
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Jairo Leonel Ulloa Gonzales,

**PETITIONER'S REPLY TO
RESPONDENT'S RESPONSE**

Petitioner

Case No: 0:26-cv-03051-JRT-SGE

v.

Markwayne Mullin et al.

Respondents.

Respondents submitted response to Petitioner's petition for a writ of habeas corpus seeking immediate release from custody. Petitioner submits this reply to Respondent's response. The Court should not deny Petitioner's petition. Petitioner respectfully requests that the Court find his unlawful arrest and detention in violation of the Immigration and Nationality Act (INA), his due process rights under the Fifth Amendment, his right to be free from unreasonable searches and seizures under the Fourth Amendment, as well as the Administrative Procedures Act (APA) for Respondents' abuse of discretion and violation of statutory regulations and agency policy, and grant Petitioner's request for habeas relief.

BACKGROUND

Petitioner, Jairo Leonel Ulloa Gonzales, is a non-citizen and national of Honduras who entered the United States on or about September 8, 2021, without inspection. On March 9, 2022, Petitioner was issued Notice to Appear (NTA) and placed in full removal proceedings pursuant to 8 U.S.C. § 1229a. On September 7, 2022, Petitioner submitted Form I-360, Petition for Amerasian, Widower or Special Immigrant, in the Special Immigrant Juvenile (SIJ)

classification. On November 14, 2022, Petitioner was convicted of underage drinking and driving pursuant to Minnesota Stat. 169A.33.2 and sentenced to ten (10) days in state custody. On March 24, 2023, USCIS approved Petitioner's Form I-360 and determined that he warranted a favorable exercise of discretion to receive deferred action for a period of four (4) years unless terminated earlier by USCIS. The Department of State (DOS) Visa Bulletin for July 2026 indicates a visa will be immediately available to Petitioner in the EB-4 category on July 1, 2026.

On July 13, 2023, an Immigration Judge ordered dismissal of removal proceedings. On February 12, 2026, Petitioner was arrested and charged by the Montevideo Police Department for driving under the influence, which remains pending. On May 22, 2026, Respondents arrested and detained Petitioner without a legally valid administrative warrant or probable cause and transferred him to the Kandiyohi County Jail. On June 11, 2026, twenty-one days *after* his unlawful arrest and detention by Respondents, Petitioner was again issued NTA and placed in full removal proceedings pursuant to 8 U.S.C. § 1229a.

Respondents argue in their Response that Petitioner was arrested with a warrant, however, the warrant in question is a facially defective and legally void administrative warrant. This Court should find Respondents' arguments unpersuasive. The Form I-200, Warrant for Arrest of Alien, referenced and relied on by Respondents in their response, is facially defective and fails to state a valid basis for probable cause on the date of issuance, rendering the administrative warrant defective. Nor is there any other evidence in the record that explains why, as of May 21, 2026, immigration officials had probable cause to believe that Petitioner was removable from the United States. The Government's best evidence is a statement in the I-213, Record of Deportable/Inadmissible Alien, that his arrest was based on records checks conducted on May 21, 2026, the same day as the issuance of the I-200.

The I-200 was purportedly issued on May 21, 2026, however, the Certificate of Service shows that it was served on May 22, 2026, on the date of Petitioner's arrest. Moreover, the Form I-213, Record of Deportable/Inadmissible Alien, contains numerous inconsistencies, and the Declaration provided by Respondents is almost entirely hearsay. In the Form I-213, Respondents provide no explanation for the individualized basis upon which the administrative warrant was issued on May 21, 2026. Respondents do not allege that Petitioner was likely to escape before a warrant could be obtained, nor do Respondents document any specific particularized facts in the Form I-213 which apply to Petitioner in showing flight risk. Respondents fail to provide any explanation for how records checks conducted on May 21, 2026, indicated that Petitioner lacked immigration status at the time the warrant was issued, nor do Respondents make any mention of Petitioner's grant of deferred action or claim that Petitioner's deferred action has been terminated.

Respondents have violated the INA, the Fifth Amendment Due Process Clause, the Fourth Amendment guarantee against unreasonable searches and seizures, and abused their discretion in violation of the Administrative Procedures Act (APA) by arresting Petitioner without a legally valid warrant, essentially equivalent to a warrantless arrest, and without the requisite probable cause for a warrantless arrest. Respondents have further violated the INA as well as Petitioner's due process rights under the Fifth Amendment and abused their discretion in violation of the APA by issuing Notice to Appear (NTA) twenty-one (21) days after Petitioner's arrest and by depriving Petitioner of procedural due process by unlawfully arresting and detaining him without documenting any individualized determination of flight risk.

In their Response, Respondents fail to respond to the core of Petitioner's claims for habeas relief, arguing instead that Petitioner's mandatory detention under § 1225(b) precludes his right to procedural due process. It does not. Notably, Respondents evoked § 1226(a) by arresting Petitioner with an invalid administrative warrant and, thus, represented to Petitioner that his detention was discretionary under § 1226(a). Petitioner was unlawfully arrested and detained by Respondents and respectfully requests that the Court finds his arrest and continued detention unlawful and unconstitutional and grants his request for habeas relief. The appropriate remedy in this case is immediate release from custody to ensure complete relief.

ARGUMENT

I. Respondents' Warrantless Arrest of Petitioner Without Probable Cause Is Unlawful and Fails to Meet Statutory and Regulatory Standards.

In their Response, Respondents concede that "Petitioner's framing of the issue is correct. Because an I-200 can be issued only after a Notice to Appear has been filed (see 8 C.F.R. § 2361 (b)), Petitioner's arrest must be judged by the standards of 8 U.S.C. § 1357 and 8 C.F.R. 287.3. Respondents warrantless arrest of Petitioner without the requisite probable cause of flight risk for a warrantless arrest is unlawful and fails to meet statutory and regulatory standards.

Despite Respondents' vague statements in their Response that "immigration officers issued a detainer and attempted to issue an I-200 warrant," nothing on the record suggests that Respondents "had clear probable cause that [Petitioner] was in the country unlawfully" on May 21, 2026, nor does anything in the I-213 corroborate Respondents' claim in their Response that "Petitioner was a flight risk" at the time of his warrantless arrest on May 21, 2026. The evidence on the record shows that records checks were conducted on May 21, 2026. Petitioner was in state custody at the time of his encounter with ICE officers, thus, Respondents' statement that "this provided more than probable cause to believe he was likely to escape from the scene" is plainly

incorrect. Petitioner was not a flight risk on the day of his arrest by Respondents, in fact, Petitioner was quite literally unable to flee, given that he was in state custody at the time. Respondents' failure to issue NTA until twenty-one days after his warrantless arrest prevented their lawful issuance of an administrative warrant in Petitioner's case. This Court should find that Respondents' attempts to retroactively justify Petitioner's warrantless arrest are unpersuasive. Respondents could have issued NTA prior to issuing an unlawful administrative warrant on May 21, 2026, and then arresting Petitioner on May 22, 2026. They did not do so.

Respondents post-arrest conduct fails to satisfy the relevant regulations under § 287.3(d), which requires a determination be made within 48 hours of the arrest as to whether a notice to appear and warrant of arrest will be issued. The NTA was not issued by Respondents until twenty-one days later, on June 11, 2026, and the I-200 administrative warrant issued on May 21, 2026, is legally invalid, as Petitioner was not in removal proceedings at the time of its issuance. Notably, Respondents improperly checked the box to indicate that probable cause for issuing the I-200 was prefaced on the issuance of a charging document against Petitioner. Critically, Petitioner was not in removal proceedings at the time of his arrest. Respondents claim that "[o]fficers made this determination on May 21, 2026," however, no NTA was issued until well after the 48-hour window required by § 287.3(d), thus, Respondents failed to follow proper procedures to arrest and detain Petitioner.

The Form I-247A, Immigration Detainer – Notice of Action, is similarly defective. The detainer is dated May 21, 2026, and signed by Deportation Officer Trevino. Two boxes are checked to provide the basis for DHS's determination that probable cause of removability existed at the time of its issuance, including "the pendency of ongoing removal proceedings against the individual" and "biometric confirmation of the individual's identity and a records

check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the individual either lacks immigration status or notwithstanding such status is removable under U.S. immigration law[.]” In addition, the detainer states that “DHS requests cooperation regarding the subject who...otherwise poses a risk to national security, border security, or public safety.” Petitioner was not in removal proceedings, thus, the immigration detainer used to prevent his release from state custody is unlawful and defective. Further, nothing in the I-213 substantiates Respondents’ claim in the I-247A that Petitioner is an alleged “risk to national security, border security, or public safety.”

Immigration detainers are issued pursuant to sections 236 and 287 of the INA. Any authorized immigration officer may at any time issue a Form I-247, Immigration Detainer – Notice of Action, to any other Federal, State, or local law enforcement agency, including “[d]eportation officers”. Respondents represented to Petitioner that his detention was pursuant to § 1226(a) by issuing I-200, however, in their Response, Respondents argue that his detention is pursuant to § 1225(b). Nowhere do Respondents claim that Petitioner is mandatorily detained under § 1226(c) based on national security threat or public safety, and the record is void of any evidence to corroborate the allegations within the immigration detainer. As discussed above, Respondents did not issue NTA until three weeks after Petitioner’s unlawful arrest, thus, the immigration detainer also fails to provide a valid basis for probable cause.

