UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Gustavo Isai Flores Amilcar,

Petitioner,

v.

Todd Blanche, Attorney General; Markwayne Mullin, Secretary of Homeland Security; David Venturella, Director of U.S. Immigration & Customs Enforcement; Marcos Charles, Executive Associate Director for Enforcement and Removal Operations; U.S. Immigration & Customs Enforcement; U.S. Department of Homeland Security; David Easterwood, Field Office Director for Enforcement and Removal Operations; and Joel Brott, Sherburne County Sheriff,

Respondents.

Case No.: _____

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

EXPEDITED PROCESSING REQUESTED UNDER 28 U.S.C. § 1657

INTRODUCTION

1. Respondents are detaining Petitioner, Gustavo Isai Flores Amilcar (A[redacted], in violation of law.

2. Petitioner is a national of Mexico who entered the United States in 2005 when he was five years old. His family entered on a tourist visa.

3. Petitioner has lived in or around Minneapolis and St. Paul since he was five years old.

4. Petitioner is a Deferred Action for Childhood Arrivals (DACA) recipient. He has been on DACA since he was about fifteen years old and has regularly renewed it. Petitioner's DACA status is active until April 23, 2027.

5. Petitioner has not received notice, hearing, or any indication his DACA status is revoked or called into question.

6. Petitioner has a work authorization, paid taxes, and had been working as a Radiologic Technologist at St. Joseph's hospital for the last five years.

7. On July 28, 2026, Petitioner was detained by the St. Joseph Police Department for disorderly conduct, for which he pleaded guilty to a misdemeanor on August 18, 2026. Shortly after July 28, the police turned him over to Immigration and Customs Enforcement (ICE) where he has remained since.

8. Petitioner had never been convicted of anything other than a petty misdemeanor for traffic violations prior to him pleading guilty to the misdemeanor charge of disorderly conduct.

9. Congress authorized immigration officers to arrest noncitizens within the interior of the United States in only two circumstances: pursuant to a valid administrative warrant or, absent a warrant, where the narrow requirements of 8 U.S.C. § 1357(a)(2) are satisfied. Those statutory requirements define the scope of Respondents' authority to deprive an individual of his physical liberty.

10. Respondents nevertheless placed Petitioner into detention under 8 U.S.C. § 1226(a) without first satisfying either statutory basis for arrest. At the time of Petitioner's arrest, Respondents had known of Petitioner's presence in the United States, his

DACA status, and work authorization status. Petitioner had been in regular contact with USCIS. Nothing known to Respondents established that Petitioner was likely to escape before an administrative warrant could be obtained.

11. Respondents continue to detain Petitioner under § 1226(a). An Immigration Judge later denied bond after conducting a custody hearing.

12. Based on information and belief, ICE did not have a valid warrant, nor did it issue a notice to appear, prior to or at the time of his arrest by ICE. The warrant, if any, that ICE had for Petitioner's arrest was invalid as it was issued before the notice to appear, and it was not issued or served by the correct official.

13. Any position by Respondents that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is untenable. Before the Eighth Circuit's decision *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. Mar. 25, 2026), courts in this district repeatedly ruled that § 1225(b)(2)(A) applies to applicants "seeking admission," not to individuals like Petitioner who entered lawfully on a visa. *See, e.g.*, *Mahad S. v. Noem*, No. 26-CV-476 (JMB/JFD), 2026 WL 177860, at *2 (D. Minn. Jan. 22, 2026); *Ahmed M. v. Bondi*, No. 25-CV-4711 (ECT/SGE), 2026 WL 25627, at *2 (D. Minn. Jan. 5, 2026) (collecting cases). This renders Petitioner's current detention unlawful from its inception, in violation of the Immigration and Nationality Act ("INA"). Petitioner preserves these arguments for future review, but as Petitioner's claims in the present petition relate to the violation of his due process rights, Respondents' own regulations, and the *Accardi* doctrine, the present petition is not precluded by the Eighth Circuit's decision in *Avila.*

14. Petitioner's detention serves no legitimate purpose. He is in the United States lawfully and cannot be deported pursuant to his DACA status.

