UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Franklin Patricio Chulca Semanate,

Petitioner,

v.

Todd Blanche, U.S. Attorney General,

Sirce E. Owen, Acting Director for Executive Office for Immigration Review,

Markwayne Mullin, Secretary, U.S. Department of Homeland Security,

David Venturella, Acting Director of Immigration and Customs Enforcement, and

David Easterwood, Acting Director, St. Paul Field Office, Immigration and Customs Enforcement, and

Joel Brott, Sherburne County Sheriff,

Respondents.

0:26-cv-3887

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Agency #: [redacted]

INTRODUCTION

1. Respondents are detaining Petitioner, Mr. Franklin Patricio Chulca Semanate ("Petitioner") in violation of law.

2. Respondents unlawfully detained Petitioner without a warrant, in violation of 8 U.S.C.§ 1357(a)(2), and without any sort of pre-detention hearing, in violation of the Fifth Amendment's Due Process Clause.

3. The continued detention of Petitioner, absent a bond or pre-detention hearing, serves no legitimate purpose and violates the United States Constitution.

4. To remedy this unlawful detention, Petitioner seeks declaratory relief and a writ of habeas corpus in the form of immediate release, or, in the alternative, an order to hold a bond hearing in which Respondents bear the burden to prove Petitioner poses a danger or flight risk within three days or to release him.

5. Pending the adjudication of his petition, Petitioner seeks an order restraining the Respondents from transferring him to a location where he cannot reasonably consult with counsel, such a location to be construed as any location outside of the geographic jurisdiction of the day-to-day operations of U.S. Customs and Immigration's ("ICE") St. Paul Office of Enforcement and Removal Operations in the State of Minnesota.

6. Pending the adjudication of this Petition, Petitioner also respectfully requests that Respondents be ordered to provide counsel with seventy-two (72) hour notice of any movement of Petitioner.

JURISDICTION AND VENUE

7. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1651 (All Writs Act), and § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). This action further arises under the Constitution of the United States and the Immigration and Nationality Act ("INA").

8. Because Petitioner seeks to challenge his custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this court.

9. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839–41 (2018); *Nielsen v. Preap*, 139 S. Ct. 954, 961–63 (2019); *Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199, 1209-12 (11th Cir. 2016).

10. Venue is proper in this Court pursuant to 28 USC §§ 1391(b), (e)(1)(B), and 2241(d) because Petitioner is detained within this District. He is currently detained at the Sherburne County Jail in Minnesota.

PARTIES

11. Petitioner is a citizen of Ecuador. Prior to his detention, he was residing in Minnesota.

12. Petitioner is currently in Immigration and Customs Enforcement ("ICE") custody at the Sherburne County Jail in Minnesota.

13. Respondent Todd Blanche is being sued in his official capacity as the Attorney General of the United States and the head of the Department of Justice, which encompasses the Board of Immigration Appeals ("BIA") and the immigration judges through the Executive Office for Immigration Review ("EOIR"). Attorney General Blanche shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Mullin. Attorney General Blanche is a legal custodian of Petitioner.

14. Respondent Sirce E. Owen is the Acting Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including bond hearings. As such, she has control over the provision of a bond hearing to Petitioner, and she is a legal custodian of Petitioner. She is sued in her official capacity only.

15. Respondent Markwayne Mullin is being sued in his official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Mullin is responsible for the administration of the immigration laws pursuant to Section 103(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1103(a), routinely transacts business in the District of Minnesota, supervises the St. Paul ICE Field Office, and is legally responsible for pursuing Petitioner's detention. As such, Respondent Mullin is a legal custodian of Petitioner.

16. Respondent David Venturella is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Respondent Venturella is responsible for Petitioner's detention. As such, Respondent Venturella is a legal custodian of Petitioner.

17. Respondent David Easterwood is being sued in his official capacity as the Field Office Director for the St. Paul Field Office for ICE within DHS. In that capacity, Field Director Easterwood has supervisory authority over the ICE agents responsible for detaining Petitioner. The address for the St. Paul Field Office is 1 Federal Drive, Suite 1601, Fort Snelling, MN 55111. As such, Respondent Easterwood is a legal custodian of Petitioner.

