UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 26-cv-3122-KMM-JFD

Kevin Jose R.M.[1],

Petitioner,

v.

Todd Blanche, *et al.*,

Respondents.

RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner is still subject to a final order of removal. Respondents are still within their statutorily allotted time to carry out Petitioner's removal. What appears to be a factual difference over whether Petitioner is subject to a final order of removal reduces down to a legal question: When does an order of removal become administratively final? Upon waiver of appeal by respondent, an order of removal made by the immigration judge *shall* become final. 8 C.F.R. § 1241.1(b).[2] When the Immigration Judge entered Petitioner's order of removal on May 18, 2026, the Immigration Judge noted that Petitioner waived appeal. Accordingly, Petitioner has been subject to a final order of removal ever since. Between the time Petitioner became subject to a final order of

[1] Petitioner's last name is abbreviated to conform with the Court's practice of using only the first name and last initial of any nongovernmental parties in immigration cases. No disrespect is intended in doing so.
[2] For the avoidance of doubt, the word "respondent" as used here and the corresponding regulation refers to the name of "an alien named in a Notice to Appear," which is the Petitioner in this habeas action and not any of the named Respondents to this habeas action. 8 C.F.R. § 1.2.

removal and the filing of his Verified Petition for Writ of Habeas Corpus (Petition), 39 days of post-final-order detention elapsed. ECF No. 1.

Petitioner brings this habeas action under 28 U.S.C. § 2241 seeking release from immigration detention while U.S. Immigration and Customs Enforcement ("ICE") works to execute Petitioner's final order of removal. Respondents submit this response to explain why Petitioner's claim is premature, and why the Court should deny the Petition in its entirety. The question before the Court is whether Petitioner's present detention violates the Constitution or laws of the United States. It does not.

BACKGROUND

All facts not specifically admitted herein are denied. Petitioner is a native and citizen of Honduras. Declaration of Deportation Officer Mario L. Trevino (Trevino Decl. ¶ 4). He entered the United States without having been admitted or paroled on or about May 2, 2019. Trevino Decl. ¶ 4.

On May 5, 2019, the Department of Homeland Security ("DHS") initiated removal proceedings by issuing a Form I-862, Notice to Appear, charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). Ex. B. On October 26, 2023, an Immigration Judge administratively closed Petitioner's removal proceedings. Trevino Decl. ¶ 6.

On November 13, 2025, the Meeker County District Court convicted Petitioner for a violation of Minnesota Statute § 169A.36.4(3), sentencing him to 30 days of confinement. *Id.* at ¶ 7. On April 5, 2026, the Montevideo Police Department arrested Petitioner for Driving while Impaired in the Fourth Degree, Carry/Possess Pistol without a Permit, and Carry a Pistole while Under the Influence, which are pending disposition. *Id.* at ¶ 8.

On April 5, 2026, Respondents identified a booking record for Petitioner at the Chippewa County Jail in Montevideo, Minnesota. *Id.* at ¶ 9. Respondents lodged a detainer, Form I-247A, to Petitioner's custodian that same day. *Id.* On April 7, 2026, Respondents' officers served Petitioner with a Form I-200, Warrant for Arrest of Alien, at the Chippewa County Jail. *Id.* at ¶ 10; Ex. D. Respondents transported Petitioner to the Kandiyohi County Jail for further processing. Trevino Decl. ¶ 10.

On May 6, 2026, an Immigration Judge granted DHS's motion to re-calendar Petitioner's removal proceedings, placing it on the immigration court's active docket. *Id.* at ¶ 11. On May 18, 2026, an Immigration Judge found Petitioner inadmissible as charged in the Notice to Appear and ordered Petitioner removed to Honduras. Ex. F. Petitioner waived his right to appeal the Immigration Judge's order to the Board of Immigration Appeals. Ex. F, at 2.