15. To remedy his unlawful detention, Petitioner seeks declaratory and injunctive relief in the form of immediate release from detention based on his warrantless arrest occurring in absence of probable cause and in violation of due process.

16. 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 this Court.

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

18. Petitioner requests an order compelling Respondents to release him pending the outcome of this petition.

19. In accordance with 28 U.S.C. § 1657, Petitioner requests that the district court issue an Order to Show Cause ("OSC") giving the government no more than 3 days to file evidence and argument in response to the OSC.

20. In accordance with 28 U.S.C. § 1657 and Rule 4 of the Rules Governing Section 2254 and 2255 Cases, Petitioner requests that rather than proceed via summonses, the Court order the Clerk of Courts to serve a copy of the petition and any subsequent Order on Respondents and any other appropriate individual involved.

21. Petitioner requests that the Court order his immediate release.

JURISDICTION AND VENUE

22. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1361 (mandamus action), § 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").

23. 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).

24. 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.

25. Federal district courts have jurisdiction to enforce 8 U.S.C. § 1226(a).

26. Custody is "separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding." 8 C.F.R. 1003.19(d). *Compare also* 8 U.S.C. 1229(a), *with* 8 USC 1226(a). The Board recently confirmed this in *Matter of E-Y-F-G-*, 29 I. & N. Dec. 103, 105 (BIA 2025). 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.

27. Nothing in 8 U.S.C. § 1252 deprives this Court of jurisdiction.

28. Nothing in 8 U.S.C. § 1226(e) deprives this Court of jurisdiction. Section 1226(e) bars review of "discretionary decisions" but does not bar review of constitutional claims or legal questions. *See, e.g.*, *Nielsen* 586 U.S. at 401 (2019) ("this limitation applies only to "discretionary" decisions about the "application" of §1226 to particular cases"); *Vijendra Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011) ("Although §1226(e) restricts jurisdiction in the federal courts in some respects, it does not limit habeas jurisdiction over constitutional claims or questions of law."); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 235 (W.D.N.Y. 2019); *Demore v. Kim*, 538 U.S. 510 516-17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-41 (2018); *Figueroa v. McDonald*, 680 F.Supp.3d 18 (D. Mass. 2018) (holding that placing burden of proof on petitioner at immigration bond hearing violated due process and was prejudicial because the IJ would not have found dangerousness on unresolved misdemeanor charges if the government had properly borne the burden of proof); *Mathon v. Searls*, 623 F.Supp.3d 203 (2022) (finding IJ committed legal error by applying the wrong analytical framework for discretionary bond hearings).

29. Any exhaustion requirement is prudential rather than jurisdictional for habeas claims. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017); *Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (9th Cir. 2011) ("On habeas review under §2241, exhaustion is a prudential rather than jurisdictional requirement.").

30. Given the prolonged length of BIA appeal time and the lack of unbiased agency decisionmaker, an administrative appeal is a futile exercise. Therefore, there is no exhaustion impediment to the Court exercising jurisdiction.

31. Petitioner's challenge presents reviewable questions of law within this Court's habeas jurisdiction. Petitioner contends that Respondents failed to satisfy the statutory prerequisites Congress imposed before exercising their authority to place him into civil immigration detention. Whether Respondents possess statutory authority to continue detaining Petitioner is a legal question properly resolved in habeas.

32. Under 28 U.S.C. § 1657, Petitioner's petition "**shall**" be expedited for good cause. (emphasis added). The good cause consists of Petitioner's credible and detailed allegations of unlawful and unconstitutional civil confinement.

33. 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 Sherburne County Detention Facility in Elk River, Minnesota. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondents are operating in this district.