18. Respondent Joel Brott is being sued in his official capacity as the Sherburne County Sheriff in charge of the Sherburne County Jail. In that capacity,

Respondent Brott has supervisory authority over the individuals detaining Petitioner. As such, Respondent Brott is the legal and physical custodian of Petitioner.

EXHAUSTION

19. ICE asserts authority to detain Petitioner pursuant to the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(a), the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and the Eighth Circuit's decision in *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026).

20. No statutory requirement of exhaustion applies to Petitioner's challenge to the lawfulness of his detention. *See, e.g.*, *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) ("There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention."); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1255 (W.D. Wash. 2025) (citing *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 962 (N.D. Cal. 2019) ("[T]his Court 'follows the vast majority of other cases which have waived exhaustion based on irreparable injury when an individual has been detained for months without a bond hearing, and where several additional months may pass before the BIA renders a decision on a pending appeal.'"); *Gomes v. Hyde*, 804 F. Supp. 3d 265, 272–73 (D. Mass. July 7,

2025) (citing *Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997) (quoting *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992))).

21. Prudential exhaustion is not required when to do so would be futile or "the administrative body . . . has . . . predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992), *superseded by statute on other grounds as stated in Woodford v. Ngo*, 548 U.S. 81 (2006).

22. The Board of Immigration Appeals' published decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), binds the immigration court and denies all noncitizens situated like Petitioner access to a bond hearings on the basis that they are subject to detention under 8 U.S.C. § 1225(b)(2)(A).

23. The Eighth Circuit's ruling in *Avila*, 170 F.4th, reinforces that analysis.

24. The Board of Immigration Appeals "ha[s] no authority to rule on the constitutionality of the laws enacted by Congress." *Matter of Fitzpatrick*, 26 I&N Dec. 559, 561 (BIA 2015).

25. Petitioner entered the United States without inspection, was released on parole, and is not subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231, but the Immigration Court cannot consider the constitutionality of 8 U.S.C. § 1225(b)(2)(A), as it applies to Petitioner, so the Immigration Judge cannot hold a bond hearing absent some intervention from the Article III federal courts.

26. As such, exhaustion would be futile here.

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

27. Petitioner is a native and citizen of Ecuador.

28. On May 17, 2023, Petitioner entered the United States without inspection.

29. He was encountered by immigration officials at that time and expressed a fear of return to Ecuador.

30. The immigration officials released him on interim parole.

31. Petitioner has been consistently engaged in his removal proceedings for years. His removal proceedings are pending, and he has a pending asylum application.

32. On September 5, 2025, the Board of Immigration Appeals issued a precedential decision, binding on lower immigration courts, finding that "Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

33. On September 2, 2026, Respondents took Petitioner into custody in Minnesota.

34. On information and belief, Petitioner was not provided with a warrant for his arrest by Respondents.

35. At the moment of Petitioner's seizure, Petitioner was living at a stable home address and had been in the United States for years. Petitioner has built ties to his community. He has valid employment authorization. Petitioner has been engaging with the immigration system for years and has complied with his obligations before the Executive Office for Immigration Review. Petitioner fully complied with the ICE officers and in no way tried to disobey or flee. Therefore, no officer could have probable cause that Petitioner was likely to escape before a warrant could be obtained.

36. Petitioner is presently held in ICE custody in the Sherburne County Jail.

LEGAL FRAMEWORK

37. The "[a]pprehension and detention of aliens" is governed under 8 U.S.C. § 1226, which provides that:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General … may release the alien on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General.

8 U.S.C. § 1226(a)(2)(A) (emphasis added).

38. This warrant requirement is also at 8 U.S.C. § 1357, which holds that:

> Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant … to arrest any alien in the United States, if he has *reason to believe* that the alien so arrested is in the United

> States in violation of any such law or regulation *and is likely to escape before a warrant can be obtained for his arrest*, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States.