Respondents submit Declaration of Special Assistant U.S. Attorney Derek Ganzhorn along with Eighth Judicial District Court Warrant for Petitioner’s arrest, initially filed with the District Court of Minnesota on May 7, 2026, as well as Complaint, filed on March 11, 2026. Regardless of the charges alleged on the Complaint, and assuming *arguendo* that Petitioner failed to appear for Court on May 4, 2026, Respondents did not document any of the specific

particularized facts in the I-213 to justify probable cause for Petitioner's warrantless arrest or the issuance of the immigration detainer. Further, the day after ICE placed the immigration detainer on Petitioner and the same day of his warrantless arrest, a Minnesota District Court Judge issued Release Order on behalf of Petitioner and ordered his release on conditions without bond, thus, demonstrating that Petitioner does not present a public danger or national security risk. *See* Ex. A. Order for Release (12-CR-26-133). This Court should reject Respondents' attempts to amend the evidentiary record during the pendency of habeas proceedings.

II. Petitioner's Arrest and Detention Violates Procedural Due Process.

A. Petitioner's Due Process Claim is Cognizable.

Respondents argue that Petitioner's due process argument fails because he is purportedly subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and point to an Eighth Circuit case: *Avila v. Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026). In *Avila*, the Eighth Circuit interpreted § 1225(b)(2)(A) to require detention of any noncitizen present in the United States who has not been admitted, regardless of whether they are arriving at the border or within the interior, if an examining officer determines that the noncitizen seeking admission "is not clearly...entitled to be admitted." *See Avila*, 2026 WL 819258, at *3-4.

Petitioner does not challenge his detention on the basis of statutory violation of the INA. Petitioner challenges the constitutionality of his unlawful arrest and detention as a violation of procedural due process under the Fifth Amendment. The *Avila* opinion did not address the issue of due process. *See* 2026 WL 819258, at *8 & n.8 (Erickson, J., dissenting). Respondents were specifically directed by this Court to address each count of the Petition in their response. With regards to Petitioner's due process claim, Respondents addressed only statutory due process under the INA. Respondents have, therefore, waived any argument on the due process issue. *See*,

e.g., Pedro Eduardo R.P. v. Bondi, No. 26-cv-1323, 2026 WL 473140, at *3 (D. Minn. Feb. 17, 2026) (discussing waiver of constitutional claims), *report and recommendation adopted*, 2026 WL 478607 (D. Minn. Feb. 19, 2026). Nonetheless, Petitioner would be entitled to relief under a procedural due process analysis, as explained below.

B. Petitioner Is Entitled to Habeas Relief Under *Mathew v. Eldridge*.

Respondents' warrantless arrest and detention of Petitioner without the requisite probable cause for a warrantless arrest, as well as Respondents' failure to issue NTA until three weeks after his arrest, violates Petitioner's procedural due process rights and entitles him to habeas relief. Respondents argue that Petitioner's claim is without merit and that Petitioner does not assert a cognizable due process claim. This Court should find that Respondents have failed to address the core of Petitioner's claims in their Response, focusing only on the lack of bond hearing in Petitioner's case. Petitioner has not received "all the process he is entitled to under the statute," as Respondents claim, and the due process clause requires additional safeguards.

Respondents incorrectly claim in their templated Response that Petitioner "argues he is entitled to a bond hearing to assess whether he is a flight risk or dangerous – criteria that are irrelevant under the terms of § 1225(b)(2)(A)." Respondents' argument here is misplaced. Petitioner did not challenge his unlawful arrest and detention on statutory due process grounds, nor does anything in the Petition for Writ of Habeas Corpus suggest that Petitioner is arguing he is entitled to a bond hearing.

Petitioner's procedural due process claim is centered upon the procedure due in his warrantless arrest. The I-213 demonstrates that Respondents failed to conduct any individualized determination of flight risk *required by statute to make a warrantless arrest*. Respondents concede that Petitioner's arrest was effectively warrantless due to the delay in NTA issuance and

then state that Petitioner clearly posed a flight risk, however, nothing on the record suggests that ICE officers made that determination before arresting him. Petitioner is not “challenging Congress’s decision to mandate detention pending removal proceedings, without regard to his flight risk or dangerousness,” and Respondents improperly frame Petitioner’s due process challenge as substantive, rather than procedural.

Respondents improperly cite *Connecticut Department of Public Safety v. Doe* to support their arguments. This Court should find that *Connecticut* does not apply in Petitioner’s case and Respondents err in claiming that Petitioner is arguing for a hearing to adjudicate facts. The facts are well established here: Respondents made no mention of flight risk in the I-213 and arrested Petitioner with an unlawful administrative warrant in violation of § 1357 and procedural due process.

Respondents argue that (1) Petitioner is raising a substantive due process claim rather than a procedural due process claim because, as in *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), he “has not challenged the adequacy of the procedures for determining whether [he] is an ‘applicant for admission’” and instead is disputing the “determination that Petitioner is an applicant for admission”; and (2) because individualized findings regarding flight risk and danger are irrelevant to § 1225(b)(2), under the reasoning in *Avila*, Petitioner has no procedural due process right to a bond hearing on flight risk or danger to the community.

Neither of these arguments are persuasive. As to the first argument, the Court should find that *Doe* is highly distinguishable. In that case, the litigant was challenging the requirement for him to register as a sex offender without a hearing on the topic of whether he was “currently dangerous,” though the statutory scheme at issue did not consider that factor. *Doe*, 538 U.S. at 4. The Supreme Court held that, because the determination sought by the litigant in such a hearing

would have no bearing on the outcome, he had no procedural due process right to such a hearing. *Id.* at 7–8. Respondents’ reasoning is inapplicable to Petitioner’s case for two reasons.

For one, *Doe* “arose in an entirely different context” than “an immigration detainee’s challenge to their detention without a bond hearing.” *Hernandez, v. ICE Field Off. Dir.*, No. EP-26-CV-67-KC, 2026 WL 503958, at *2 (W.D. Tex. Feb. 23, 2026). Given that “[f]reedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects,” *Zadvydas*, 533 U.S. at 690, this Court similarly should not find that a case about registering as a sex offender is directly on point. Second, as described previously, whether or not Petitioner is a flight risk is relevant to Petitioner’s arrest and detention. Though Respondents frequently describe detention under 8 U.S.C. § 1225(b) as “mandatory detention,” § 1357 requires documentation of Respondents’ determination of flight risk based on specific particularized facts to make a warrantless arrest. Thus, a determination that Petitioner is a flight risk is in fact not irrelevant, unlike in *Doe*.

Respondents arrested Petitioner with an administrative warrant issued pursuant to § 1226(a) and, thus, represented to Petitioner that his detention was discretionary. Section 1226(a) requires a warrant and provides for a bond hearing; however, the issue of a bond hearing is not at the core of Petitioner’s claim for relief. Petitioner challenges his unlawful arrest and detention by Respondents without being provided the process he is due, namely, an individualized determination of flight risk to justify his warrantless arrest.

Under the national settlement agreement in *Castañon Nava*, as well as pursuant to 8 U.S.C. § 1357, Respondents are required to consider specific factors to determine flight risk in making a warrantless arrest and to document those “specific particularized facts” in the I-213. Respondents did not do so here, and instead, attempt to retroactively amend the record to

establish flight risk. Respondents issued I-200 and then failed to issue NTA within a reasonable period, rendering the administrative warrant null and void. The I-213 submitted by Respondents with their Response makes no mention of flight risk. Accordingly, this Court should find that Respondents deprived Petitioner of procedural process which he is due under the Fifth Amendment. Because Petitioner makes a valid procedural due process argument, the Court should address whether Petitioner has succeeded on his procedural due process claim under *Mathews v. Eldridge*, 424 U.S. 319 (1976).

1) *Mathews* Is An Individualized Test.

Respondents argue that “Courts have recently begun using *Mathews* as a form of individualized assessment governing whether a detainee is entitled to another individualized assessment, namely a bond hearing.” This framing is inapplicable to Petitioner’s case: again, Petitioner is not arguing that he is entitled to a bond hearing, rather, he is arguing that Respondents’ failure to conduct an individualized determination of flight risk before arresting him with an unlawful administrative warrant violates procedural due process. Respondents attempt to reframe Petitioner’s constitutional challenge and fail to respond in a meaningful way to Petitioner’s procedural due process claim, thus, this Court should find that Respondents have waived this issue.

As the Ninth Circuit put it, *Mathews* “remains a flexible test,” and takes account of individual circumstances. *Rodriguez Diaz*, 53 F.4th at 1206. It allows for what might appear to be “conflicting outcomes.” *Id.* Applying *Mathews* comports with the Supreme Court’s guidance in *Jennings* that “due process is flexible,”...and... ‘calls for such procedural protections as the particular situation demands.’” 583 U.S. at 314 (alteration omitted) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). Courts have applied this framework in similar circumstances

to Petitioner's. *O-JM- v. Bostock*, No. 3:25-cv-00944-AB at 37-38 (D. Or. July 14, 2025) (applying *Mathews* test to grant writ of habeas corpus based on "a very concerning deprivation of petitioner's constitutional due process rights"). In this Circuit, the adequacy of the process provided in civil immigration confinement is determined through application of the *Mathews* balancing test. *Booker v. City of Saint Paul*, 762 F.3d 730, 734 (8th Cir. 2014).