PARTIES

34. Petitioner is a citizen of Mexico who has lived in Minnesota since 2005, when he was five years old. Petitioner has active DACA status until April 23, 2027. Petitioner is currently detained at Sherburne County Detention Facility.

35. 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. 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.

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

37. 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.

38. Respondent Marcos Charles is the Acting Executive Associate Director for ICE Enforcement and Removal Operations ("ERO") and is sued in his official capacity. Respondent Charles is responsible for Petitioner's detention.

39. Respondent Department of Homeland Security ("DHS") is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

40. Respondent Immigration and Customs Enforcement ("ICE") is the subagency

within the Department of Homeland Security responsible for implementing and enforcing the Immigration & Nationality Act, including the detention of noncitizens.

41. Respondent David Easterwood is being sued in his official capacity as the Field Office Director for the Fort Snelling Field Office for ICE within DHS. In that capacity, Field Director Easterwood has supervisory authority over the ICE agents responsible for detaining Petitioner. The address for the Fort Snelling Field Office is 1 Federal Drive, Fort Snelling, Minnesota 55111.

42. Respondent Sheriff Joel Brott is being sued in his official capacity as the Sheriff responsible for the Sherburne County Detention Facility. Because Petitioner is detained in the Sherburne County Detention facility, Sheriff Brott has immediate day-to-day control over Petitioner.

EXHAUSTION

43. Respondents assert authority to jail Petitioner pursuant to 8 U.S.C. § 1226(a). 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*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *11 (W.D. Wash. Apr. 24, 2025) (citing *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 962 (N.D. Cal. 2019); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL

1869299, at *5 (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)).

44. To the extent that prudential consideration may require exhaustion in some circumstances, Petitioner has exhausted all *effective* administrative remedies available to him. Any further efforts would be futile. Upon information and belief that the Board of Immigration Appeals ("BIA") is also a biased decisionmaker and would affirm the immigration judge's ruling for reasons that are politically motivated rather than for reasons based in the law and legal standards governing immigration bond proceedings and administrative appeals from immigration bond proceedings.

45. Moreover, the BIA has predetermined the issue before it, as evidenced by, *inter alia*, Interim Final Rule ("IFR"), Appellate Procedures for the Board of Immigration Appeals, Docket No. EOIR-26-AB37; Dir. Order No. 02-2026; RIN 1125-AB37 (published Feb. 6, 2026).[1] The IFR represents the most severe procedural restriction on BIA appellate review in the history of modern immigration adjudication and fundamentally transforms the BIA from a mandatory appellate tribunal into a discretionary certiorari-style court, while simultaneously compressing appeal timelines to functionally eliminate meaningful appellate review for most noncitizens. The IFR creates a presumption of a mandatory summary dismissal. The

[1] Available at: https://www.federalregister.gov/documents/2026/02/06/2026-02326/appellate-procedures-for-the-board-of-immigration-appeals/.

IFR represents both predetermination of the issue and constitutes evidence of the BIA and immigration courts being biased decisionmakers in favor of DHS litigants and outcomes that result in detention and/or deportation.

46. 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).

47. Prudential exhaustion is also not required in cases where "a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." *McCarthy*, 503 U.S. at 147. Every day Petitioner is unlawfully detained causes him and his family irreparable harm. *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 711 (D. Md. 2016) ("Here, continued loss of liberty without any individualized bail determination constitutes the kind of irreparable harm which forgives exhaustion."); *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (explaining that "a loss of liberty" is "perhaps the best example of irreparable harm"); *Hamama v. Adducci*, 349 F. Supp. 3d 665, 701 (E.D. Mich. 2018) (holding that "detention has inflicted grave" and "irreparable harm" and describing the impact of prolonged detention on individuals and their families).

