UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 26-cv-3481-MJD-LIB

Epifanio SOSA VARGAS,

Petitioner,

v.

David EASTERWOOD, *et al.*,

Respondents.

RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner files his Verified Petition for Writ of Habeas (Petition) to test the lawfulness of his present detention, alleging four claims of relief. Respondents respectfully submit this Response to present the factual record in connection with his detention and why federal law authorizes his detention. Since Petitioner has been removed from the United States on several prior occasions and his bar to re-enter has not been waived, Petitioner faces a *fifth* removal from the United States. Since his removal has been accomplished several times before, Respondents are confident that they have a significant likelihood of removal in the reasonably foreseeable future that overcomes Petitioner's argument at the outset.

BACKGROUND

All facts not specifically admitted herein are denied. The following background derives from the Petition, the Declaration of Supervisory Detention and Deportation Officer Randy Langworthy ("Langworthy Decl."), and its accompanying exhibits.

A. Immigration History

Petitioner is a native and citizen of Mexico. Langworthy Decl. ¶ 4. On or about April 15, 2006, Petitioner unlawfully entered the United States. Langworthy Decl. ¶ 4. U.S. Customs and Border Patrol (CBP) processed Petitioner and granted him voluntary return to Mexico, resulting in his *first* official removal from the United States. Langworthy Decl. ¶ 4.

On or about April 24, 2011, for the *second* time, Petitioner unlawfully entered the United States without inspection. Langworthy Decl. ¶ 5. CBP processed Petitioner for expedited removal. Langworthy Decl. ¶ 5. On April 30, 2011, Respondents issued Form I-296, Notice to Alien Ordered Removed/Departure Verification that he is prohibited from entering, attempt to enter, or being in the United States for a period of *5 years*. On May 1, 2011, Respondents executed Petitioner's second removal from the United States. Langworthy Decl. ¶ 5.

On or about July 6, 2012, for the *third* time, Petitioner unlawfully entered the United States without inspection. Langworthy Decl. ¶ 6. CBP again processed Petitioner for expedited removal. Langworthy Decl. ¶ 6. On July 6, 2012, Respondents issued Form I-296, Notice to Alien Ordered Removed/Departure Verification, providing notice to Petitioner that he is prohibited from entering, attempting to enter, or being in the United States for a period of *20 years* from the date of departure and that violation of this prohibition could incur criminal liability under 8 U.S.C. § 1326. Respondents removed Petitioner on July 9, 2012. Langworthy Decl. ¶ 6.

On or about July 14, 2018, for the *fourth* time, Petitioner unlawfully entered the United States without inspection. Langworthy Decl. ¶ 7. On July 16, 2018, CBP issued Form I-871, reinstating Petitioner's prior order of removal. Langworthy Decl. ¶ 7. Pursuant to that reinstatement, Respondents removed Petitioner from the United States on July 17, 2018. Langworthy Decl. ¶ 7.

On some date unknown to Respondents, for the *fifth* time, Petitioner unlawfully entered the United States without inspection. Langworthy Decl. ¶ 8. His next immigration encounter would not be with CBP, but with the U.S. Immigration and Customs Enforcement (ICE), a sister agency within the Department of Homeland Security (DHS). *See* Langworthy Decl. ¶ 9.

B. Entry into ICE Custody

On July 9, 2026, a team of Respondents' officers were conducting immigration enforcement operations in Minneapolis when they encountered Petitioner's registered vehicle. Langworth Decl. ¶ 9. After reviewing Petitioner's immigration and criminal histories in ICE, Enforcement and Removal Operations (ERO) systems, a Supervisory Detention and Deportation Officer determined Petitioner had no lawful basis to be present in the United States. Langworthy Decl. ¶ 9. Prior to initiating the stop, Respondents' officer knew that Petitioner had been removed from the United States previously. Langworthy Decl. ¶ 9. Respondents' officer confirmed that, following his most recent unlawful entry, Petitioner had not registered his status or provided his home address to ICE. Langworthy Decl. ¶ 9.