Further, Petitioner's grant of SIJ status and deferred action constitute important benefits such that his detention constitutes "cognizable prejudice." See, e.g. *Zadvydas*, 533 U.S. at 690 ("[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"); *Estuardo Xol-Maas*, 2026 WL 457005, at *2 ("Petitioner has established that his removal from the United States while he enjoys SIJ status but has yet to have the opportunity to apply for adjustment of status would violate due process"); *Nevarez Jurado v. Freden*, No. 25-CV-943 (LJV), 2025 WL 3687264, at *10 (W.D.N.Y. Dec. 19, 2025) (finding, under *Mathews* that "the government [does not have] free [rein] to detain a deferred action recipient" without any individualized determination). Thus, under the *Mathews* test, Petitioner's arrest and detention, conducted with an unlawful I-200 and without any individualized determination of flight risk, was effected in flagrant violation of his Due Process rights. *McDonald v. Francis*, No. 25-CV-09355 (JAV), 2025 WL 3295906, at *3–4 (S.D.N.Y. Nov. 26, 2025) (In like circumstances, holding that "[t]he Court next considers whether [] the Government violated Petitioner's due process rights. The Court easily concludes that it has.").

2) *Mathews* Entitles Petitioner to Due Process.

No person within the United States—including noncitizens who entered unlawfully—shall be "deprived of life, liberty, or property, without due process of law." U.S. Const. amend.

V; see *Zadvydas*, 533 U.S. at 693. Civil detention violates the Due Process Clause unless there is a “special justification” that “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (citation modified). To determine whether civil detention violates a detainee’s due process rights, courts apply the three *Mathews* factors. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); see, e.g., *Maldonado*, 795 F. Supp. 3d at 1148. To determine whether civil detention violates a noncitizen’s procedural due process rights, courts consider three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government’s interest, including the function involved and the fiscal and administrative burdens that any such procedural requirement would entail. *Mathews*, 424 U.S. at 335 (citing *Goldberg v. Kelly*, 397 U.S. 254, 263–71 (1970)).

Use of the *Mathews* factors is appropriate here despite the Eighth Circuit’s decision to bypass this test in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024). *Banyee* analyzed the mandatory detention of a noncitizen pursuant to § 1226(c). See *id.* at 930. Section 1226(c) requires the detention of noncitizens who are inadmissible or deportable because they have committed a particular crime. See 8 U.S.C. § 1226(c). Respondents do not allege that Petitioner is detained pursuant to § 1226(c) in their Response.

Relying on *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), *Demore v. Kim*, 538 U.S. 510 (2003), and *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), the Government argues that Petitioner’s procedural-due-process argument is foreclosed and that he is not entitled to additional process beyond the opportunity to oppose his removal. Respondents also rely on *Jennings*, which is inapplicable because it did not address due process claims.

Jennings, 583 U.S. at 312 (“Because the Court of Appeals erroneously concluded that periodic bond hearings are required under the immigration provisions at issue here, it had no occasion to consider respondents’ constitutional arguments on their merits. Consistent with our role as a court of review, not of first view, we do not reach those arguments.” (citation modified)). Instead, as in *Avila*, the Supreme Court “remand[ed] the case to the Court of Appeals to consider them in the first instance.” *Id.* This Court should disagree with Respondents’ argument for the reasons explained below.

First, *Banyee* and *Demore* do not preclude due process challenges to detention under Section 1225(b)(2). The Eighth Circuit in *Banyee* – and the Supreme Court in *Demore*, on which *Banyee* relied – held that mandatory detention pending the conclusion of removal proceedings is constitutionally permissible. *See Banyee*, 115 F.4th at 933 (quoting *Demore*, 538 U.S. at 527) (“[T]he [g]overnment can detain an alien for as long as deportation proceedings are still ‘pending.’” (emphasis omitted)). Notably, *Banyee* and *Demore* involved due process challenges to mandatory detention under Section 1226(c), not Section 1225(b)(2), *see Banyee*, 115 F.4th at 930-31; *Demore*, 538 U.S. at 522-23. The Government does not assert that Petitioner is detained under Section 1226(c), but nevertheless asserts that the holdings in *Banyee* and *Demore* mean Petitioner’s due process claims fail as a matter of law. This Court should be unconvinced.

In *Banyee*, the petitioner, a lawful permanent resident, was convicted of armed robbery, placed in removal proceedings and detained under Section 1226(c). *See* 115 F.4th at 930. Although initially granted cancellation of removal by an immigration judge, the BIA reversed and remanded. *Id.* On remand, the petitioner was ordered removed by the immigration judge, which he appealed to the BIA. *See id.* The petitioner, who by this point had been detained in a county jail for one year, sought habeas relief while the appeal was pending, challenging his

“lengthy detention” during removal proceedings on due process grounds but not “directly contesting the grounds for his mandatory detention.” *Id.* at 930–31. The Eighth Circuit rejected his argument, concluding that “the [g]overnment may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.” *Id.* at 931 (alteration in original) (quoting *Demore*, 538 U.S. at 526).

Similarly, in *Demore*, the petitioner was convicted of at least one aggravated felony, did not “dispute the validity of his prior convictions” or the “conclusion that he [was] subject to mandatory detention under § 1226(c),” and “conced[ed] that he was deportable.” *Id.* at 513–14. Instead, the petitioner argued his detention under Section 1226(c) violated due process because the government “had made no determination that he posed either a danger to society or a flight risk.” *Id.* at 514. The Supreme Court rejected his argument and affirmed that his detention without a bond hearing was constitutionally permissible. *See id.* at 530. Critical to *Demore*’s holding—and *Banyee* to the extent it relies on *Demore*—was Congress’s reliance, in enacting Section 1226(c), on findings supporting its “justifiabl[e] concern[] that deportable criminal aliens who are not detained [would] continue to engage in crime and fail to appear for their removal hearings.” *Id.* at 513. The Supreme Court reasoned that the “narrow detention policy reflected in 8 U.S.C. § 1226(c),” as applied to the class of criminal noncitizens in removal proceedings, was constitutionally permissible because “[s]uch detention necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.” *Id.* at 526, 528. In effect, the consideration of dangerousness and risk of nonappearance is already baked into Section 1226(c).

Importantly, under the version of Section 1226(c) that existed when *Demore* and *Banyee* were decided, the “vast majority of mandatory-detention cases” under Section 1226(c) involved noncitizens w convicted of criminal offenses, with “rare” exceptions involving, for example, noncitizens who were “thought likely to engage in terrorist activity.” *Nielsen v. Preap*, 586 U.S. 392, 398–99, 399 n.4 (2019); see also 8 U.S.C. § 1226(c)(1) (1996). As a result, any due process concerns regarding mandatory detention under the previous version of Section 1226(c) were mitigated because those noncitizens, as part of securing their criminal convictions, received the “full procedural protections our criminal justice system offers.” See *Demore*, 538 U.S. at 513.

Section 1226(c) was amended in January 2025 and now requires mandatory detention for noncitizens who have been “charged with” or “arrested for” certain qualifying crimes, whether by a state or the federal government. See Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E)). The Government does not cite any cases discussing the due process implications of the current version of Section 1226(c), and instead relies on *Banyee* and *Demore*, which dealt with the previous version of Section 1226(c).

No similar logic applies to Section 1225(b)(2). Detention under Section 1225(b)(2) requires only a determination that a noncitizen is an “applicant for admission” who is not “clearly and beyond a doubt entitled to be admitted.” Unlike Section 1226(c), there is no requirement that a noncitizen detained under Section 1225(b)(2) be formally accused or convicted of certain criminal conduct or any other “‘personal activity’ that Congress considered relevant to future dangerousness.” See *Demore*, 538 U.S. at 525 n.9; see also *Carlson v. Landon*, 342 U.S. 524, 541 (1952) (holding detention of Communist Party members without bond was constitutionally permissible because Congress’s “understanding of their attitude toward the use of force and violence . . . to accomplish their political aims” provided “adequate ground for

detention”); *Zadvydas*, 533 U.S. at 690 (citations omitted) (explaining that “government detention violates th[e] [Due Process] Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in special and narrow nonpunitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individual’s constitutionally protected interest in avoiding physical restraint” (internal quotation marks omitted)). Unlawful presence within the United States, by itself, is not a criminal offense. *See Arizona v. United States*, 567 U.S. 387, 396 (2012) (“Removal is a civil, not criminal, matter.”).

Nor are there congressional findings under Section 1225(b)(2) like those discussed in the context of Section 1226(c) suggesting a noncitizen who is purportedly detained under Section 1225(b)(2) based on unlawful presence in the United States, is likely to be a flight risk or a danger to the community. *Cf. Demore*, 538 U.S. at 518–21; S. Rep. No. 104-48, at 32 (1995) (“Congress should consider requiring that all aggravated felons be detained pending deportation. Such a step may be necessary because of the high rate of no-shows for those criminal aliens released on bond.”).