48. Prudential exhaustion is additionally not required in cases where the agency "lacks the institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute." *McCarthy*, 503 U.S. at 147–48. Immigration agencies have no jurisdiction over constitutional challenges of the kind

Petitioner raises here. *See, e.g., Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); *Matter of Akram*, 25 I. & N. Dec. 874, 880 (BIA 2012); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345 (BIA 1982); *Matter of Fuentes-Campos*, 21 I. & N. Dec. 905, 912 (BIA 1997); *Matter of U-M-*, 20 I. & N. Dec. 327 (BIA 1991).

49. Because requiring Petitioner to exhaust administrative remedies would be futile, would cause him irreparable harm, and the immigration agencies lack jurisdiction over the constitutional claims, this Court should not require exhaustion as a prudential matter.

LEGAL FRAMEWORK

Habeas Petitions

50. The origin of the writ of habeas corpus lies in clause 39 of the Magna Carta, which stated that no free man could be imprisoned except by lawful judgment of his peers or by the law of the land. *See Boumediene v. Bush*, 553 U.S. 723, 740 (2008) (citations omitted). The Magna Carta, and especially clause 39, was designed to limit the king's power by protecting the most fundamental rights of free men. *See Boumediene*, 553 U.S. at 739-42 (collecting sources).

51. When the United States seceded from Great Britain, the Framers of the Constitution and the States that were to make up the Union, in order to ensure sufficient signatories, reserved debate on most of the civil rights for a few years in what would

later become the Bill of Rights. However, one right was so fundamental and so undisputed that it was placed into the actual Constitution. *See generally* U.S. Const., Art. I, § 9, cl. 2. The Framers and the States thus recognized and agreed that habeas corpus is the most fundamental and important civil right in any free society. *Cf. Boumediene*, 553 U.S. at 743 ("Surviving accounts of the ratification debates provide additional evidence that the Framers deemed the writ to be an essential mechanism in the separation-of-powers scheme.").

52. Throughout the history of the United States, habeas corpus has had three principal eras of importance. First, there was the post-reconstruction era following the civil war. *See, e.g., Ex parte Milligan*, 71 U.S. 2 (1866) (ruling that civilians cannot be tried by military tribunals when civilian courts are open and functioning); Habeas Corpus Act of 1867, 14 Stat, 385, 28 U.S.C. § 451 et seq. The second era occurred during World War 2 when the United States placed persons of Japanese origin in internment camps. *See, e.g., Korematsu v. United States*, 323 U.S. 214 (1944), abrogated by *Trump v. Hawaii*, 585 U.S. 667 (2018). Most recently, there was the war on terror and associated detentions at Guantanamo Bay, Cuba. *See Rasul v. Bush*, 542 U.S. 466 (2004) (foreign nationals housed at Guantanamo Bay had the right to challenge their detention via habeas corpus); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (U.S. citizens designated as "enemy combatants" and detained in the United States have a constitutional right to due process, including a meaningful opportunity to challenge their detention before a neutral decisionmaker); *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (military commissions used to try Guantanamo

Bay detainees lacked congressional authorization and violated both the Uniform Code of Military Justice and the Geneva Convention); *Boumediene*, 553 U.S. at 740 (foreign detainees at Guantanamo Bay have a constitutional right to habeas corpus and the Military Commissions Act of 2006's procedures were an inadequate substitute for habeas corpus).

53. We are now in the fourth major era of habeas, which began when the present administration started arbitrarily revoking student visas and detaining students on the basis of those revocations, deporting individuals not from El Salvador to Salvadoran prison without due process, jailing immigrants for exercising their rights to free speech, and announcing an intent to use civil detention punitively against criminal aliens. *See, e.g.*, *100 Days of Fighting Fake News*, HOMELAND SECURITY (Apr. 30, 2025).[2]

Statutory framework for detention authority under 1226(a)

54. 8 U.S.C. 1226(a) is the default detention authority, and it applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a); *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

55. To initiate removal proceedings, "written notice (in this section referred to as a 'notice to appear') shall be given in person to the alien (or, if personal service is not

[2] Available at: https://www.dhs.gov/news/2025/04/30/100-days-fighting-fake-news.

practicable, through service by mail to the alien or to the alien's counsel of record, if any)." 8 U.S.C. § 1229(a)(1).