A Supervisory Detention and Deportation Officer authorized subordinate Respondents' officers to conduct a vehicle stop. Langworthy Decl. ¶ 10. Respondents' officer approached the driver's-side of the vehicle, identified himself as an immigration officer, and questioned the driver of the vehicle, later confirmed to be Petitioner. Langworthy Decl. ¶ 10. Respondents' officer asked the driver to provide his name and identification. Langworthy Decl. ¶ 10. Based on the information provided, Respondents' officer confirmed Petitioner's identity. Langworthy Decl. ¶ 10.

With the information confirmed up to this point by the team of Respondents' officers, the Supervisory Detention and Deportation Officer then determined there was probable cause to believe Petitioner was removable from the United States and that Petitioner presented a flight risk. Langworth Decl. ¶ 10. Accordingly, the Supervisory Detention and Deportation Officer authorized Petitioner's administrative arrest. Langworth Decl. ¶ 10. Respondents' officer then informed Petitioner that he was being placed under arrest because there was probable cause to believe he was removable from the United States. Langworth Decl. ¶ 10.

In coming to his probable cause determination, the Supervisory Detention and Deportation Officer considered (1) the limited information available during the encounter to determine whether Petitioner had a stable residence or significant ties to the community, (2) a reliable location to find him at a later time being indeterminable, and (3) Petitioner's access to a vehicle, (4) Petitioner's history of noncompliance with immigration laws. Langworthy Decl. ¶ 11. A warrantless arrest followed where

Respondents' officer took custody of Petitioner and transported him to Fort Snelling, Minnesota for further processing. Langworthy Decl. ¶ 12.

C. Initial Processing

On July 9, 2026, the Supervisory Detention and Deportation Officer issued a Form I-200, Warrant for Arrest of Alien, and a Deportation Officer served it on Petitioner. Langworthy Decl. ¶ 13.

On July 9, 2026, the same day of arrest, Respondents' officer issued Form I-871, Notice of Intent/Decision to Reinstate Prior Order. Langworthy Decl. ¶ 14. When presented with the reinstate notice, Petitioner refused to sign the Acknowledgement and Response. Langworthy Decl. ¶ 14. The Supervisory Detention and Deportation Officer signed the Decision, Order, and Officer's Certification on the Form I-871. Langworthy Decl. ¶ 14.

D. Additional Processing

On July 29, 2026, an Asylum Officer with United States Citizenship and Immigration Services (USCIS) conducted a credible fear interview with Petitioner. Langworthy Decl. ¶ 15. Following the interview, the Asylum Officer determined that Petitioner does not have a reasonable fear of persecution. Langworthy Decl. ¶ 15. Petitioner requested review of the Asylum Officer's determination but refused to sign the USCIS form. Langworthy Decl. ¶ 15.

On August 4, 2026, ICE/ERO filed the paperwork with the immigration court to schedule a review by an immigration judge of the Asylum Officer's credible fear finding. Langworthy Decl. ¶ 15. DHS records reflect that the hearing date for such review will take place on August 10, 2026. Langworthy Decl. ¶ 15.

ARGUMENT

Petitioner alleges four claims for relief. First, Petitioner alleges that Petitioner's ineligibility for bond is a violation of the Fifth Amendment of the U.S. Constitution. Pet. ¶¶ 33-40. Second, Petitioner alleges that his warrantless arrest violates the Fourth Amendment of the U.S. Constitution. Pet. ¶¶ 41-47. Third, Petitioner alleges that Petitioner is a member and entitled to the injunctive relief of *I.C.W.C. v. Noem*, 2:26-cv-09848-AB-AS (C.D. Cal. May 20, 2026). Fourth, Petitioner alleges Respondents cannot accomplish removal during the mandatory detention's removal period, thus Respondents somehow violate 8 U.S.C. § 1231 entirely.

Petitioner, as the party seeking relief, bears the burden of proving he is entitled to relief. *Copenhaver v. Bennett*, 355 F.2d 417, 422 (8th Cir. 1966); *Harris v. Tahash*, 353 F.2d 119, 123 (8th Cir. 1965). Petitioner bears the burden of proving his detention is unlawful by a preponderance of the evidence. *Jose J. O. E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025); *Aditya W. H. v. Trump*, 782 F. Supp. 3d 691, 703 (D. Minn. 2025) (collecting cases).

