,” for a specified period of time, even if they are otherwise potentially removable. *Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901, 909, 912 (W.D. Wash. 2025); see generally USCIS Policy Manual [hereinafter “USCIS PM”], Vol. 1, Pt. H, Ch. 2.A.4, <https://www.uscis.gov/policy-manual>; *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) (noting deferred action means “no action will thereafter be taken to proceed against an apparently deportable alien even on grounds normally regarded as aggravated”); *Victor G. v. Lyons*, No. 26-cv-119, 2026 WL 127733, at *2-3 (D. Minn. Jan 17, 2026) (explaining deferred action). Deferred action does not confer lawful status and does not prevent an immigration judge from issuing a removal order. However, it is a “formal determination” by DHS “not to remove a particular individual,” and noncitizens with deferred action are “considered to be in a period of stay authorized under USCIS policy for the period deferred action is in effect.” *Sepulveda Ayala*, 794 F. Supp. 3d at 912-13 (citation omitted); see 8 C.F.R. § 1.3(A)(4)(vi). Deferred action is “not simply a non-enforcement policy.” *DHS v. Regents of University of Cal.*, 591 U.S. 1, 18 (2020). Rather, it is an “affirmative determination that certain individuals meet enumerated criteria and are entitled to forbearance from removal and work authorization.” *Sarmiento v. Perry*, No. 25-cv-01644-AJT-WBP, 2026 WL 131917, at *7 (E.D. Va. Jan. 19, 2026) (citing *Regents*, 591 U.S. at 18); see also 8 C.F.R. § 247a.12(c)(14) (eligibility for work authorization).

53. Deferred action is granted “based on a prescribed set of factors generally related to humanitarian grounds,” *Sepulveda Ayala*, 794 F. Supp. 3d at 912 (citations omitted), often in connection with an application for lawful immigration status for survivors of violence or abuse. For example, deferred action is available for: crime

survivors with approved U-visa applications or pending applications USCIS has determined are bona fide; trafficking survivors with pending T-visa applications that USCIS has determined are bona fide; domestic abuse survivors with approved self-petitions under the Violence Against Women Act (“VAWA”), and youth who have been abused, neglected, or abandoned by a parent who have approved petitions for Special Immigrant Juvenile Status (“SIJS”). 8 C.F.R. §§ 214.14(d)(2), 214.205(c), (e); USCIS PM, Vol. 3, Pt. C, Ch. 5 & Pt. D, Ch. 5.D.2; see also *A.C.R. v. Noem*, No. 25-cv-3962, 2025 WL 102611 (E.D.N.Y. Jan. 14, 2026) (explaining SIJS deferred action program). Deferred Action for Childhood Arrivals (“DACA”) is also a form of deferred action. *Regents*, 591 U.S. at 10.

54. In deciding deferred action requests, USCIS considers whether the noncitizen warrants a favorable exercise of discretion based on the totality of the evidence. Generally, this evaluation includes consideration of whether the noncitizen poses a danger to the public or a national security risk. *See, e.g., Victor G.*, 2026 WL 127733, at *3 (noting USCIS “already determined [the petitioner] is not a ‘risk to national security or public safety’ by virtue of its bona fide determination and grant of employment authorization and deferred action”); *F.R.P. v. Wamsley*, No. 3:25-CV-1917, 2025 WL 3037858, at * 4 (D. Or. Oct. 30, 2025) (explaining that the “mere fact” of the petitioner’s VAWA approval, giving rise to deferred action, suggests he is neither a flight risk or a danger to the community, since it required a criminal background check and showing of “good moral character”); *Gamez Lira v. Noem*, No. 1:25-cv-855, 2025 WL 2581710, at *3 (D.N.M. Sept. 5, 2025) (explaining that a DACA grant was evidence that DHS already determined

the recipient poses no danger or flight risk).

CAUSES OF ACTION

FIRST CLAIM

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

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

56. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *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.

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

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

59. Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk pending removal and preventing danger to the community. See *Zadvydas*, 533 U.S. at 690-91.