56. 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.
> 8 U.S.C. § 1226(a) (emphasis added).

57. The regulations provide that, to detain a person under 8 U.S.C. § 1226(a), the Department must issue a Form I-200 to take a person into custody. The regulation states:

> (b) Warrant of arrest—
>
> (1) In general. **At the time of issuance of the notice to appear, or at any time thereafter** and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I–200, Warrant of Arrest. A **warrant of arrest may be issued only by** those immigration officers listed in § 287.5(e)(2) of this chapter and **may be served only by** those immigration officers listed in § 287.5(e)(3) of this chapter.
> 8 CFR § 236.1(B)(1) (emphasis added).

58. If the Government arrests a noncitizen on such a warrant, the Attorney General or their designees may then continue to detain them or release them on bond of at least $1,500 or conditional parole. 8 U.S.C. §§ 1226(a)(1)-(2); 8 C.F.R. § 236.1(c)(8) (2025).

59. An ICE officer "makes the initial determination for noncitizens subject to detention under section 1226(a)." *Hernandez-Lara v. Lyons*, 10 F.4th 19, 26 (1st Cir. 2021).

Civil Immigration Detentions Must Comply with Fifth Amendment Due Process

60. The Fifth Amendment states that no individual may be "deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

61. Chief among these procedural protections is "the guarantee of an impartial and disinterested tribunal," which the Due Process Clause requires "in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

62. The mandate of the Due Process Clause must be considered expansively. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) ("[D]ue process is flexible and calls for such procedural protections as the particular situation demands."). Unlike some legal rules, due process "is not a technical conception with a fixed content unrelated to time, place and circumstances"; instead, it is a critical liberty interest which must be considered in factual context. *Cafeteria & Rest. Workers Union v. McElroy*, 367 U.S. 886, 895 (1961) (quoting *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 162-163 (1951) (Frankfurter, J. concurring)).

63. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). At a minimum, civil immigration detention must "bear[] a reasonable relation to the purpose for which the individual was committed" and be accompanied by adequate

procedural protections to ensure that those goals are being served. *Id* at 690-691 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). If "detention's goal is no longer practically attainable," the detention becomes unreasonable and thus violates the Fifth Amendment right to due process. *Id.*

64. Recent circuit court decisions in *Buenrostro-Mendez* and *Avila* do not control this petition, as both cases address the classification and application of detention authority under §1225(b) and §1226(a), and neither decision addresses nor forecloses constitutional claims of due process violations. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Avila*, 170 F.4th 1128; *see also Hassen v. Noem,* No. EP-26-CV-00048-DB, 2026 WL 446506, at *2 & n.1 (W.D. Tex. Feb. 9, 2026) ("*Buenrostro-Mendez* does not change this case's outcome on procedural due process grounds."); *Suarez-Lugo v. Bondi,* 819 F. Supp. 3d 653, 655 (S.D. Tex. 2026) (held that unlawful detention under mandatory detention provisions without any process violated due process rights and ordered immediate release); *Bonilla Chicas v. Warden*, 821 F. Supp. 3d 782, 800 (S.D. Tex. 2026) (immediate release with additional safeguards was the appropriate remedy for procedural due process violations in immigration detention contexts).

Effect of Deferred Action for Childhood Arrivals (DACA) Status

65. DHS's own regulations instruct that a DACA recipient is considered "lawfully present." 8 C.F.R. §236.21(c)(3). *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 10 (2020).