While district courts may not review discretionary decisions made by immigration authorities, they may review immigration-related detentions for their lawfulness using the

habeas vehicle. *See Deng Chol. A. v. Barr*, 455 F. Supp. 3d 896, 901 (D. Minn. 2020) (following *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001)). The initial pleading in a habeas must "specify *all* the grounds for relief available to the petitioner." *Mayle v. Felix*, 545 U.S. 644, 645 (2005) (referencing in part *Rules Governing Section 2254 and 2255 Proceedings for the United States District Courts*).

I. Petitioner has a final order of removal at the time of filing his Petition.

The statutory question controls at the outset. Which detention authority controls has changed. When Petitioner entered ICE custody, he did not have an active final order of removal. Instead, he had a prior, executed order of removal. That removal order would need to undergo a reinstate under 8 C.F.R. § 241.8 in order to become a final order of removal again. 8 C.F.R. § 241.8(a) sets the applicability for the reinstatement of removal orders. "An alien who legally reenters he United States after having been removed, or having departed voluntarily, wile under an order of exclusion, deportation, or removal shall be removed from the United States by reinstating the prior order." 8 C.F.R. § 241.8.

This demonstrably applies to Petitioner in his every subsequent reentry into the United States. Petitioner received the ability to voluntarily depart the United States and did so. Langworthy Decl. ¶ 4. This satisfies 8 C.F.R. § 241.8(a) on its own. In case there were any doubt, Petitioner was placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1) and ordered removed. Langworthy Decl. ¶ 5. That also satisfies 8 C.F.R. § 241.8(a).

Importantly, the regulation on reinstatement explicitly forecloses the right to a hearing. 8 C.F.R. § 241.8(a). However, Petitioner is entitled to notice of the reinstatement. 8 C.F.R. § 241.8(b), which he received in the form of his Form I-871 dated July 9, 2026. Langworthy Decl. ¶ 14. Petitioner has the opportunity to make a statement contesting this determination, which on July 9, 2026, he refused as is his right. Langworthy ¶ 14; *see also* 8 C.F.R. § 241.8(b). If Respondents reinstate Petitioner's order of removal and then Petitioner expresses a fear of returning to his home country, Petitioner has the opportunity to present his claim of reasonable fear of persecution to an asylum officer with USCIS. 8 C.F.R. § 241.8(b). Petitioner made such claim and an Asylum Officer heard that claim. Langworthy Decl. ¶ 15. After the Asylum Officer's determined that Petitioner does not have a reasonable fear of persecution, ICE filed the paperwork with the immigration court to schedule a review of the Asylum Officer's finding. Langworthy Decl. ¶ 15. Respondents followed the process promulgated under 8 C.F.R. § 241.8 to reinstate Petitioner's order of removal. Accordingly, Petitioner is subject to a final order of removal.

Section 1231 directly contemplates the outcome for similarly-situated individuals. A reinstated order of removal is not subject to being "reopened or reviewed," and the individual "is not eligible and may not apply for any relief" under the framework Congress established. 8 U.S.C. § 1231(a)(5). Once ordered removed, it is the Government's obligation to remove within a 90-day removal period set by statute. 8 U.S.C. § 1231(a)(1)(A). During that period, detention is mandatory. 8 U.S.C. §

1231(a)(2). The 90-day removal period starts on the latest of three dates (1) the date the order of removal becomes "administratively final"; (2) the date of the final order of any court that entered a stay of removal; or (3) the date the individual is released from non-immigration custody. 8 U.S.C. § 1231(a)(1)(B).

Continued Detention Beyond the 90-Day Removal Period

Congress' detention framework recognizes there may be instances that removal cannot be accomplished within ninety days. The detention framework authorizes post-removal-period detention to continue beyond ninety days in three key situations. First, the statute recognizes that detention may continue on account of the individual's failure to make a timely application for travel documents or otherwise acts to prevent his removal. 8 U.S.C. § 1231(a)(1)(C). Second, the Secretary of Homeland Security could stay removal if he or she decides removal is not practicable, proper, or would be in the interest of a pending prosecution. 8 U.S.C. § 1231(c)(2)(A). Lastly, the statute also excepts and authorizes post-removal-period detention on account of the individual being inadmissible under 8 U.S.C. § 1182; removable under 8 U.S.C. §§ 1227(a)(1)(C), (a)(2), or (a)(4); or who is determined to be a risk to the community or unlikely to comply with the order of removal. 8 U.S.C. § 1231(a)(6).