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

61. Moreover, here, the government's inability to lawfully remove Mr. Lopez given his deferred action eliminates any justification of flight risk. *Victor G.*, 2026 WL 127733, at *2 (ordering release of noncitizen because he had an unrevoked grant of deferred action preventing his removal); *Santiago v. Noem*, No. EP-25-cv-361, 2025 WL 2702588, at *12 (W.D. Tex. Oct. 2, 2025) ("Where an individual is protected from removal through deferred action, their detention serves no valid purpose."). The lack of flight risk is particularly evidence in light of his pending U visa application which will likely eventually allow him to adjust to lawful permanent resident status and then gain citizenship. The government's previous decision to grant deferred action also demonstrates that the government agrees Mr. Lopez poses no danger to the community. See, e.g., *Victor G.*, 2026 WL 127733, at *3; *F.R.P.*, 2025 WL 3037858, at *4; *Gamez Lira*, 2025 WL 2581710, at *3.

62. 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 his immediate release. *See Victor G.*, 2026 WL 127733, at *2; *Juan M. v. Bondi*, No. 26-cv-266, 2026 WL 129059, at *1-2 (D. Minn. Jan. 17, 2026) (ordering immediate release where noncitizen argued detention despite a grant of deferred action violated substantive and procedural due process); *Luis S.I. v. Easterwood*, No. 26-cv-533, 2026 WL 253630, at *1-2 (D. Minn. Jan. 28, 2026), *report and recommendation adopted*, 2026 WL 257119 (Jan. 31, 2026) (similar).

SECOND CLAIM

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

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

64. 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.

65. Federal courts use the three-part test in *Mathews 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.

66. 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.

67. 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).

68. Third, 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.

69. Finally, Mr. Lopez has a strong liberty interest in light of his grant of deferred action. *See, e.g., Gamez Lira*, 2025 WL 2581710, at *3 (finding DACA recipient had "a protectable liberty or property interest" in case challenging his detention where "he lived under the understanding" that enforcement, including attendant detention, was unlikely); *Oscar C.M. v. Lyons*, No. 1:25-cv-1915, 2025 WL 3712285, at *3 (E.D. Cal. Dec. 22, 2025) (finding a grant of deferred action "increased Petitioner's reliance on his liberty interest").

70. The second *Mathews* factor also weighs heavily in Mr. Lopez's favor. Mr. Lopez was previously granted deferred action, which demonstrates DHS found that he did not pose a flight risk or danger. The lack of any mechanism to determine whether Mr. Lopez's detention serves a legitimate statutory purpose makes the risk of erroneous deprivation of liberty not just high, but certain. His detention is the direct result of insufficient safeguards and lack of procedure. *See, e.g., Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1188 (D. Minn. 2025) (noting that lack of consideration of "individualized or

particularized facts . . . increases the potential for erroneous deprivation of individuals' private rights"); *Selvin Adonay E.M.*, 2025 WL 3157839, at *9 (finding the second factor weighed in a petitioner's favor when the government took the position that detention was mandatory without individualized review). Under these circumstances, the second *Mathews* factor weighs heavily in Mr. Lopez's favor.

71. The third factor favors Mr. Lopez as well. Mr. Lopez's erroneous detention imposes high fiscal and administrative burdens on Respondents, and unlawful detention and violation of noncitizens' constitutional rights disserve the public interest. The third *Mathews* factor generally favors saving the government from expending "substantial resources on needless detention." *Idle H. v. Bondi*, No. 26-cv-315, 2026 WL 266462, at *7 (D. Minn. Feb. 2, 2026) (noting the "staggering" costs of immigration detention); *see also Rodriguez Vega*, 2026 WL 482906, at *6 ("[L]imiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from [unnecessarily] expending substantial resources." (citation omitted)). Unnecessary detention also "imposes substantial societal costs," such as "reduced economic contributions and tax payments by detained immigrants," as well as the separation of individuals from their families and communities. *Rodriguez Vega*, 2026 WL 482906, at *6 (citation omitted). In any event, detention with *no* process is wholly unnecessary to allow Respondents to detain those who truly pose a legitimate risk of flight or danger. *Ochoa v. Vergara*, No. 1:26-cv-266, 2026 WL 482211, at *3 (W.D. Tex. Feb. 20, 2026). Releasing Mr. Lopez and requiring the government to provide a pre-deprivation hearing before detaining him stands to save the government money and effort wasted on

erroneous detention.