On May 27, 2026, an Acting Field Office Director issued a Form I-205, Warrant of Removal/Deportation on the basis of his administratively final order of removal. Ex. E. On June 14, 2026, Petitioner files an appeal of the immigration judge's removal order to the Board of Immigration Appeals. Trevino Decl. ¶ 14. That appeal remains pending. *Id.*

On June 26, 2026, Respondents transferred Petitioner from the Kandiyohi County Jail to the Freeborn County Jail, Minnesota, where Petitioner remains detained. *Id.* at ¶ 15.

The undersigned counsel was advised by ICE that USCIS is actively working to revoke Petitioner's deferred status on account of his criminal charges. The undersigned counsel was advised that USCIS will issue an intent to deny (ITD) to Petitioner. Following the issuance of the ITD, the undersigned counsel was advised that Petitioner will have 33 days to respond.

ARGUMENT

Petitioner alleges seven claims for relief. First, Petitioner alleges that Respondents violated 5 U.S.C. § 706(2)(A) because Petitioner's detention violates the Preliminary Injunction from *ICWC v. Noem* and, therefore, not in accordance with law. Second, Petitioner alleges that his re-detention after his prior release of recognizance is a violation of the law in violation of 5 U.S.C. § 706(2). Third, Petitioner alleges that Respondents violated the *Accardi* doctrine. Fourth, Petitioner alleges that Respondents violated procedural due process. Fifth, Petitioner alleges that Respondents violated substantive due process. Sixth, Petitioner alleges that Respondents violated the Fourth Amendment in his arrest. Seventh, Petitioner alleges a pre-*Avila* argument.

Respondents Lawfully Detained Petitioner under § 1231

Before Respondents can address Petitioner's argument, it must first clarify what appears to be confusion over the detention authority. Petitioner's detention arises under the post-final-order framework Congress enacted in 8 U.S.C. § 1231. That statute applies after an alien has been ordered removed and the removal order has become final. Once that occurs, the Government must remove the alien within the statutory removal period, and detention during that period is mandatory. 8 U.S.C. § 1231(a)(1)(A), (a)(2). The statute then authorizes continued detention beyond the removal period for specified categories of aliens, including inadmissible aliens, aliens removable on certain criminal or security grounds, aliens determined to be a risk to the community, and aliens unlikely to comply with the order of removal. 8 U.S.C. § 1231(a)(6).

The removal period begins on the latest of three dates: the date the removal order becomes administratively final; if the removal order is judicially reviewed and a court orders a stay of removal, the date of the court's final order; or, if the alien is detained or confined outside the immigration process, the date the alien is released from that non-immigration custody. 8 U.S.C. § 1231(a)(1)(B). The statute also provides that the removal period may be extended, and the alien may remain detained during that extended period, if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to departure, or otherwise acts to prevent removal. 8 U.S.C. § 1231(a)(1)(C).

That statutory framework governs here. Petitioner is subject to a final order of removal. On May 18, 2026, an Immigration Judge ordered Petitioner removed to Honduras or another country as would be indicated on a Notice to Appear. Ex. F. Petitioner waived appeal on the record, resulting in waiver being checked by the Immigration Judge. *Id.* at 2. The order became administratively final on May 18, 2026. 8 C.F.R. § 1241.1(b).[3] Because

[3] Respondents highlight that the cited source lists several different factual predicates that could lead to a final order of removal becoming administratively final. The operative word amongst each possible condition is "or," so one basis will do.

Petitioner is detained after entry of a final order of removal, his custody is governed by § 1231, not by the pre-final-order detention provisions of 8 U.S.C. § 1226 or 8 U.S.C. § 1225.

If Petitioner has sought appellate review, and it appears he has, that does not change the statutory source of detention unless the appellate body enters a stay that affects the beginning or running of the removal period under § 1231(a)(1)(B)(ii). Here, Petitioner has not obtained a stay a removal. Petitioner has only obtained a receipt that his appeal has been filed.[4] Accordingly, the removal period began on May 18, 2026, and Petitioner's custody remains governed by § 1231.