“Congress may make rules as to aliens that would be unacceptable if applied to citizens.” *Banyee*, 115 F.4th at 931 (quoting *Demore*, 538 U.S. at 522). But those rules still must comport with the Due Process Clause, for “[l]egislation cannot abridge a constitutional privilege.” *Counselman v. Hitchcock*, 142 U.S. 547, 585 (1892); *see also Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985) (explaining that the “answer to th[e] question” of whether the Due Process Clause is satisfied “is not to be found in the . . . statute”). That *Banyee* and *Demore* found the detention framework in Section 1226(c) constitutionally permissible does not mean the detention framework in Section 1225(b) is constitutionally permissible merely because

both statutes require mandatory detention. This is the case especially considering the different classes of noncitizens to which they are directed: Section 1226(c) applies to criminal noncitizens, and Section 1225(b)(2), according to Respondents and several Circuit Courts, now applies to everyone else. The Court should not agree that Petitioner's due process claim is precluded by *Banyee* and *Demore*.

Similarly, *Thuraissigiam* does not preclude due process challenges to detention under Section 1225(b)(2). Respondents point to *Thuraissigiam* to argue that Petitioner cannot claim any greater rights under the Due Process Clause than those provided by a statutory framework Congress made mandatory. Again, this Court should disagree. In *Thuraissigiam*, the Supreme Court held “[m]ore than a century of precedent establishes that, for aliens seeking initial entry, ‘the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.’” *Thuraissigiam*, 591 U.S. at 104. The petitioner in that case had been detained 25 yards into U.S. territory, and the Court made clear that an individual detained shortly after unlawful entry cannot be said to have “effected an entry.” *Id.* In declining an as-applied constitutional challenge to Section 1252(e)(2), the Court reasoned that “[w]hile aliens who have established connections in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for an alien's lawful entry into this country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause.” *Id.* at 107.

In Petitioner's case there are several critical distinctions: (1) *Thuraissigiam*, in fact, did not address whether noncitizens purportedly detained under Section 1225(b) have a constitutional due process right to challenge the fact or the length of their detention, leaving the issue open for lower courts to consider, (2) *Thuraissigiam* was seeking a second opportunity to

apply for asylum through habeas, not his release like Petitioner, (3) *Thuraissigiam* was subject to expedited removal proceedings, meanwhile Petitioner is in full removal proceedings and has no final order of removal, and (4) *Thuraissigiam* was apprehended 25 yards into U.S. territory on the threshold of initial entry, meanwhile Petitioner has established multiple years of presence in the United States. *Thuraissigiam*, 591 U.S. at 114.

This Court has previously rejected Respondents' argument that Petitioner is not entitled to more due process than what Congress provided because he is in full removal proceedings and the statute provides him with robust due process protection. Further, this Court has agreed with other courts that have found *Thuraissigiam* is not preclusive on the facts of this case because (1) Petitioner is not challenging his removal, but rather his detention during removal, and (2) he was not detained at the border on the threshold of initial entry, but rather after living in the United States for years. *See Anthony Javier R.M. v. Blanche*, No. 26-cv-2283 (LMP/DLM) (D. Minn. May 29, 2026).

Thuraissigiam does not preclude Petitioner's due process claim here for at least two reasons. First, unlike in *Thuraissigiam*, Petitioner challenges the lawfulness of his arrest and detention without procedural safeguards, not the fact that he has been charged with removability or the process that determination was made. *Thuraissigiam*'s due process analysis was limited to whether an "applicant for admission" has greater due process rights with respect to admissibility determinations than those provided by statute. *See id.* at 138–40 ("[A]n alien in respondent's position has only those rights regarding admission that Congress has provided by statute." (emphasis added)). *Thuraissigiam* did not address whether the petitioner's detention itself was unlawful or inconsistent with the Due Process Clause and did not deal with a core habeas challenge to detention like Petitioner's request for habeas relief here. In *Thuraissigiam*, the

petitioner's claims were rejected largely because the petitioner "[sought] to use habeas to obtain something far different from simple release," namely "authorization . . . to remain in [the] country" or "to obtain administrative or judicial review leading to that result." *Id.* at 120–21.

Second, a key factual distinction is that the petitioner in *Thuraissigiam* was stopped by immigration authorities "within 25 yards of the border," immediately detained, and never released. *See id.* at 114. And *Thuraissigiam*'s holding, by its own language, is limited to noncitizens at the border—that is, those who are "seeking initial entry." *Id.* at 139–40. In other words, *Thuraissigiam* reinforced the understanding that noncitizens "on the threshold of initial entry stand[] on a different footing" than those who have "passed through our gates."

Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206, 212 (1953), 345 U.S. at 212 ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law."); *see also*, e.g., *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990) ("[A]liens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country."); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (holding that "all persons within the territory of the United States are entitled to the protection" guaranteed by the Fifth Amendment).

Petitioner has "passed through our gates" and is therefore protected by the Due Process Clause. *See Mezei*, 345 U.S. at 212; *Zadvydas*, 533 U.S. at 693. He has since established residence in Minnesota and has a U.S. citizen child. The circumstances of Petitioner's presence in the United States differentiate him from the petitioner in *Thuraissigiam* because noncitizens "receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country." *Verdugo Urquidez*, 494 U.S. at 271

(emphasis added). *Thuraissigiam* itself suggests that this distinction is material. *See* 591 U.S. at 138 (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)) (“[A]s to ‘foreigners who have never been naturalized, nor acquired any domicil[e] or residence within the United States, nor even been admitted into the country pursuant to law,’ ‘the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.’” (emphasis added)).

To be sure, *Thuraissigiam* discusses the so-called “entry fiction” relating to the legal status maintained by unadmitted noncitizens. That is the concept that “aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are treated for due process purposes as if stopped at the border.” *Id.* at 139 (internal quotation marks omitted) (citation omitted). But again, *Thuraissigiam*’s analysis focused on a noncitizen’s due process rights with respect to admissibility, not as to the noncitizen’s detention pending that determination. *See id.* at 138–40. Said another way, a noncitizen who has been paroled into the United States has no greater entitlement to remain in the United States or to procedural protections “leading to that result,” *id.* at 120, than one who just arrived at the border. But the process due to determine whether a noncitizen may remain in this country—removal proceedings—is separate from the process to determine whether detention is warranted while the decision is made.

Other than in the context of expedited removal under Section 1225(b)(1), immigration detention and removal proceedings are governed by different provisions of the INA. *See* 8 U.S.C. §§ 1225(b)(2) (detention), 1226 (detention), 1229a (removal proceedings); *see also* 8 C.F.R. § 1003.19(d) (“Consideration by the Immigration Judge of an application or request of a respondent regarding custody or bond . . . shall be separate and apart from, and shall form no part

of, any deportation or removal hearing or proceeding.” (emphasis added)). As the Supreme Court has explained, the analysis as to the due process rights of noncitizens depends, in meaningful part, on where and when a noncitizen is detained:

It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all “persons” within the United States, including aliens, *whether their presence here is lawful, unlawful, temporary, or permanent*. *Zadvydas*, 533 U.S. at 693 (emphasis added) (citations omitted); *accord Avila*, 170 F.4th at 1140–41 (Erickson, J., dissenting) (quoting *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 519 (5th Cir. 2026) (Douglas, J., dissenting)) (“[G]overnment intrusions have always been tolerated at the border that would be intolerable in the interior, for the obvious reason that citizens and noncitizens alike expect to be able to go about their business without having to show that they are ‘clearly and beyond doubt entitled to be admitted’ if taken, or mistaken, for an otherwise inadmissible noncitizen.”).

Petitioner was detained within the United States several years after entering the United States. He has since established residence in Minnesota. Petitioner’s case is, thus, meaningfully distinguishable from the cases on which Respondents rely, and the Court should conclude Petitioner’s due process claim is not precluded here. Although not at the time of his arrest, Petitioner is now in full removal proceedings, unlike *Thuraissigiam* who was subject to expedited removal after unsuccessful asylum claims. 591 U.S. at 114. Moreover, because Petitioner is challenging his detention during removal proceedings, “the choice...is not between imprisonment and the alien ‘living at large[,]’ [citation omitted] [i]t is between imprisonment and supervision under release conditions that may not be violated.” *Zadvydas*, 533 U.S. at 696.

Respondents' position overlooks the "distinction between an alien who has effected an entry into the United States and one who has never entered [that] runs throughout immigration law." *Zadvydas*, 533 U.S. at 693. Even in *Thuraissigiam*, the core point of the Court's analysis in rejecting an as-applied challenge rested on the fact that as an individual on the initial threshold of entry, he wasn't entitled to more due process than that afforded by statute. Precedent and logic tell us that those individuals who have established ties in the country are protected by constitutional procedural due process. After all, it is a "well established" rule "that the Fifth Amendment entitles aliens to due process of law." *Trump v. J. G. G.*, 145 S. Ct. 1003, 1006 (2025). Here, it is undisputed Petitioner has lived in the United States since his initial entry in 2021, he was detained by U.S. Border Patrol at the border and then released on his own recognizance, and he is now living in the United States and waiting to receive lawful status, therefore, he is entitled to due process protections.