8 U.S.C. § 1357(a)(2) (emphasis added).

39. At the border, things are a little different, as there:

> Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant …to arrest any alien who in his presence or view is *entering or attempting to enter the United States in violation of any law or regulation* made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens.

8 U.S.C. § 1357(a)(2).

40. In instances where the government arrests a noncitizen without a warrant,

> a determination will be made within 48 hours of the arrest, except in the event of an emergency or other extraordinary circumstance in which case a determination will be made within an additional reasonable period of time, whether the alien will be continued in custody or released on bond or recognizance and whether a notice to appear and warrant of arrest as prescribed in 8 CFR parts 236 and 239 will be issued.

8 C.F.R. § 287.3(d).

41. Agencies like ICE must follow their regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

42. "The Eighth Circuit has construed 'reason to believe' in § 1357(a)(2) to mean 'constitutionally required probable cause.'" *Ferrer Flores v. Blanche at al.*,

No. 0:26-cv-02540-PJS-DTS, ECF No. 8, at *5 (D. Minn. June 2, 2026) (quoting *United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010)).

43. The mere fact that an individual may be removable is insufficient to establish the requisite reason to believe that the individual is likely to escape before a warrant can be obtained for his arrest. *Id.* at *6 (citing *Francisco M.A. v. Blanche*, No. 26-CV-2032 (JRT/EMB), 2026 WL 1229701, at *3 (D. Minn. May 5, 2026) ("To hold that a noncitizen is likely to escape merely because they are removable would effectively collapse § 1357(a)(2)'s two distinct requirements into one."); *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1007 (N.D. Ill. 2016) ("Nor can it be the case that, simply by being potentially removable, an alien must be deemed to be likely to evade detention by ICE. Such a reading would render the limitations on warrantless arrest created by 8 U.S.C. §§ 1226(a) and 1357(a)(2) meaningless.").

44. In *Avila*, 170 F.4th, the Eighth Circuit held that the mandatory detention provision at 8 U.S.C. § 1225(b)(2)(A) applies to noncitizens like Petitioner who are present in the United States without admission and have been for years.

45. That provision holds that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted,

the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A).

46. However, the *Avila* court made no mention of the Fifth Amendment, due process, *Mathews v. Eldridge*, 424 U.S. 319 (1976), or the constitutionality of mandatory detention without any sort of hearing or bond determination as it applied to noncitizens like Petitioner, who have been present in the interior of the United States for years. *See generally Avila*, 170 F.4th.

47. This is important because courts are "not bound by a previous decision if that decision did not consider an issue raised in the subsequent case." *United States v. Ramirez*, 507 F. App'x 353, 354 (5th Cir. 2013) (citing *Matter of Swift*, 129 F.3d 792, 796 n. 18 (5th Cir. 1997)).

48. "'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." *Trump v. J.G.G.*, 604 U.S. 673 (2025) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

49. "[S]tatutory authority to detain does not itself resolve whether the manner in which that authority is exercised satisfies the Due Process Clause." *Bryan A.G.D. v. Blanche*, 2026 WL 2163098, at *1 (D. Minn. July 27, 2026).

50. "To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424

U.S. 319 (1976)." *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025).

51. Those factors are: (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 the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

52. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333 (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

53. First, "the interest in being free from physical detention by one's own government" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

54. Parolees like Petitioner have a weighty liberty interest under the Due Process Clause. The Supreme Court has noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

55. "[T]he parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Morrisey v. Brewer*, 408 U.S. at 482. The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Id.*

56. This liberty interest remains even after the expiration of parole. *See, e.g.*, *Matamoros Rodriguez Gonzalez Arias v. Woodbury County Jail*, 2026 WL 1735035, at *4 (N.D. Iowa June 16, 2026) ("[T]he fact [Petitioner] was previously evaluated and released confers on him a greater liberty interest than is enjoyed by those applicants for admission who never were. Even though his release on discretionary parole expired lawfully, his liberty interest did not expire with it."); *Molina-Sanchez v. Bondi*, 2026 WL 752002, at *3 (W.D. Tex. Mar. 13, 2026) ("[T]he expiration of Petitioner's parole under 8 U.S.C. 1182(d)(5)(A) does not override or diminish the constitutional concern of Petitioner's liberty interest in his freedom from detention."); *Marceau v. Noem*, 2026 WL 368953, at *1 (W.D. Tex. Feb. 9, 2026) ("Regardless of whether [Petitioner]'s parole has expired or been terminated, Respondents

may not revoke that liberty without an individualized determination of the need to do so.").