This post-removal-period has an indefinite endpoint in the text of the statute, which is an ambiguity the Supreme Court has directly addressed. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). There, the Court found that the Government gets a presumptively-reasonable period of time to accomplish removal in six months. *Id.* at 701.

After that presumptive period of reasonableness, the burden lies with the detainee to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" before the Government is obligated to factually rebut or release the individual. *Id.*

Withholding from Removal

Even with a final order of removal, ordered-removed individuals could still seek statutory withholding of removal under 8 U.S.C. § 1231(b)(3)(A), or withholding under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Dec. 10, 1984, S. Treaty Doc. No. 100-20. For a reinstated removal orders, the process looks slightly different because there are no further removal proceedings, they had come and gone. Instead, it begins with expressing a fear of return to the country of removal. 8 C.F.R. § 208.31. DHS refers the individual to an asylum officer to determine if there is a credible fear of return. 8 U.S.C. § 208.31(b). The outcome gets referred to an immigration judge for withholding-only proceedings. 8 C.F.R. § 208.31(e). The scope of this inquiry concerns the eligibility for withholding, not any other possible claim. 8 C.F.R. § 208.2(c)(3)(i). Crucially, withholding is "country specific" relief, meaning nothing prevents DHS from removing generally. *Johnson v. Guzman Chavez*, 594 U.S. 523, 531-32 (2021) (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 428, n. 6 (1987)). The pendency of withholding proceedings does not terminate the finality of the removal order or transform detention into pre-final-order detention. *Guzman Chavez*, 594529-32, 534-35 (2021) (petitioners illegally re-entered the United

States, had their final orders reinstated, sought bond determinations under a pre-removal detention statute, which were ultimately denied by the Supreme Court as unavailable under § 1231).

Effect of Applying for a U-Visa and Before Grant of Any Relief

The U nonimmigrant visa, created in the year 2000, provides a pathway to lawful immigration status in the United States for survivors of qualifying crimes who assist law enforcement in investigations or prosecutions. 8 U.S.C. § 1513(a)(2)(B), (b). Once granted, it may provide a beneficiary with legal status to reside and work legally in the United States for four years. 8 U.S.C. § 1184(p)(6). Congress does not explicitly shield a U visa applicant from deportation, and implementing regulations make this clear. *See* 8 U.S.C. § 1101(p); 8 C.F.R. § 214.14(c)(1)(ii). Congress also made a cap of U visas it may issue in a year of 10,000. 8 U.S.C. § 1184(p)(2).

While U visa petitioners wait for the adjudication on their petition, Congress granted some interim relief, to include deferred action and work authorization. If USCIS determines a U visa petitioner sets forth a prima facie case for favorable discretion, they may lay claim to an administrative remedy of a stay of removal. 8 U.S.C. § 1227(d)(1)-(3). U visa petitioners may also receive relief from being placed on a waiting list for a visa. 8 C.F.R. § 214.14(d)(2).

Petitioner has not submitted any evidence that he has received a bona fide determination regarding his prima facie eligibility for a U visa or placed him on the waiting list to determine eligibility. *See* 8 C.F.R. § 214.14(d)(2). Instead, he concedes that

he has applied for a U visa and his petition is pending. That means, at a minimum, Petitioner has not received a bona fide determination on his eligibility for a U visa, let alone is the beneficiary of one.

To be clear, Petitioner can always apply for a U visa after having been ordered removed, just like he can apply for other forms of relief from removal described earlier in this Response. 8 C.F.R. § 214.14(c)(1)(ii). That still does not override the removal order. *Id.* ("The filing of a petition for U-1 nonimmigrant status has no effect on ICE's authority to execute a final order.")

Respondents also note that Petitioner's final order of removal was reinstated on July 9, 2026. This was before USCIS could even receive Petitioner's U visa application with certification, which at the earliest would need to have occurred on July 17, 2026. ECF No. 1-1.

Count Four of the Petition contends that Respondents violate 8 U.S.C. § 1231 because "removal of Petitioner is unlikely to occur within the statutory period." This is unavailing. The statutory period for removal has lapsed because reinstatement goes by the date of the original order of removal, which was entered on April 30, 2011. This factor may appear to not favor Respondents. Not so. The facts of this case fall under the exceptions Congress specifically provided to address cases like this.