Petitioner therefore cannot recharacterize this case as one involving pre-final-order detention. Section 1226 governs detention while removal proceedings remain pending and before a removal order becomes final. Section 1231 governs detention after finality while the Government works to execute the removal order. Because Petitioner is already subject to a final order of removal, the relevant question is not whether Petitioner would prefer a different custody framework, but whether Petitioner's present custody is authorized under § 1231 and the limits recognized in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Count One

I. Respondents Have Not Violated the Preliminary Injunction in *ICWC v. Noem*

Petitioner first claims lies in an alleged violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). He claims that a recent order in the class action suit *ICWC v.*

---

[4] Petitioner's Filing Receipt (Ex. G, at 2) explicitly warns, "Filing a motion with the Board does not automatically stop the DHS from executing an order of removal."

Noem, No. 2:25-cv-09848-AB-AS (C.D. Cal. Oct. 14, 2025), makes his present detention unlawful. Because of Petitioner's arrest and charges for multiples violations of Minnesota state law he is not entitled to special relief under *ICWC.*

Respondents do not contest Petitioner's assertions about the general sweep of *ICWC*. Because Petitioner is an alien "with pending principal or derivative U visa petitions, T visa petitions, or VAWA self-petitions who ICE detain[ed] or seeks to detain for civil immigration enforcement," he is nominally in the class subject to the injunction in ICWC. *See* Notification to ICE Employees: Effective Immediately—Preliminary Injunction Issued in I.C.W.C. v. Mullin. Issued May 21, 2026.

However, Petitioner ignores the fact that he is still subject to detention under the policy and rule imposed by *ICWC*. The class action prohibited Respondents from following guidance provided by the Trump Administration in ICE Directive 11005.4, *Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits* (Jan. 30, 2025). It reinstituted the Biden-era rule detailed in ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (issued Dec. 2, 2021) and Obama-era policy detailed in ICE Policy 10076.1, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (issued June 17, 2011).

ICE Directive 11005.3 states that Respondents would not detain aliens who had applied for U Visas barring "exceptional circumstances." *Id.* "Exceptional circumstances generally exist only in the following circumstances: a) The [alien] poses national security concerns; or b) The [alien] poses an articulable risk of death, violence, or physical harm to any person." *Id.*[5]

ICE Policy 10076.1 states that ICE would "avoid deterring individual from reporting crimes" in making detention and enforcement decisions, barring "serious adverse factors" such as whether an alien "poses a threat to public safety."

Petitioner has been detained since he was charged with driving under the influence, carrying a pistol under the influence, and carry/possession of a pistol without a permit. The prosecutorial discretion described in ICE Directive 11005.3 does not apply to him because he is an alien who poses a risk to public safety. This is how ICE chose to proceed when lodging its detainer at the custodian of Petitioner in which it checked the box next to "otherwise poses a risk to national security, border security, or public safety." It is reasonable for ICE to have made that determination on account of the heightened risk to public safety posed by Petitioner's criminal history. As such, Petitioner is subject to no special consideration under ICE Directive 11005.3 or ICE Policy 10076.1.

Put another way, there is no point when Petitioner would have been able to avail himself of favorable discretion to avoid otherwise lawful detention. Under the Biden-era and Obama-era rules, he still would have been arrested and detained. Petitioner's Form I-797 specifically indicates that he may receive lower priority for removal, not that he is

[5] Petitioner notes that Directive 11005.3 does not apply in "exceptional circumstances" in his brief. ECF No. 1, ¶ 98. But he does not bother to name what these "exceptional circumstances" are.

precluded from removal. ECF No. 8-3. Respondents have a right and duty to keep people who pose a danger to public safety off the streets, regardless of their U Visa status.