72. For these reasons, regardless of the statutory authority, mandatory detention as applied to Mr. Lopez violates his procedural due process rights, rendering his ongoing detention unconstitutional. *See, e.g., Selvin Adonay E.M.*, 2025 WL 3157839, at *8-10 (finding procedural due process violation was an independent basis for granting habeas petition challenging application of § 1225(b)(2) to person who had been residing in the United States); *Abdirashid H.M.*, 2026 WL 127698, at *4-5 (similar); *Ochoa v. Vergara*, 2026 WL 482211, at *3 (finding mandatory detention of inadmissible noncitizen who had been living in the United States for over a year violated procedural due process under *Mathews*, collecting cases reaching the same conclusion, and ordering release as the appropriate remedy); *see also, e.g., Juan M.*, 2026 WL 129059, at *1-2; *Luis S.I.*, 2026 WL 253630, at *1-2; *Santiago*, 2025 WL 2792588, at *13 (detention of DACA-holder violated procedural due process); *B.D.A.A. v. Bostock*, No. 6:25-cv-2062, 2025 WL 3484912, at 5-7 (D. Or. Dec. 4, 2025) (detention of recipient of U-visa-based deferred action violated procedural due process).

73. 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

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

75. The INA prescribes three basic forms of detention for most noncitizens in

removal proceedings. The government has no authority to detain Mr. Lopez under any of these bases.

76. The government has correctly disclaimed reliance on two of the three statutory bases for detention, 8 U.S.C. § 1225 and § 1226. *See* ECF No. 9 at 1 (“[T]his is not one of the now-familiar petitions being filed in this Court challenging detention under 8 U.S.C. § 1225 or even § 1226.”).

77. The third basis for detention, Section 1231, does not apply to Mr. Lopez either. Mr. Lopez is not “removable” given his deferred action status and his pending U-Visa application—which has been found satisfactory but without an available visa. Moreover, because the final order for removal was entered *in absentia* in October 2014, Mr. Lopez is now outside the removal period. *See Alfredo A.*, 2026 WL 963292, at *1 (“When a removal order is issued *in absentia* . . . it is deemed to be administratively final ‘immediately upon entry.’”) (quoting 8 C.F.R. § 1241.1(e)). As such, Mr. Lopez must be released subject to supervision, unless he falls into one of the categories of aliens outlined in § 1231(a)(6) “such as certain criminal offenders, or those ‘determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal.’” *Saengnakhone S.*, 2026 WL 34132, at *3 (D. Minn. Jan. 6, 2026). Mr. Lopez does not fall into either of those categories. He has lived in Minneapolis since 2014 with no serious criminal history, and has been in contact with ICE since at least 2019 when he submitted his U visa application. As such, Mr. Lopez’s current detention under 8 U.S.C. § 1231, violates INA.

FOURTH CLAIM

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

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

79. 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).

80. 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).

81. 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.

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

83. 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.

84. The continued detention of 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

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

86. 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.

87. 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").

88. Respondents argue only that Mr. Lopez is removable under Section 1231 based on a final order for removal—but wholly ignoring his deferred action status and the finding that he satisfies the requirements for a U-visa.

89. Mr. Lopez's detention is unlawful. He was and remains detained based on an incorrect, atextual application of 8 U.S.C. § 1231. Nor was there any warrant to justify his detention under 8 U.S.C. § 1231. Release is the appropriate remedy.

PRAYER FOR RELIEF

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

- 1) Retain jurisdiction over this matter;
- 2) Continued enforcement of the existing Order that, among other things, restrains Respondents from moving Mr. Lopez out of the district of Minnesota. *See* ECF No. 5.
- 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 14, 2026

Respectfully submitted,

/s/ Gene Hummel

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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 14, 2026

/s/ Gene Hummel

Gene Hummel

Attorney for Petitioner