57. The first factor favors Petitioner.

58. Second, where there is no "opportunity to … make an individualized assessment of the need to [ ] detain [Petitioner], … there is a high risk that [Petitioner] has been and will continue to be erroneously deprived of his liberty." *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 686 (W.D. Tex. 2025).

59. When Respondents paroled Petitioner into the United States, they considered Petitioner's facts and circumstances and determined that he was not a flight risk or danger to the community. *See, e.g.*, *Matamoros Rodriguez Gonzalez Arias v. Woodbury County Jail*, 2026 WL 1735035, at *3 (N.D. Iowa June 16, 2026) ("[T]he fact that the Government once deemed [Petitioner] to be worthy of parole establishes that the Secretary previously evaluated his dangerousness and flight risk and made favorable findings as to those characteristics.").

60. Petitioner has no criminal history and has been participating in his ongoing removal proceedings. "Since DHS's initial determination that Petitioner should be paroled because []he posed no danger to the community and was not a flight risk, there is no evidence that these findings have changed." *Salazar v. Casey*, 2025 WL 3063629, at *4 (S.D. Cal. Nov. 3, 2025).

61. There is a high risk that Respondents' current procedures cause an erroneous deprivation of a private interest.

62. This erroneous deprivation could have been avoided by additional safeguards such as proper notice and an opportunity to be heard.

63. The second factor favors Petitioner.

64. Third, where Petitioner "did not abscond from his proceedings," the burden to the government is minimal and any concerns about flight and danger "would be squarely addressed if the Court were to grant the petition and order a bond hearing." *Id.* The third factor also favors Petitioner.

65. Courts in this district have sided with Petitioner on this issue post-*Avila*. *See, e.g.*, *Felix Alberto J.M. v. Blanche*, No. 26-cv-2944 (LMP/DLM), 2026 WL 1906596 (D. Minn. July 1, 2026) (Provinzino, J.); *Pedro A.D.L.O.O. v. Bondi*, No. CV 26-1959, 2026 WL 948970 (D. Minn. Apr. 8, 2026) (Frank, J.); *Axel J.M.C. v. Stanski*, No. 26-2281, 2026 WL 1171344 (D. Minn. Apr. 29, 2026) (Tunheim, J.); *Heriberto R.E. v. Blanche, No. 26-cv-2227*, ECF No. 12 (D. Minn. May 1, 2026) (Blackwell, J.).

66. Additionally, courts throughout the Fifth Circuit sided with Petitioner on this issue, even in the aftermath of *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502 (5th Cir. 2026), which was functionally identical to *Avila*, 170 F.4th, in its holding. *See Zamudio Sanchez v. Noem*, No. EP-25-CV-00403-DCG, 2026

WL 596133 (W.D. Tex. Mar. 2, 2026) (Guaderrama, J.); *Garcia Hernandez v. De Anda-Ybarra*, No. EP-26-CV-318-KC, 2026 WL 560337 (W.D. Tex. Feb. 13, 2026) (Cardone, J.); *Noyola v. Bondi*, No. 1:26-CV-405-RP, 2026 WL 607266 (W.D. Tex. Mar. 4, 2026) (Pitman, J.); *Acosta Espana v. Ortega*, No. 1:26-CV-00300-DAE, 2026 WL 594362 (W.D. Tex. Mar. 2, 2026) (Ezra, J.); *Rodriguez v. Bondi*, No. EP-26-CV-00292-DB, 2026 WL 523055 (W.D. Tex. Feb. 25, 2026) (Briones, J.); *Rodriguez v. Frink*, No. 4:26-CV-00798, 2026 WL 709487 (S.D. Tex. Mar. 13, 2026) (Ellison, J.); *Bonilla Chicas v. Warden*, No. 5:26-CV-00131, 2026 WL 539475 (S.D. Tex. Feb. 20, 2026) (Saldaña, J.); *Rodriguez v. Tate*, No. CV 4:26-650, 2026 WL 517983 (S.D. Tex. Feb. 25, 2026) (Hanks, Jr., J.).