3) Analysis Under *Mathews* Factors Favors Petitioner.

Analysis of the *Mathews* factors favors Petitioner. First, freedom from detention is a central due process protection. *See Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("[T]he most elemental of liberty interests [is] the interest in being free from physical detention by one's own government."). Second, without requiring a valid warrant or probable cause of flight risk, the risk of erroneous deprivation is high. Third, the government's interest in arresting and detaining Petitioner without a valid warrant or probable cause is weak. The *Mathews* factors weigh in favor of Petitioner.

Once it is “determined that the Due Process Clause applies, ‘the question remains what process is due.’” *Loudermill*, 470 U.S. at 541 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). “The answer to that question is not to be found in the . . . statute.” *Id.* Deciding what process is due ordinarily requires some form of interest balancing. *See Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976) (citation omitted) (“‘[D]ue process,’ unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.”); *Morrissey*, 408 U.S. at 481 (“[D]ue process is flexible and calls for such procedural protections as the particular situation demands.”). But “there can be no doubt” that the Due Process Clause requires, at a minimum, that “deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950). Consequently, Respondents may not deny “notice” or “an opportunity to be heard” to a noncitizen “who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population, although alleged to be illegally here.” *Yamataya v. Fisher*, 189 U.S. 86, 101 (1903); see *Wong Wing*, 163 U.S. at 238 (“[E]ven aliens shall not . . . be deprived of life, liberty, or property without due process of law.”).

Respondents argue that Petitioner’s “private interest” here is insubstantial” on the basis that his detention without a bond hearing “does not implicate any fundamental rights.” Again, Respondents argument is misplaced and fails to address the core of Petitioner’s habeas claim, which centers on his unlawful arrest without a warrant or individualized determination of flight risk to justify probable cause and Respondents’ failure to issue NTA within a reasonable period in the absence of emergency or extraordinary circumstances. As discussed above, Petitioner’s purported detention under § 1225(b) does not preclude his procedural due process claim; further,

Respondents invoked § 1226(a) in issuing the legally invalid administrative warrant for his arrest and, thus, represented to Petitioner that his detention was pursuant to § 1226(a). Petitioner has a protected liberty interest under the Fifth Amendment and Respondents deprived him of due process and procedural safeguards required by the Fifth Amendment, and in doing so, deprived him of that fundamental liberty interest. The Court should, therefore, disregard Respondents' argument and conclude that this factor weighs in Petitioner's favor.

Respondents argue “[n]or is there any substantial risk Petitioner will be erroneously deprived of his rights.” Here, Respondents again fail to address the core of Petitioner’s due process challenge: that the risk of erroneous deprivation is high where the Government arrested him without a legally valid warrant and without the requisite probable cause for a warrantless arrest, as well as failed to issue NTA within a reasonable period and failed to properly document the emergency or extraordinary circumstances which warranted the delay. Requiring a legally valid administrative warrant, or alternatively, proper documentation of the requisite probable cause for a warrantless arrest, “would alleviate th[at] risk.” *Abdirashid H. M.*, 2026 WL 127698, No. 25-cv-4779 (JRT/EMB), 2026 WL 127698, at *4 (D. Minn. Jan. 9, 2026) (first quoting *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-00773-JKP, 2025 WL 2976923, at *9 (W.D. Tex. Oct. 21, 2025); and then citing *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025)). Petitioner has already been erroneously deprived of his rights and Respondents’ conduct here provides substantial reason “to believe otherwise[.]”.

The Government’s authority to detain noncitizens is not limitless and should advance two regulatory goals: (1) ensuring the appearance of noncitizens at their immigration proceedings; and (2) preventing danger to the community while those proceedings are ongoing. *See Zadvydas*, 533 U.S. at 690. Requiring Respondents to issue a legally valid administrative warrant, or

alternatively, to properly document the requisite probable cause for Petitioner's arrest, as well as requiring Respondents to properly document emergency or extraordinary circumstances in delaying NTA issuance, will ensure that the purpose of detention is necessary to ensure appearance at future immigration proceedings and to prevent danger to the community. *Id.*; see *Seling v. Young*, 531 U.S. 250, 265 (2001) (“[D]ue process requires that the conditions and duration of confinement...bear some reasonable relation to the purpose for which persons are committed.”). This Court should take serious issue with the warrant used here and find that the risk of erroneous deprivation is substantial where Respondents fail to follow statutory policy and regulations by arbitrarily arresting Petitioner without a lawful warrant or probable cause.

Finally, Respondents argue that the Government has “strong historical and practical interests in seeing Congress’s will given effect.” Petitioner’s due process challenge was not reliant on the lack of a bond hearing here; Petitioner specifically challenged his unlawful arrest without a valid warrant or probable cause as a violation of procedural due process and Respondents fail to address the Government’s interest in detaining Petitioner without a valid warrant or the requisite probable cause for a warrantless arrest. The federal law requires probable cause to arrest an individual without a warrant in the United States and Respondents have provided no evidence to support their claim that ICE officers had probable cause at the time the I-200 was issued, on May 21, 2026, or at any point prior to Petitioner’s arrest on May 22, 2026. Based on the I-213 and the I-200 submitted, records checks were conducted on the day of the I-200’s issuance. Respondents do not attempt to address the Government’s interest in delaying issuance of the NTA and their failure to document how emergency or extraordinary circumstances justified the delay, as required by statute. This Court should find that Respondents have waived these issues and conclude that the Government’s interest in making unlawful arrests

based on probable cause and delaying issuance of NTA, in contravention of statutory requirements, is not substantial.

According to Respondents, due process places no limitations at all on the statutory procedure required to arrest and detain noncitizens who entered without inspection and are purportedly detained pursuant to § 1225(b). However, *Avila* is not dispositive as to the facts and procedural posture of this matter, particularly because Respondents invoked § 1226(a) in their issuance of the legally invalid administrative warrant for Petitioner's arrest. Even after the Eighth Circuit decision in *Avila v. Bondi*, this Court has found that due process requires procedural safeguards and ordered the immediate release of noncitizens subject to mandatory detention under § 1225(b) for due process violations.

Accordingly, this Court should declare that Respondents violated Petitioner's right to due process and order his immediate release from custody. Respondents' unlawful warrantless arrest without probable cause and arbitrary detention of Petitioner without notice, and before initiating removal proceedings against him, is unlawful and in violation of due process under the Fifth Amendment.

III. Respondents' Unlawful Warrantless Arrest of Petitioner Absent Probable Cause Violates the Fourth Amendment Guarantee Against Unreasonable Searches and Seizures.

This Court should find the administrative warrant is legally void and Respondents detained Petitioner without a warrant. The I-213 demonstrates that immigration officers lacked reasonable suspicion to initiate an investigation. The encounter on May 21, 2026, did not lead to reasonable suspicion or probable cause of flight risk, given that Petitioner was detained at the time and unable to flee from Respondents.

Respondents' unlawful arrest and detention of Petitioner using a defective administrative warrant, effectively equivalent to his arrest without a warrant, violates the Fourth Amendment,

which protects the right of all persons present in the United States to be free from unreasonable seizures by government officials absent a warrant establishing probable cause. The Form I-200 is substantively and fatally defective. Two of the five checkboxes completed to explain how the responsible ICE official developed probable cause of removability directly contradict Respondents' hearsay narrative in the I-213. The I-200 implies that records checks conducted on May 21, 2026, as well as the issuance of charging documents against Petitioner, formed the basis for Respondents' probable cause determination. However, the Form I-213 clearly states that records checks were conducted that same day, on May 21, 2026, and Respondents did not issue NTA until three-weeks later, on June 11, 2026. In effect, the warrant is based upon nothing at all. The I-200 is also unreliable. The form represents that SDDO Munoz "determined there is probable cause" for Petitioner's arrest without specifying how records checks conducted on May 21, 2026, and the issuance of an NTA three weeks later, on June 11, 2026, supported the probable cause required to issue I-200 for Petitioner's arrest on May 21, 2026. Nothing in the I-213 suggests that Respondents made an individualized determination of flight risk to justify Petitioner's warrantless arrest.

SDDO Munoz' signature is a typed signature block dated May 21, 2026. All other portions of the warrant have been filled out in the same ink and handwriting, presumably by Deportation Officer Trevino based on the signature, however, without his name being present, there is no evidence on the record that the officer who signed the service section is authorized to issue warrants. Respondents suggest that the warrant was issued on May 21, 2026, when in reality it was completed and served on May 22, 2026. This supposition becomes stronger when the I-200 is viewed in conjunction with other documents issued in connection with Petitioner's detention. The I-213 report lacks detail regarding why officers determined that Petitioner was a

flight risk on May 21, 2026. The NTA's issuance on June 11, 2026, directly contradicts the I-200 administrative warrant, upon which Respondents allegedly determined that there was probable cause for Petitioner's arrest based, in part, upon the execution of a charging document to initiate removal proceedings against him.