8 U.S.C. § 1231(a)(6) provides Respondents with tools specifically to deal with individuals who are "unlikely to comply with the order of removal." Respondents have good reason to believe Petitioner is unlikely to comply with the order of removal, given

he has demonstrated significant noncompliance with the order of removal. Respondents may continue to detain until removal is accomplished.

Zadvydas does not make post-final-order detention unlawful merely because removal has not yet occurred. Nor does it require release whenever an alien asserts that removal may be difficult, delayed, or uncertain. Instead, *Zadvydas* supplies a limited rule for post-removal-period detention under § 1231(a)(6): detention remains authorized for the period reasonably necessary to accomplish removal, and six months is presumptively reasonable. *Id.* at 689, 701.

The Supreme Court was explicit about the burden-shifting framework. After the six-month period, the alien must first "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. Only after the alien makes that threshold showing must the Government "respond with evidence sufficient to rebut that showing." *Id.* And even then, the six-month marker "does not mean that every alien not removed must be released after six months." *Id.* To the contrary, an alien may remain detained until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future. *Id.* Thus, the relevant question is not whether Petitioner has been detained, whether Petitioner prefers release, or whether removal has already occurred. The question is whether Petitioner has carried the burden to show that removal is not significantly likely in the reasonably foreseeable future.

Petitioner has not carried that burden here. Here, Respondents reinstate a final order of removal, and Petitioner has petitioned USCIS for a U visa. Nothing in the record

shows Petitioner has reason to believe ICE and USCIS cannot coordinate to resolve this quickly. The *I.C.W.C.* injunction is by its nature temporary relief and that temporary character. Respondents would not concede that temporary relief is enough "good cause" to shift the burden back to the Government on the question of prospect for removal. Accordingly, Respondents lawfully exercise their statutory authority under 8 U.S.C. § 1231(a)(6) in this instance.

I. Petitioner is not entitled to a bond hearing because he is subject to a final order of removal.

Section 1231, not a pre-removal detention statute, applies to Petitioner's detention. Those detained under § 1231 are not eligible for a bond hearing. The Supreme Court has already considered a similar issue where petitioners subject to a reinstate of their previously-executed final order of removal were held to not receive bond because their detention proceeds under § 1231 upon the reinstatement of a final order of removal. *Guzman Chavez*, 594 U.S. 523, 529-30 (2021). Because § 1231 governs, Petitioner cannot obtain the kind of bond hearing associated with pre-final-order detention under § 1226(a). *See id.*; *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-82 (2022).

Contrary to Petitioner's contentions, the Government does not need to prove flight risk or dangerousness before exercising the detention authority under § 1231. Pet. ¶ 38. Respondents can indeed show valid justification for detaining Petitioner: his reinstated final order of removal. Petitioner is confusing the tests for detention authority because a

bond hearing, and all that would entail, is the appropriate test for a detention that Petitioner is not currently under.

II. Petitioner was lawfully arrested, not in violation of the Fourth Amendment.

Petitioner argues his arrest was unlawful. To attempt to carry his burden of proof, he first speculates that he was arrested without justification because "he was not the target of the operation conducted at the worksite." Pet. ¶ 44. Petitioner does not cite any law that provides that ICE can only arrest a pre-planned, pre-approved target. Nor does he claim to know he was not target. The assertion is speculative, which does not carry the burden a habeas petitioner is expected to carry. "[H]e offers nothing but conjecture to support that argument, which is insufficient to meet his burden to receive habeas relief." *Chay T. v. Mullin*, No. 26-cv-2908 (LMP/ECW), 2026 WL 1870619, at *2, n. 3 (D. Minn. June 30, 2026) (referencing *Jose J. O. E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025). Respondents' officers seem to contend otherwise. "Prior to initiating the vehicle stop, I knew that Petitioner had previously been removed from the United States." Langworthy Decl. ¶ 9.