Count Two

II. Respondents' Re-detention After His Prior Release on Recognizance was a Valid, Non-Arbitrary Exercise of its Discretion

Petitioner argues that his re-detention after release on an Order of Release on Recognizance (OREC) was violative of the Administrative Procedure Act, 5 U.S.C. § 706(2), because the revocation derived from ICE's rule-making authority and that decision was an abuse of discretion, unconstitutional, and contrary to the law. Respondents will address why each claim is incorrect and could not arise to the level of prejudicial error.

Petitioner may have had an Order of Release on Recognizance back in 2019, but it was revoked upon the issuance of the Form I-200 that returned him to custody of DHS. Trevino Decl. ¶ 10. Respondents had sufficient reason to do so. Conditions on an Order of Release of Recognizance, Form I-220A, typically include standard conditions of "You must not violate any local, State or Federal laws or ordinances." Respondents identified Petitioner after he was booked at the Chippewa County Jail for charges in violation of Minnesota state law. Trevino Decl. ¶¶ 7-9. Respondents reasonably exercised its discretion to issue a Form I-200 to revoke his prior 2019 Order for Release on Recognizance.

Respondents agree that *Matter of Sugay*, 17 I.&N. Dec. 637, 640 (BIA 1981) generally supports the proposition that immigration officials are required to show a "material change in circumstances" before re-detaining noncitizens it previously released on recognizance. However, the facts support Respondents on this point. Petitioner was given release from the custody of DHS with the expectation he would stay out of trouble. That expectation was not met when ICE re-encountered Petitioner at the Chippewa County Jail. Trevino Decl. ¶ 9. Respondents reasonably consider that Petitioner's prior criminal acts warranted re-detention through the issue of a Form I-200. Petitioner admits that the Immigration and Nationality Act authorizes DHS to revoke release on recognizance "at any time," so it is unlikely Petitioner can proven abuse of discretion.

Likewise, Petitioner's claim that OREC revocation was arbitrary and capricious or unconstitutional are similarly unavailing. It is telling that Petitioner does not cite to any formal revocation process for OREC. That is because he cannot. OREC, unlike OSUP (Order of Supervised Release), does not have a formal revocation process. *See* 8 C.F.R. § 241.5. Because Petitioner was not subject to a final order of removal prior to May 2026, his release on recognizance in 2019 could not have been OSUP. Ex. F. It only could have been OREC. OREC does not have specific procedures, such as an informal interview, before termination of the OREC. A simple violation of OREC's conditions will do. Accordingly, Petitioner cannot claim that Respondents acted arbitrarily and capriciously or unconstitutionally for reasonably returning Petitioner to their custody following his encounter with Respondents at the Chippewa County Jail.

Count Three

III. Respondents Had an Officer in Charge Issue Petitioner's Form I-200

Petitioner argues that Respondents violated the APA and *Accardi* doctrine in returning him to Respondents' custody. First, Petitioner argues that re-detaining Petitioner prior to revoking his OREC violated the *Accardi* doctrine. This implies OREC is OSUP. It is not. Additionally, it is factually inaccurate. Respondents' returned Petitioner to their custody upon the issuance of a Form I-200, which gives Respondents the authority to execute an arrest. 8 C.F.R. § 236.1(b)(1). The Form I-200 would be concurrent with the revocation of OREC, not prior. Trevino Decl. ¶ 10.

Moreover, Form I-200s can be issued by Supervisory Detention and Deportation Officers. 8 C.F.R. § 287.5(e)(2)(ix). Supervisory Detention and Deportation Officers have been delegated this authority under the regulation to execute arrests, including Petitioner's. Ex. D. The Supervisory Detention and Deportation Officer is the officer in charge as referenced in 8 C.F.R. § 236.1(c)(9). The undersigned counsel has been advised by ICE that "officer in charge" is not used as an official title with ICE's, Enforcement and Removal Operations. Because Supervisory Detention and Deportation Officers, like the one who issued Petitioner's warrant, has the authority to do so under 8 C.F.R. § 287.5(e)(2)(ix), he has the authority to concurrently terminate OREC upon that warrant's execution.