The I-213 provides no indication that officers conducted an individualized determination of flight risk to justify Respondents' warrantless arrest of Petitioner prior to the initiation of removal proceedings against him. Respondents fail to make any argument concerning their failure to follow procedure and conceded that Petitioner was arrested using a facially defective and legally void administrative warrant. Given the lack of probable cause and numerous inconsistencies, this Court should find that Petitioner was unlawfully arrested without a warrant. Given the two boxes checked on the I-200 and the inconsistencies between the dates on the I-213, the I-200, and the dates that the NTA was issued, the I-200 only bolsters Petitioner's Fourth Amendment and APA claims. Respondents invoked § 1226(a) in issuing the I-200, and in doing so, represented to Petitioner that his detention was discretionary under § 1226(a). This Court should declare that Petitioner's arrest without a legally valid warrant and without probable cause as well as his continued detention by Respondents is unlawful and order Petitioner's immediate release from custody.

The Government has not advanced any argument that justifies Petitioner's arrest and detention with a legally invalid warrant. Upon information and belief, at no point did Respondents conduct an individualized assessment of whether Petitioner was a flight risk. Despite conceding Petitioner was arrested without a warrant in their Response, the I-213 is void of any evidence that Respondents made an individualized determination of flight risk as required to make a warrantless arrest. In fact, the I-213 states that "[SDDO] Munoz issued a Warrant for

Arrest of Alien, Form I-200” on May 21, 2026, and that “[o]n May 22, 2026, DO Trevino...served the I-200.” This Court should be skeptical as to the lack of any statements regarding flight risk in the I-213, despite Respondents concessions that Petitioner was arrested without a warrant.

Additionally, there is ample evidence of widespread abuses of I-200 warrants by ICE officers. Consequently, the warrant is legally invalid and “not a warrant” within the meaning of the Fourth Amendment and 8 U.S.C. § 1226(a). Because the warrant is a legal nullity, immigration officers had no lawful basis to detain Petitioner. Immigration officers should never have made the May 22 arrest. Immigration officials compounded these violations by unlawfully initiating biometrics collection. Even assuming, *arguendo*, that immigration officers had a lawful basis to effect a warrantless arrest, they failed to conduct an individualized assessment of flight risk before doing so. This Court should order the Respondents to release Petitioner forthwith and declare that Petitioner was detained unlawfully pursuant to a warrantless arrest, entitling him to immediate release, because officers arrested him without probable cause of flight risk.

IV. Petitioner’s Claims Under the APA Hold Merit and Demonstrate a Pattern and Practice of Unlawful Warrantless Arrests Absent Probable Cause by Respondents Which Constitutes An Abuse of Discretion.

The APA requires courts to hold challenged final agency actions unlawful when the actions are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Agency action is arbitrary and capricious when the agency fails to “examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). ICE, like other agencies, is required to follow

its own regulations. *Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to abide by certain internal policies is well-established.")

When an agency changes its policies, it also "must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account." *Dept. of Homeland Security v. Regents of the Univ. of Calif.*, 591 U.S. 1, 30 (2020) (internal quotations and citations omitted). In any agency action "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

The record here shows that Respondents did not articulate a satisfactory explanation including a "rational connection between the facts found and the choice made" for Petitioner's arrest with a defective administrative warrant, equivalent to a warrantless arrest without probable cause. See *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43. Respondents do not show any consideration of the "serious reliance interests" that they have engendered in Petitioner by arbitrarily detaining him following their change in policy. See *Dept. of Homeland Security v. Regents of the Univ. of Calif.*, 591 U.S. at 30. Respondents arrest and detention of Petitioner departs from longstanding agency precedent, policy, and practice. In arresting and detaining Petitioner with an unlawful warrant, Respondents provided no reasoned or adequate explanation, which is a dramatic shift from recent and longstanding agency policies, and which results in the costly and arbitrary detention of individuals, like Petitioner, who had serious reliance interests in those past policies. See *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016).

Respondents' unlawful arrest and detention of Petitioner with a defective and unlawful warrant is arbitrary and capricious under the APA because Respondents failed to provide a reasoned explanation for the reversal of longstanding agency policy against arresting noncitizens

absent an individualized determination of flight risk, and failed to consider important factors relevant to this decision, such as the reliance interests of individuals in remaining outside of detention, due process, and Fourth Amendment implications of the new policy of arresting noncitizens with unlawful warrants.

Respondents' detention of Petitioner is arbitrary and capricious under the APA because it was adopted and implemented for an improper purpose and also unlawful under the APA as "contrary to a constitutional right" because it violates the Fourth Amendment's guarantee against unreasonable searches and seizures. In detaining Petitioner with a facially defective and unlawful warrant, Respondents failed to adequately consider important aspects of the problem and all relevant factors, including the constitutional limitations on the government's authority to arrest and detain, and the reliance interests of individuals subject to detention, such as Petitioner. Respondents instead considered the improper purpose of pressuring noncitizens to abandon their claims for relief and self-deport.

Respondents' actions in unlawfully arresting and detaining Petitioner without a legally valid warrant and without probable cause for a warrantless arrest are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. § 702(2)(a); *Minnesota Telecom Alliance v. Federal Communications Commission*, No. 24-1179 (8th Cir. May 6, 2026). Judicial review is only available under the APA for "final agency action." 5 U.S.C. § 704; *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 890 (1990).

Agency action is defined in the APA as "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent[,], or denial thereof, or failure to act." 5 U.S.C. § 551(13). "For agency action to be final, two factors must be satisfied: (1) 'the action must mark the 'consummation' of the agency's decision-making process' and (2) 'be one by which 'rights

or obligations have been determined,’ or from which ‘legal consequences will flow.’” *Brake Plus NWA, Inc. v. Department of Transportation*, No. 24-2951 (8th Cir. May 18, 2026) (citing *Bennett v. Spear*, 520 U.S. 154, 177–78, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997)) (quotations and citations omitted).

Defendants’ policy, pattern, and/or practice of making warrantless arrests without the required individualized status determination and flight risk analysis is “final agency action” that is ultra vires and “in excess of statutory jurisdiction, authority, or limitations” under 8 U.S.C. § 1357(a)(2). 5 U.S.C. §§ 704, 706(2)(C). Respondents have a policy and practice of making warrantless arrests without probable cause of removability, as required by 8 U.S.C. § 1357(a)(2). The fact that a policy, pattern, or practice is not committed to writing is not dispositive; both logic and law require unwritten policies to be reviewable. Federal courts have found that Respondents’ policy of making warrantless arrests without probable cause amounts to final agency action. *Escobar Molina v. U.S. Dep’t of Homeland Sec.*, No. 25-3417, 2025 WL 3465518, at *2 (D.D.C. Dec. 2, 2025); *Ramirez-Ovando v. Noem*, No. 25-3183, 2025 WL 3293467, at *3 (D. Colo. Nov. 25, 2025); *Nava v. Dep’t of Homeland Sec.*, 435 F.Supp.3d 880, 885 (N.D. Ill. 2020). Respondents are now executing the same policy in Minnesota. Petitioner’s case is not unique, but rather part of a larger pattern and practice of conducting warrantless arrests in Minnesota without making the requisite probable cause determination.

The evidence demonstrates that ICE fails to meaningfully question individuals or document facts known to the officers at the time of arrest that could establish probable cause of a noncitizen’s likelihood of escape before officers can obtain a warrant. Instead, officers copy and paste language and broadly cite general immigration violations or information obtained *after* the time of arrest. Petitioner’s I-213 form does not articulate that he posed an escape risk, and the

hearsay narrative by Respondents indicates that he “placed under arrest” pursuant to an unlawful administrative warrant and without any individualized determination of flight risk. The officer who drafted the I-213 was not present for the arrest and relied on inaccurate information. These determinations need to occur *before* a warrantless arrest is made for that arrest to be lawful.

Other judges in this district have found that ICE committed the same unlawful warrantless arrest practice. *Nyolo v. Mullin*, No. 26-cv-2025 (LMP/DLM), at *4 (D. Minn. April 9, 2026) (concluding that the administrative warrant issued for the petitioner’s arrest fails for lack of probable cause and ordering immediate release); *Sergio P. v. Bondi*, No. 26-cv-1538 (ECT/DTS), 2026 WL 497290, at *2-3 (D. Minn. Feb. 23, 2026) (ordering release as a remedy for a petitioner with a similarly defective warrant); *see also Mejia Huerta v. Noem*, No. 26-cv-01248 (MMG), 2026 WL 555014, at *3 (S.D.N.Y. Feb. 27, 2026) (holding that a petitioner was “arrested without a proper warrant”); *B.D.A.A. v. Bostock*, No. 25-2062, 2025 WL 3484912, at *7 (D. Or. Dec. 4, 2026) (“Respondents do not say that they conducted a flight risk assessment. And they provide no facts or documentation to discern any basis to make such assessment...Here, the facts support that Petitioner was in fact not a flight risk,” but she was nonetheless arrested without a warrant); *M.L.G.G. v. Wamsley*, No. 25-2012, 2025 WL 3539183, at *1 (D. Or. Dec. 10, 2025) (ordering petitioner’s release after she was arrested despite telling “the officers only her name, the city where she lives, that she was not a minor, and that she spoke Mam”); *A.B.D. v. Wamsley*, No. 25-2014, 2026 WL 178306, at *1 (D. Or. Jan. 22, 2026) (“The parties do not dispute that ICE officers did not make an individualized assessment of each Petitioners’ flight risk as required to make a warrantless arrest under 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii).”).