Petitioner then admits to speculating, "it is unknown how DHS had access to the vehicle database from the State of Minnesota." Respondents construe this to mean how ICE could know Petitioner's identity. Respondents' officers consulted ICE/ERO systems for immigration and criminal history. Langworthy Decl. ¶ 45. The systems consulted are listed on the Petitioner's Form I-213. Ex. A, at 2. Petitioner then alleges that the Government lacked "any information of changed or exigent circumstances that would

justify Petitioner's sudden detention." Petitioner does not cite this arrest-limiting standard as applying to Respondents. However, Respondents identified Petitioner's noncompliance with his final orders of removal, which formed one weighty factor favoring his arrest. Langworthy Decl. ¶ 11.

Petitioner's arrest was reasonable. Recall that Petitioner's final order of removal was not in effect at the time of his arrest, it had to be reinstated. Langworthy Decl. ¶ 13. Prior to that reinstatement, it stands to reason Petitioner would be arrested as if he were never ordered removed. Respondents have two means to accomplish the arrest of an alien: § 1226(a) or § 1357(a)(2). Along with this, Respondents must comply with the regulatory framework applicable to the appropriate statutory arrest authority. Here, the arrest was lawful under 8 U.S.C. § 1357(a)(2) and its implementing regulations. And in any case, an irregularity with arrest does not negate the independent lawfulness of present detention under the Immigration and Nationality Act.

Congress has authorized immigration officers to interrogate a person believed to be an alien as to the person's right to be or remain in the United States and, in specified circumstances, to make an administrative arrest. 8 U.S.C. § 1357(a). Where no warrant has issued at the entry point into custody, 8 U.S.C. § 1357(a)(2) authorizes a warrantless arrest if the officer has reason to believe the person is in the United States in violation of law and is likely to escape before a warrant can be obtained.

The Eighth Circuit has held that, because the Fourth Amendment applies, "reason to believe" in § 1357(a)(2) means constitutionally required probable cause. *United States*

v. Diaz-Quintana, 623 F.3d 1237, 1240–41 (8th Cir. 2010). The post-arrest procedures for a warrantless administrative arrest are then governed by 8 C.F.R. § 287.3, which requires examination by an officer other than the arresting officer, advisals in formal proceedings, and a custody determination within forty-eight hours absent emergency or extraordinary circumstances justifying an additional reasonable period. 8 C.F.R. § 287.3(a), (c), (d). These principles provide the framework for evaluating Petitioner's arrest here.

Here, on July 9, 2026, Respondents' officers identified Petitioner through a variety of means. First, they identify Petitioner's registered vehicle. Langworthy Decl. ¶ 9. Respondents review Petitioner's immigration and criminal histories in ICE/ERO systems. Langworthy Decl. ¶ 9. This review indicated to Respondents had no lawful basis to be present in the United States. Langworthy Decl. ¶ 9. Respondents also confirmed Petitioner had been previously removed from the United States on several occasions. Langworthy Decl. ¶ 9. Respondents also confirmed that Petitioner had not registered his status with ICE/ERO or provided ICE/ERO with his home address. Langworthy Decl. ¶ 9. This was before any detention began. Langworthy Decl. ¶ 9. Under 8 C.F.R. § 287.8(b)(2), reasonable suspicion based on articulable facts may authorize an immigration officer to briefly detain a person for questioning.

Respondents conduct a vehicle stop for questioning. Langworthy Decl. ¶ 10. After identifying himself as an immigration officer, Respondents spoke with the driver of the vehicle. Langworthy Decl. ¶ 10. Respondents asked the driver of the vehicle to provide

his name and identification. Langworthy Decl. ¶ 10. Based on the information provided, identification was fully confirmed. Langworthy Decl. ¶ 10.

Respondents' officers considered all the information they obtained up until that point. For flight risk, Respondents considered several factors. Respondents considered that it was indeterminable whether Petitioner had stable residence or significant ties to the community. Langworthy Decl. ¶ 11. Respondents also considered Petitioner's access to a vehicle. Langworthy Decl. ¶ 11. Respondents also considered Petitioner's noncompliance with immigration laws. Langworthy Decl. ¶ 11. Respondents could not feel confident that Petitioner would be reliably located at another time. Langworthy Decl. ¶ 11. Respondents took him into custody.