Petitioner's deferred action does not need to be revoked at the point of entry into detention, but he must be provided with the formal revocation process by USCIS according to the USCIS Policy Manual. ICE has as advised the undersigned counsel that ICE has no jurisdiction over that process. However, ICE has advised the undersigned counsel that it has communicated with USCIS to begin the process to issue an Intent to

Deny notice to Petitioner on account of his criminal charges. Following the expedited review of Petitioner's grant of a Bona Fide Determination and deferred action, USCIS advised ICE that its issuance of an Intent to Deny will provide Petitioner with 33 days to respond. To be clear, ICE did not "strip[] deferred action through detaining Petitioner." Pet. ¶ 120. USCIS is looking into this. Petitioner's own Form I-797 clearly indicates that Petitioner may be a lower priority for removal. ECF No. 8-3. Removal can still be accomplished while Petitioner is subject to a final order of removal without engendering *Zadvydas* concerns.

Count Four

IV. Respondents did not violate Petitioner's procedural due process rights

Respondents did not violate Petitioner's procedural due process rights because OREC is limited in what process it gives and USCIS will be able to provide Petitioner with process to contest an intent to deny his prior BFD and deferred action. Conditions have materially changed since Petitioner came under OREC. Petitioner committed and served time for a drug-related offense. Trevino Decl. ¶ 7. Petitioner also has been charged with other violations of state law in which disposition remains pending. *Id.* at ¶ 8. Circumstances have materially changed since 2019. Moreover, USCIS has advised the undersigned counsel by way of ICE that it intends to undertake an expedited review of Petitioner's BFD and deferred action. It was further advised that this process will entitle him to 33 days to respond.

Petitioner's Fifth Amendment claim fails because his detention arises under a statutory framework Congress made mandatory for individuals with a final order of removal, and neither procedural nor substantive due process entitles him to a different custody regime. Such a result would deprive the government agency charged with detention of the ability to select and identify the basis upon which that agency is pursuing detention.

The Supreme Court resolved that statutory question in *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022). There, the Court held that § 1231(a)(6) does not require the Government to provide aliens detained for six months with bond hearings at which the Government bears the burden of proving, by clear and convincing evidence, that the alien is a flight risk or danger to the community. *Id.* at 576, 582–83. The Court explained that § 1231(a)(6) "says nothing about bond hearings before immigration judges or burdens of proof," and "there is no plausible construction" of the statute that requires the hearing procedures the lower court imposed. *Id.* at 580–82.

That holding forecloses Petitioner's request for any additional balancing. Petitioner announces a preference for the Court undertaking the test from the Supreme Court's decision in *Mathews v. Eldrige*. 424 U.S. 319, 335 (1976). If an alien provides good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. *Zadvydas*, 533 U.S. at 701. That is the posture this habeas works with, not the reasonableness test Petitioner seeks here.

Nor may the Court use constitutional avoidance to graft additional procedures onto § 1231(a)(6). In *Jennings v. Rodriguez*, the Supreme Court rejected a similar effort to read periodic bond hearings into immigration detention statutes by invoking constitutional avoidance. 583 U.S. 281, 286 (2018). The Court emphasized that constitutional avoidance permits courts to choose between plausible reading of statutory text; it does not permit courts to rewrite the statute. *Id.* at 286, 296. *Arteaga-Martinez* applied that same reasoning to § 1231(a)(6) and held that the statute cannot plausibly be read to require the bond procedures Petitioner requests. 596 U.S. at 580-82.

Petitioner's request also conflicts with the structure of § 1231. Congress knew how to create bond procedures when it wanted them. Section 1226(a), for example, governs certain pre-final-order detention and expressly permits release on bond or conditional parole. 8 U.S.C. § 1226(a)(2). Section 1231(a)(6) uses different language. It authorizes detention beyond the removal period for specified categories of aliens and provides that, if released, those aliens are subject to terms of supervision. 8 U.S.C. § 1231(a)(6). It does not assign custody redetermination to an immigration judge, impose a clear-and-convincing-evidence burden, or create periodic bond hearings. The Court should not add those features to the statute.