Public statements from Respondents' officials further demonstrate a commitment to conducting unlawful warrantless arrests. As in *Escobar Molina*, "finding that defendants have implemented [the alleged] policy and practice does not require a far leap of logic: defendants *themselves* have repeatedly emphasized an abandonment of the probable cause standard." *Escobar Molina v. Department of Homeland Security*, No. 25-cv-3417, 2025 WL 3465518, at *23 (D.D.C. Sep. 25, 2025) (citing, among other agency representations, former Chief Border Patrol Officer Gregory Bovino's statement that "We need reasonable suspicion to make an immigration arrest... You notice I did not say probable cause, nor did I say I need a warrant. We need reasonable suspicion of illegal alienage that's well grounded within the United States immigration law.")). Respondents' practice of conducting warrantless arrests without probable cause of flight risk represents the consummation of Respondents' decisionmaking to engage in this unlawful conduct.

Second, individual rights are plainly affected by the challenged conduct. Petitioner was arrested with a legally invalid administrative warrant, essentially equivalent to a warrantless arrest, and without probable cause, thus, he has experienced very real harm because of the violation of his individual rights, including but not limited to his continued detention by Respondents and the deprivation of his freedom. ICE's widespread targeting continues to affect the rights of individuals such as Petitioner whom officers perceive as targets of their operations. This misconduct lead not only to Petitioner's unlawful arrest and detention but also deprived him of precious time with his family, his work, and his ability to support his family.

Respondents have a longstanding history of noncompliance with federal laws requiring probable cause to make warrantless arrests. This Court should have no confidence that Respondents will cease this unlawful practice, even, if not especially, when they insist they are

complying with the law. Respondents' pattern and practice of arresting individuals, such as Petitioner, without a warrant and without the required probable cause determination amounts to final agency action because it affects fundamental individual rights in real time.

This Court has inherent equitable authority to enjoin violations of federal law and the Constitution by federal officers. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326 (2015). Respondents' policy and practice of making warrantless arrests without probable cause is a final agency action that is "arbitrary, capricious...or otherwise not in accordance with law" and "in excess of statutory jurisdiction, authority, or limitations," 5 U.S.C. § 706(2)(A), (C). This Court also has authority under the APA to "hold unlawful and set aside" such agency action. 5 U.S.C. § 706(2). As a result of Respondents' unlawful policy and practice of warrantless arrests without probable cause, Petitioner faces irreparable harm and requires declaratory relief to prevent continued and future irreparable injury.

Petitioner has shown a high likelihood of success on the merits of his claim that Respondents' practice of arresting noncitizens without warrants and without the requisite probable cause determination is contrary to law. Little analysis is required to show that arresting an individual without a valid warrant and without probable cause of flight risk is contrary to the INA. This Court should agree with other district courts that have found this practice likely violates the law. *Escobar Molina*, 2025 WL 3465518, at *27 ("Defendants' systemic failure to apply the probable cause standard, including the failure to consider escape risk, directly violates the clear statutory requirements under the INA...and DHS's implementing regulations); *Ramirez*, 2025 WL 3293467, at *20 ("defendants likely have a policy, pattern, and/or practice of violating [the immigration statutes and regulations] by effecting warrantless arrests without

individualized probable cause”); *Castañon Nava*, 806 F.Supp.3d at 843 (arresting officers’ I-213 forms contained insufficient probable cause to support warrantless arrests in violation of policy).

There is no reasonable explanation for the irregularities in Petitioner’s arrest and Respondents’ unlawful arrest of Petitioner without a lawful warrant and without the requisite probable cause for a warrantless arrest constitutes abuse of discretion which should be set aside. The I-200 and I-213 submitted underscore the extent of Respondents’ abuse of discretion in Petitioner’s case, namely, that the administrative warrant for Petitioner’s arrest issued by Respondents on May 21, 2026, has no legal basis.

8 C.F.R. § 287.8(c)(2)(ii) requires that before detaining an individual for questioning, an immigration officer must have “a reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States.” Respondents’ arrest of Petitioner, without *articulating* any reasonable suspicion of a qualifying offense based on specific facts *before* issuance of the I-200 administrative warrant and *before* arresting Petitioner constitutes a clear abuse of discretion. There is also no reasonable explanation for the delay in the service of the NTA. Respondents do not attempt to address the lack of written documentation explaining in detail the emergency or extraordinary circumstances justifying the delay in issuance of the NTA in Petitioner’s case, as required by 8 C.F.R. § 287.3(d). Nor do Respondents make any argument regarding the length of delay and whether it is reasonable.

Further, Respondents make no attempt to address *Turkmen v. Ashcroft*, where the district court cautioned, that “[t]here is no doubt that at some point after arrest, an alien’s due process rights would be violated if he were detained without being served a Notice to Appear.” Nor do Respondents claim that Petitioner’s detention presented systemic obstacles comparable to the

September 11 attacks. Respondents also fail to address whether the delay in the issuance of the NTA was reasonable given Petitioner's detention in the context of *Marin v. Noem*. Critically, nothing in the I-213 suggests that Respondents documented in writing that any emergency or extraordinary circumstance prevented them from making a Section 287.3 determination.

The issue before the Court, in part, is also whether Respondents' delay in issuance of NTA while Petitioner was detained is reasonable. Respondents failed to properly document any circumstances justified their need for additional time to serve paperwork, and accordingly, conclude that Respondents violated agency regulations and abused their discretion by unreasonably delaying the issuance of any charging document against Petitioner, despite referencing the execution of a charging document against him as the basis, in part, for the issuance of the I-200 for his arrest. Respondents improperly issued a legally invalid administrative warrant which, on its face, states that the basis for Petitioner's arrest was grounded in records checks and the issuance of an NTA at a much later date. The sequencing defect here demonstrates the extent to which Respondents have abused their discretion. If Respondents had properly issued NTA *prior* to arresting and subjecting Petitioner to mandatory detention under § 1225(b), as required by statute and regulations as well as longstanding agency policy, their abuse of discretion here would not be so apparent. If Respondents had documented their legal basis for finding probable cause of flight risk based on earlier records checks in the I-213, as they claim, the evidence on the record would better support their arguments. It does not. The evidence on the record shows that Respondents improperly issued NTA well after the issuance of the I-200 administrative warrant and that an unreasonable delay occurred between Petitioner's unlawful arrest and the NTA's issuance. Even assuming *arguendo* that Respondents considered emergency or extraordinary circumstances warranted

delay of NTA issuance, Respondents failed to properly document what prevented them from making the required determination in a reasonable period of time.

This Court should be skeptical as to Respondents' attempts to amend the evidentiary record with vague statements made in their Response. Petitioner has carried his burden to prove agency abuse of discretion and demonstrated that Respondents' actions in arresting and detaining Petitioner were and continue to be unreasonable. This Court should declare that Respondents' arrest without a legally valid administrative warrant and without the requisite probable cause for a warrantless arrest constitutes agency abuse of discretion. This Court should further declare that Respondents abused their discretion in unreasonably delaying issuance of NTA without documentation of emergency circumstances or explanation as to why the delay was reasonable.

Respondents' violation of the APA in their unilateral decision to unlawfully arrest and detain Petitioner using a defective and legally void administrative warrant and without probable cause constitutes adequate and independent grounds by which his confinement is unlawful, thus, this Court should also grant Petitioner's petition for writ of habeas corpus on this basis and enable his immediate release from custody. Because Respondents unlawfully detained Petitioner using a defective administrative warrant and without any rational individualized fact-finding or probable cause, Respondents have acted arbitrarily and capriciously in violation of the APA.

Respondents' discretion is not unlimited, and due process requires that federal agents follow statutory regulations when arresting and detaining noncitizens, regardless of whether they are detained pursuant to § 1225(b). This Court should agree that Petitioner is likely to succeed on the merits of his claims and that Respondents are likely engaged in the unlawful practice of conducting warrantless arrests without an individualized probable cause determination of flight risk. Accordingly, this Court should find that Respondents have not articulated a reasonable

explanation for their actions and declare that Respondents abused their discretion by detaining Petitioner without any individualized determination in violation of the APA as well as due process and order Petitioner's immediate release from custody as the appropriate remedy.

V. Petitioner Presents a Valid Claim Under *Accardi*.

By arresting Petitioner without a warrant and without the requisite probable cause for a warrantless arrest and while his standard removal proceedings are pending, Respondents have failed to follow their own policy and violated the APA. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent caselaw, agencies are bound to follow their own rules that affect the fundamental rights of individuals, *including* self-imposed policies and processes that limit otherwise discretionary decisions. See *Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

VI. The Appropriate Remedy is Immediate Release to Provide Complete Relief.

The inconsistencies and defects in Petitioner's arrest by Respondents warrant his immediate release from custody. This Court has repeatedly found that immediate release is the proper remedy for unlawful warrantless arrest and detention without probable cause. In determining the proper remedy for Petitioner's unlawful detention, this Court should find that immediate release is warranted. ICE failed to comply with federal immigration law when arresting and detaining Petitioner and Respondents have not justified Petitioner's continued detention, thus, release is the proper remedy. See, e.g., *Ahmed M. v. Bondi*, No. 25-4711, 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026); *Lauro M. v. Bondi*, No. 26-134, 2026 WL 115022, at

*3 (D. Minn. Jan 15, 2026); *Hoamaza Lita v. Blanche*, No. 26-2344 (D. Minn. May 5, 2026); *Nyolo v. Mullin*, No. 26-2025 (D. Minn. April 9, 2026); cf. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (“Habeas is at its core a remedy for unlawful executive detention... The typical remedy for such detention is, of course, release.”). This Court should find that Respondents’ argument that “[i]f warrantless arrests cannot justify release in criminal cases, where constitutional protections are at their highest, release cannot be a proper remedy in immigration cases” falls flat.