67. In this district, Judge Provinzino recently ordered a petitioner immediately released where immigration officers had detained the petitioner without a warrant and without the requisite probable cause under 8 U.S.C.§ 1357(a)(2). *Felix Alberto J.M. v. Blanche*, No. 26-cv-2944 (LMP/DLM), 2026 WL 1906596 (D. Minn. July 1, 2026).

68. These cases analyzed detention under 8 U.S.C. § 1225(b)(2)(A) through the lens of due process and requirements for warrantless arrests, independent of the issue resolved in *Avila*, 170 F.4th, and they represent the proper analysis in its aftermath.

REMEDY

69. Respondents' detention of Petitioner without an administrative warrant violated 8 U.S.C.§ 1357(a)(2) and Respondents' own regulations.

70. Respondents' detention of Petitioner without an administrative warrant or any sort of hearing in which Petitioner might challenge his detention under 8 U.S.C. § 1225(b)(2)(A) violates the Due Process Clause of the United States Constitution's Fifth Amendment.

71. To remedy this Fifth Amendment violation, Petitioner requests his immediate release. *See Felix Alberto J.M. v. Blanche*, No. 26-cv-2944 (LMP/DLM), 2026 WL 1906596 (D. Minn. July 1, 2026); *see also Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the "typical remedy" for unlawful executive detention).

72. Alternatively, Petitioner requests a constitutionally adequate custody determination bond hearing in which Respondents bear the burden to illustrate that his continued detention is justified based on danger or flight risk within three days.

CAUSE OF ACTION

COUNT ONE

Declaratory Relief

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

74. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner's mandatory detention under 8 U.S.C. § 1225(b)(2)(A), absent some hearing or venue in which Petitioner might challenge that detention, violates the Fifth Amendment's Due Process Clause such that Respondents must release Petitioner or, minimally, hold a bond hearing and justify Petitioner's ongoing detention by illustrating that he poses either a danger or a flight risk by clear and convincing evidence within three days.

COUNT TWO

Violation of the Fifth Amendment

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

76. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

77. The mandatory detention provisions at 8 U.S.C. § 1225(b)(2)(A), absent any bond hearing or venue to challenge detention, are unconstitutional as applied to Petitioner under the standard set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

78. As such, Respondents must release Petitioner or, minimally, hold a bond hearing and justify Petitioner's ongoing detention by illustrating that he poses either a danger or a flight risk by clear and convincing evidence within three days.

COUNT THREE

Violation of the Fourth Amendment to the U.S. Constitution, 8 U.S.C. § 1357(a)(2), and 8 C.F.R. § 287.3(d) Unlawful Arrest

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

80. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. Amend. IV. Immigration arrests and detentions are seizures within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the "seizure" of the person).

81. The Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). "Probable cause requires a 'substantial probability; based on facts related to the individual." *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *15 (D. Colo. Nov. 25, 2025) (quoting *Storey v. Taylor,* 696 F.3d 987, 992 (10th Cir. 2012) (finding probable cause for immigration arrests lacking). That determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id.*

82. It must, however, occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstance. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

83. There is a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). The INA thus provides immigration agents with only limited authority to conduct warrantless arrests. 8 U.S.C.§ 1357(a)(2). Specifically, an officer must have probable cause to believe the person is violating the immigration laws *and* that the person "is likely to escape before a warrant can be obtained," *i.e.*, is a flight risk. *Id.*; *see also Ramirez Ovando*, 2025 WL 3293467, at *2. Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

84. Without an administrative warrant in hand at the time of Petitioner's arrest, the arrest must be judged by the warrantless-arrest framework of 8 U.S.C. § 1357(a)(2). *Felix Alberto J.M. v. Blanche*, No. 26-cv-2944 (LMP/DLM), 2026 WL 1906596, at *1 (D. Minn. July 1, 2026) (citing *Francisco M. A. v. Blanche*, No. 26-cv-2032 (JRT/EMB), 2026 WL 1229701, at *2 (D. Minn. May 5, 2026)).