Petitioner cannot avoid *Arteaga-Martinez* by recasting the requested bond hearing as a matter of procedural due process. The Supreme Court in *Arteaga-Martinez* decided the statutory question and left any constitutional arguments for lower courts to consider in the first instance. 596 U.S. at 583-84. But Petitioner's due process label does not change the nature of the relief requested. Petitioner still asks the Court to impose a bond-hearing regime that § 1231(a)(6) does not provide. Where removal remains significantly likely in the reasonably foreseeable future, and where Petitioner has not satisfied the *Zadvydas* standard, due process does not require the Court to create a parallel custody process untethered to the statute.

The Court should therefore reject Petitioner's request for broader custody procedures. Section 1231(a)(6) does not provide that remedy, *Zadvydas* does not require it, and *Arteaga-Martinez* forecloses expanding the statute to consider it. Petitioner's entitlement to relief would rise or fall under *Zadvydas*. Because Petitioner's *Zadvydas* claim is premature, Petitioner's request for alternative custody procedures fails as well.

If Mathews Applies, the Test Favors Respondents

If the Court decides that the test in *Mathews v. Eldrige* applies to this detention, Respondents should still prevail to defeat Petitioner's due process claim. Under *Mathews*, courts consider the private interest affected, the risk of erroneous deprivation through the procedures used and the probable value of additional safeguards, and the Government's interest, including the fiscal and administrative burdens that additional procedures would entail. *Mathews v. Eldrige*, 424 U.S. 319, 335 (1976). Each factor favors Respondents here.

The *Mathews* factors consider (1) "the private interest that will be affected by the official action"; (2) "the risk of 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 the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

As to the first factor, Petitioner's private interest, though significant in the abstract, is limited by the detention posture Congress assigned to post-order-removal noncitizens. *See Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139–40. Petitioner is not a lawfully admitted noncitizen challenging discretionary detention after lawful entry; he is detained under a statutory framework Congress made mandatory. His interest is in direct contradiction to Congress's own interest and choice to make detention mandatory, which is a choice the Supreme Court has routinely treated with great deference. *See generally Reno v. Flores*, 507 U.S. 292, 306 (1993).

With respect to the second factor, the risk of erroneous deprivation is low because detention under § 1231 turns on objective statutory predicates—most importantly whether Petitioner is subject to a final order of removal and whether there's significant likelihood of removal in the reasonably foreseeable future—not on discretionary findings of danger or flight risk. The Due Process Clause "does not require the opportunity to prove a fact that is not material to the [government]'s statutory scheme." *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 4 (2003). Additional procedures aimed at such discretionary factors would add little because Congress did not make them material to detention under § 1231.

Regarding the third factor, the Government's interest is substantial. Congress has a strong interest in the uniform administration of the immigration laws, in ensuring that removals are effected efficiently and within the time allotted by statute, and in avoiding the administrative burdens of grafting onto § 1231 a bond-hearing regime Congress did not create. The Supreme Court has repeatedly recognized the strength of those governmental interests in the immigration context. *See Demore v. Kim*, 538 U.S. 510, 523 (2003). And the Eighth Circuit has made clear that courts are not to impose an extra-statutory reasonableness or balancing overlay onto mandatory immigration detention regimes where Congress has already made the operative judgment. *See Banyee v. Garland*, 115 F.4th 928, 931–33 (8th Cir. 2024).

Requiring individualized assessments for detainees properly subject to mandatory detention under § 1231 would substantially burden the statutory scheme Congress adopted and would effectively rewrite mandatory detention into discretionary detention through the Judiciary. Accordingly, even if *Mathews* applies, it does not support release, a bond hearing, or any other extra-statutory custody process.