Respondents argue that “even if Petitioner’s Fourth Amendment claims had merit, he would be owed no relief in habeas, because there is no remedy in the Fourth Amendment that would justify his release,” citing *INS v. Lopez-Mendoza* to justify their argument that the same principles apply here to Petitioner’s case. This Court should find Respondents’ argument lacking. Petitioner was arrested with an unlawful warrant which states that his arrest and detention is discretionary pursuant to § 1226(a). Respondents’ arrest of Petitioner on May 22, 2026, without a valid warrant and without probable cause, fails to satisfy the regulatory standard under § 1226(a), thus, his initial arrest as well as his continued detention are unlawful.

In *INS v. Lopez-Mendoza*, respondents challenged their placement in deportation proceedings after being unlawfully arrested. While evidence obtained in violation of the Fourth Amendment is generally inadmissible in criminal court proceedings, the Supreme Court found that the exclusionary rule did not apply wholesale in immigration court. Notably, however, *Lopez-Mendoza* expressly left two openings for suppression of evidence where 1) the Fourth Amendment violation was “egregious” and serious enough that admitting evidence would offend due process, and 2) widespread or systemic violations by the agency have occurred. First, Petitioner’s request for habeas relief and immediate release is distinguished from that of the

respondents in *Lopez-Mendoza*, as Petitioner has not requested evidence be suppressed from his removal proceedings. Second, district courts have repeatedly recognized Respondents' widespread policy and practice of making warrantless arrests without probable cause, thus, the Fourth Amendment violation alleged here by Petitioner is systemic. This Court should find that Respondents' argument against immediate release despite Petitioner's unlawful arrest without a warrant or probable cause is unavailing.

VII. This Court Should Strike Portions of Deportation Officer Northwood's Declaration as Inadmissible Hearsay and In Violation of the Best Evidence Rule.

Respondents rely on the Declaration of Deportation Officer Northwood, however, portions of the Declaration should be stricken as inadmissible hearsay. Nearly the entire Declaration by Officer Northwood is inadmissible in this proceeding because it is based almost entirely on hearsay and is too vague to assess its reliability. Hearsay is defined as an out-of-court statement submitted for the truth of the matter asserted in that statement. *See* Fed. R. of Evid. 801(c). The Federal Rules of Evidence apply to habeas corpus proceedings. *See* Advisory Committee Notes to Fed. R. Evid. 1101 ("The rule does not exempt habeas corpus proceedings.") (citing *Walker v. Johnson*, 32 U.S. 275 (1941)). Thus, inadmissible hearsay may not be offered in support of or opposition to a habeas petition. *See Herrera v. Collins*, 506 U.S. 390, 417–18 (1993) (habeas petitions based on affidavits are disfavored, and hearsay affidavits are "particularly suspect."); *Smith v. Brewer*, 444 F. Supp. 482, 489 (S.D. Iowa 1978), *aff'd*, 577 F.2d 466 (8th Cir. 1978), *cert. denied*, 439 U.S. 967 (1978) ("Federal evidentiary rules generally govern in habeas proceedings.") (citing *Walker*, 32 U.S. at 287). The Court should disregard the Declaration by Officer Northwood to the extent that it contains inadmissible hearsay.

In *Martinez v. Hott*, Judge Alston considered a similar declaration and struck several paragraphs as inadmissible hearsay. 527 F. Supp. 3d 824, 833 (E.D. Va. 2021). Insofar as the

Declaration by Officer Northwood purports to provide an evidentiary foundation for the facts averred therein, it does so by means of one paragraph nearly identical to the wording found insufficient in *Martinez v. Hott*: Deportation Officer Northwood states that his declaration is “based on my personal and professional knowledge, my review of records and systems maintained by ICE in the regular course of business, and information provided by other agents and officers.” Even more concerning than in *Martinez*, Officer Northwood does not even purport to be personally involved in managing any aspect of Petitioner’s case, arrest, detention, or transfer.

Petitioner asks the Court to strike the following statements from the Declaration by Officer Northwood as inadmissible under the hearsay and best evidence rules. Officer Northwood disclaims personal knowledge of much of his sworn statement. He attests that “this declaration is based on [his] personal and professional knowledge, [his] review of records and systems maintained by ICE in the regular course of business, and information provided by other agents and officers.” Officer Northwood does not distinguish which purported facts are from his personal knowledge or observations; based on documents that he maintains or uses in the ordinary course of business; based on documents that he read or obtained solely in order to prepare his declaration; and based on verbal conversations with other individuals within ICE, or the basis for those individuals’ personal knowledge, as opposed to information obtained through hearsay. Everything that follows Statement 3 is inadmissible hearsay.

Officer Northwood attests to the out-of-court determination of the vaguely identified “DHS/ICE employees” that “made” the “Forms I-200, I-213, and I-862” on May 21 and May 22. He then attests that the employees based on “obtain information provided from immigration officers, Petitioner, and law enforcement information sources,” but does not identify the officers

who provided this information. As Deportation Officer for the St. Paul Field Office in Minnesota, Officer Northwood does not provide any basis for how he has personal knowledge of the actions and decisions of unnamed and unidentified ERO officers who were present for Petitioner's arrest. Officer Sabin does not assert that he heard or observed any of these facts. If he learned this information through out-of-court statements of unnamed and unidentified officers of ERO, it is hearsay. Accordingly, statements 4 through 14 should be stricken in their entirety.

Respondents assert that "[t]he officers had clear probable cause that [Petitioner] was in the country unlawfully," citing the Declaration by Officer Northwood. But nowhere in his declaration does Officer Northwood attest to being personally present to Petitioner receiving the documents referenced by Respondents, nor does Officer Northwood provide any explanation for the three-week delay in issuing NTA to Petitioner after ICE issued its unlawful Form I-200 for his arrest. This Court should be skeptical as to Respondents' reliance on the declaration by Officer Northwood, which contains nothing more than vague statements and inadmissible hearsay. Further, Officer Northwood states that the I-200 was "based on biometric confirmation of subject's identity and a records check to execute a charging document and initiate removal proceedings," which directly contradicts the plain language of the I-200 itself, which states that "there is probable cause to believe that [Petitioner] is removable from the United States...based upon *the execution* of a charging document to initiate removal proceedings against the subject."

If the Court does not strike the Northwood Declaration, Petitioner requests an opportunity to issue interrogatories and depose Officer Northwood, the "employees of DHS/ICE" and the "ICE/ERO officers," including but not limited to Examining Officer/SDDO Munoz and Deportation Officer Trevino, who allegedly "made...[t]he Form/s I-200, I-274A, I-213, I-830

and I-862” referred to in the declaration. 28 U.S.C. § 2246; *Marisol P.Q. v. Bondi et al.*, No. 26-cv-1055-MJD-DJF (D. Minn. Feb. 18, 2026) (order granting discovery in habeas case).

CONCLUSION

Respondents fail to make any substantive argument concerning their failure to comply with a statutory requirement that they obtain a *lawful* warrant prior to arresting Petitioner, or alternatively, *document* the specific and particularized facts which applied to Petitioner in their alleged determination of flight risk in the I-213 to justify his warrantless arrest. Nor do Respondents make any attempt to justify the unreasonable delay in the issuance of the NTA. Nothing on the record suggests that emergency or extraordinary circumstances warranted the delay in the issuance of the NTA in Petitioner’s case. Respondents failed to follow any procedure when arresting and detaining Petitioner and there is no reasonable explanation for the discrepancies and defects here. Respondents, in fact, concede that officers used an unlawful administrative warrant to arrest Petitioner. The I-200 submitted by Respondents is defective to the extent that it should not constitute a warrant at all, and there is no mention of flight risk in the I-213. This Court should agree that Respondents’ conduct here raises serious due process concerns and find that Petitioner’s procedural due process rights and his Fourth Amendment rights to be free from unreasonable searches and seizures have been substantially violated. Respondents’ failure to follow agency policy and procedure constitutes an abuse of discretion, and Petitioner’s unlawful arrest and detention by Respondents is arbitrary and capricious and in violation of *Accardi* as well as the INA.

Accordingly, in light of Respondents’ unlawful detention of Petitioner, their failure to comply with statutory and procedural requirements, and their lack of any substantive response to critical aspects of Petitioner’s claims, Petitioner respectfully seeks this Court’s intervention to

declare that his detention violates statutory law, due process, the Fourth Amendment, and the APA, and to order his immediate release from custody.

Dated: June 26, 2026.

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