The analysis does not end there. 8 C.F.R. § 287.3 requires Respondents to make a determination "within 48 hours of the arrest ... whether the alien will be continued in custody or released on bond or recognizance and whether a notice to appear and warrant of arrest ... will be issued." This happened here. Within 48 hours of arrest, a Form I-200 issued. Langworthy Decl. ¶ 13. Respondents then began the process of reinstating the Petitioner's order of removal through the issuance and completion of Form I-871. Langworthy Decl. ¶ 14. Accordingly, Respondents complied with the regulations that govern warrantless arrests.

Arrest Defects Generally

Separately, Respondents cannot concede that arrest irregularities overcome the independent lawfulness of Respondents' exercise of detention. Petitioner cannot convert

an asserted defect in the arrest process into automatic release from otherwise lawful immigration custody. The dispositive question in this proceeding is whether Respondents presently possess lawful statutory authority to detain him. They do. Even assuming for the sake of argument that Petitioner could identify some procedural irregularity surrounding the arrest, that would not negate the independent lawfulness of Petitioner's present detention under the Immigration and Nationality Act. Habeas addresses unlawful custody; it does not furnish release merely because Petitioner disputes every step that preceded detention now authorized by statute. Nor can Petitioner transform an asserted arrest defect into a suppression-style basis for discharge. Removal proceedings are civil proceedings, and the Supreme Court has made clear that the "'body' or identity" of a respondent is not itself suppressible as fruit of an allegedly unlawful arrest. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984).

Petitioner's theory also fails because it does not establish a causal path from the alleged arrest defect to the remedy he seeks. Even if some aspect of the arrest process were imperfect, that would not establish that Respondents lack present statutory authority to detain him. At most, Petitioner would identify an alleged irregularity in the route to custody, not a basis for automatic discharge from custody that is independently lawful now. See *Bilokumsky v. Tod*, 263 U.S. 149, 158 (1923) (explaining that a habeas petitioner is not entitled to discharge for defects in the original arrest or commitment where sufficient ground for detention is otherwise shown); *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039–40 (1984) (explaining that the "body" or identity of a respondent is not

itself suppressible as the fruit of an allegedly unlawful arrest and that the mere fact of an illegal arrest has no bearing on a subsequent deportation hearing). Respondents here sought to exercise their warrantless arrest authority under 8 U.S.C. § 1357(a)(2); however, it does not waive argument under this alternative argument.

III. Respondents are not enjoined from detention or arrest under the *I.C.W.C.* Injunction.

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 *I.C.W.C. v. Noem*, No. 2:25-cv-09848-AB-AS (C.D. Cal. Oct. 14, 2025). The class action prohibits 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." ICE Policy 10076.1 states that ICE would "avoid deterring individual from reporting crimes" in making detention and enforcement decisions, barring "serious adverse factors," which gives examples such as, "national security concerns or evidence the alien has a serious criminal history, is involved in a serious crime, or poses a threat to public safety." *Id.* It goes on, "[o]ther adverse factors include evidence the alien is a human rights violator or has engaged in significant immigration fraud." *Id.* Lastly, it leaves the door open for "other serious adverse factors." *Id.*

The class members of *I.C.W.C.* had applied for U visas before ever entering ICE detention. It is unclear from Petitioner's record if he had done so. Petitioner poses serious adverse factors giving his significant noncompliance with his orders of removal, and having attained the 20-year bar from re-entry from the United States and still violating it. Langworthy Decl. ¶¶ 4-8. Under the Obama-era policy, Petitioner's arrest could be arrested in spite of having applied for a U visa petition. Whether it was applied timely enough also appears to be relevant to the *I.C.W.C.* analysis.

Petitioner claims removal is unlawful because of an APA claim that the petitioners seek to vindicate in the *I.C.W.C.* injunction, namely over the Blind Removal Policy, "whereby ICE detains or removes petitioners who have requested a stay of removal without first conducting a statutorily-required inquiry into whether the petitions present a prima facie case for approval." *I.C.W.C.*, 2:25-cv-09848-AD-AS, ECF No. 57, at 14. Petitioner does not indicate when or where he has requested a stay of removal. The

Secretary of Homeland Security may grant an administrative stay of a final order of removal if he or she determines that an application for U visa sets forth a prima facie case for approval. 8 U.S.C. § 1227(d)(1).

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.

CONCLUSION

The Court should deny the Petition in full.

Dated: August 6, 2026

Respectfully submitted,

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