85. Petitioner's warrantless arrest occurred without probable cause that Petitioner posed a flight risk. "Courts have … made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties." *Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. CV 25-3417 (BAH), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (collecting cases).

86. At the moment of Petitioner's seizure, Petitioner was living at a stable home address and had been in the United States for years. Petitioner has built ties to his community. He has valid employment authorization. Petitioner has been engaging with the immigration system for years and has complied with his obligations before the Executive Office for Immigration Review. Petitioner fully complied with the ICE officers and in no way tried to disobey or flee. Therefore, no officer could have probable cause that Petitioner was likely to escape before a warrant could be obtained.

87. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Petitioner. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. Petitioner received no such judicial determination.

88. Regulations also provide that noncitizens arrested without a warrant must receive a custody determination within 48 hours of the arrest, unless there is "an emergency or other extraordinary circumstance" that requires "an additional reasonable period of time" to make the custody determination. 8 C.F.R. § 287.3(d).

89. During that custody determination, the immigration officer must make findings as to whether "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). Similarly, upon information and belief, Petitioner has received no such custody determination.

COUNT FOUR

Violation of the APA – Failure to Comply with Regulatory Mandate & *Accardi* Doctrine

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

91. Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

92. Regulations also provide that noncitizens arrested without a warrant must receive a custody determination within 48 hours of the arrest, unless there is "an emergency or other extraordinary circumstance" that requires "an additional reasonable period of time" to make the custody determination. 8 C.F.R. § 287.3(d).

93. During that custody determination, the immigration officer must make findings as to whether "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8).

94. Respondents have not complied with these regulations.

95. Respondents' failure also violates the mandate of *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

96. Respondents must observe the rules, regulations or procedures which it has established. *Accardi,* 347 U.S.

97. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *See id.*

98. Under *Accardi*, Respondents' warrantless arrest should be set aside for violating agency procedures, rules, or instructions.

99. Respondents' action violates the APA and *Accardi* doctrine.

COUNT FIVE

Violation of the APA – Arbitrary and Capricious

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

101. Under the APA, a court "shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be .. . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

102. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983)).

103. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

104. Respondents failed to articulate the facts that formed a basis for their decision to arrest Petitioner without a warrant, let alone any rational connection between the facts found and the decision made.

105. Respondents' action is therefore arbitrary and capricious.

106. Respondents' action violates the APA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner asks this Court for the following relief:

1. Assume jurisdiction over this matter.

2. Issue an order prohibiting Respondents from moving Petitioner outside of Minnesota for the duration of these proceedings.

3. Issue an order requiring Respondents to provide 72-hour notice of any intended movement of Petitioner.

4. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. § 153.

5. Declare that Petitioner's detention absent some hearing or opportunity to challenge it violates the Due Process Clause of the Fifth Amendment.

6. Order that Respondents release Petitioner or, alternatively, order that Respondents hold a bond hearing in which they bear the burden to justify Petitioner's ongoing detention by clear and convincing evidence of either danger to the public or flight risk within three days.

7. Order that Respondents release Petitioner if they fail to hold the requisite bond hearing referenced in ¶ 6 within three days.

8. Declare that Respondents' action is arbitrary and capricious.

9. Grant Petitioner reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).

10. Grant all further relief this Court deems just and proper.

DATED: September 3, 2026

Respectfully submitted,

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Attorneys for Petitioner

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

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I have discussed the events described in this Petition with Petitioner's family and reviewed relevant documents. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status, are true and correct to the best of my knowledge.

/s/ Gabriela Anderson Date: September 3, 2026