Count Five

V. Respondents Complied with Substantive Due Process

Petitioner next argues his detention is barred under "substantive due process." A substantive due process claim asserts a "substantial component" to due process "which forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993). The very nature of a substantive right opens the door to strict scrutiny and for this reason "substantive due process" claims are treated cautiously by the courts. *Dept. of State v. Munoz*, 602 U.S. 899 (2024); *see also Kerry v. Din*, 576 U.S. 86 (2015). To that end, the two-step inquiry put forth in *Washington v. Glucksberg*, disciplines the substantive due process analysis. 521 U.S. 702, 728 (1997).

First, it insists on a "careful description of the asserted fundamental liberty interest." *Id.*, at 721 (internal quotation marks omitted). Second, it stresses that "the Due Process Clause specially protects" only "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Id.*, at 720–721 (internal quotation marks omitted). Any alleged burden of Petitioner's liberty interest is constitutionally reasonable on its face.

Count Six

VI. Respondents Complied with the Fourth Amendment.

Petitioner was arrested pursuant to an I-200. His biometric data was captured when he was booked by the Chippewa County Jail, not ICE. ICE confirmed Petitioner was in their records when reviewing the booking records against their own records. Trevino Decl. ¶ 9. Petitioner was arrested with a lawful warrant. Therefore, warrantless arrest analysis is inappropriate.

Count Seven

I. Petitioner's Pre-*Avila* Argument is Irrelevant

The *Avila* decision made it the law within the Eighth Circuit that 8 U.S.C. § 1225(b)(2)(A) authorizes mandatory detention of applicants for admission found in the interior of the United States and charged with inadmissibility. *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026). Petitioner represents the subsequent history of the *Avila* decision as having an outstanding motion for rehearing that could potentially undermine *Avila*'s effect in the District of Minnesota. Pet. ¶¶ 167-69. Petitioner may have neglected to have updated these citations following new subsequent history in the *Avila* decision where the

Eighth Circuit has denied rehearing before Petitioner filed his Petition. *Avila v. Blanche*, 170 F.4th 1128 (8th Cir. 2026), *reh'g denied*, 2026 WL 1746744 (8th Cir. June 17, 2026).

Petitioner's cites to *Avila* are of no consequence here even if the subsequent history was accurate. Petitioner is subject to a final order of removal. Ex. F. Section 1225 concerns detention prior to a final order of removal. If Petitioner presents evidence that his final order of removal has been *stayed* by the Board of Immigration Appeals, the final order of removal otherwise sticks. 8 C.F.R. § 1241.1(b). Therefore, the Court need not consider the legality of something outside the factual record at this time.

ADDITIONAL MATTERS

I. Evidentiary Hearing

Respondents believe the Court can rule on this petition without holding an evidentiary hearing. The facts are not likely to be disputed, and the only issues before the Court are ones of legal interpretation capable of resolution on the parties' submissions.

II. Additional Request

Respondents acknowledge the importance of complying with any order this Court might issue regarding Petitioner's release. The U.S. Attorney's Office has been advised that U.S. Immigration and Customs Enforcement is devoting additional resources to the agency's inquiry email account for the St. Paul Field Office—both in terms of monitoring and responding to inquiries, and in terms of resolving release-related issues that detainees or their attorneys raise via messages to the address. The email address is StPaul.Outreach@ice.dhs.gov, and Respondents respectfully request that any order requiring Petitioner's release include a direction that questions about release logistics, detainee property, or conditions of release be sent to that email address in the first instance. This approach will lead to the fastest and most efficient resolution of any such issues.

CONCLUSION

The Court should deny the Petition in full.

Dated: July 1, 2026

Respectfully submitted,

DANIEL N. ROSEN
United States Attorney

s/ Pedro del Valle

BY: PEDRO DEL VALLE
Special Assistant United States Attorney
Attorney ID Number FL 1060036
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
Phone: 612-664-5600
Email: pedro.del.valle@usdoj.gov