66. Petitioner's DACA status confers a liberty interest that is protected by the Fifth Amendment's Due Process Clause.

67. Courts around the country have "recognized that the government's affirmative decision not to detain an alien may give rise to a liberty interest in their continued release that is protected by the Fifth Amendment's Due Process Clause. And courts have repeatedly held that DACA's grant of deferred action—even when that protection expires—confers a liberty interest that cannot be taken away without a hearing." *Morales Martinez v. Warden*, No. 8:26-CV-319, 2026 WL 2056542, at *1 (D. Neb. July 16, 2026) (citing *Ixquiactap-Ajpacaja v. Mullin*, No. 4:26-CV-3143, 2026 WL 1295702, at *1 (D. Neb. May 12, 2026); *Gonzalez-Jaimes v. Warden of the Cal. City Det. Facility*, No. 1:26-CV-4534, 2026 WL 1983939, at *5 (E.D. Cal. July 9, 2026) (collecting cases); *Orellana-Rivera v. Johnson*, No. 5:26-CV-2116, 2026 WL 1390433, at *3 (C.D. Cal. May 14, 2026)); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *10 (W.D. Tex. Oct. 2, 2025) ("A core benefit of DACA is that it allows recipients to live, study, and work in the United States without fear of arrest or deportation. It would be incongruous to find that DACA recipients acquire a constitutionally protected interest in their DACA benefit, but not one of its essential facets: their liberty.").

68. Except where a recipient has been convicted of a national security related offense, Petitioner's DACA status cannot be revoked without USCIS *first* providing "a Notice of Intent to Terminate and an opportunity to respond." 8 C.F.R § 236.23(d).

69. "Where an individual is protected from removal through deferred action, their detention serves no valid purpose." *Santiago*, 2025 WL 2792588, at *10 (citing *Sepulveda Ayala v. Bondi*, 25-cv-1063, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025) (concluding government had no legal basis to detain petitioner where deferred action prevented his removal); *see also Primero v. Mattivelo*, No. 1:25-CV-11442-IT, 2025 WL 1899115, at *5 (D. Mass. July 9, 2025) (concluding that active DACA status prevents deportation and government cannot rely on the presumptive period of permissible detention under *Zadvydas*).

The Accardi Doctrine Requires Agencies to Follow Internal Rules

70. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

71. *Accardi* is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. *See Morton v. Ruiz*, 415 U.S. 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *United States v. Heffner*, 420 F.2d 809, 812

(4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

Limits on Warrantless Arrests

72. Valid warrantless arrests require officers to comply with procedures outlined in federal law, as well as the constitutional requirements of probable cause.

73. Immigration authorities must comply with the law when arresting noncitizens without a warrant. *Orellana v. Nobles Cnty.*, 230 F. Supp. 3d 934, 945 (D. Minn. 2017) ("arrest and continued detention is lawful only if officers acted within their statutory authority for affecting a warrantless arrest."); *see also Fernando C.C. v. Bondi*, No. 26-cv-1235, 2026 WL 446408 at *4 (D. Minn. Feb. 17, 2026) (noting that "8 C.F.R. § 287.8(c)(2)(ii) sets the default rule: get a warrant").

74. Warrantless arrests are statutorily authorized in civil immigration matters only in limited circumstances: (i) to arrest a noncitizen who, in the presence or view of the arresting officer, "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 [noncitizens]," or (ii) to arrest a noncitizen when the arresting officer has reason to believe the noncitizen 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 . . . ." 8 U.S.C. § 1357(a)(2) (emphasis added); *see also* 8 C.F.R. §§ 287.3(a) & (d) and 287.8(c)(2)(i)-(ii).

75. The Eighth Circuit has held that the "reason to believe" requirement of 8 U.S.C. § 1357(a)(2) "means constitutionally required probable cause." *United States v.*

Quintana, 623 F.3d 1237, 1239 (8th Cir. 2010). The probable cause requirement applies to both the belief that the person is "in violation" *and* that the person is "likely to escape before a warrant can be obtained." *See* 8 U.S.C. § 1357(a)(2) (emphasis added). That is because, "[a]s a general rule, it is not a crime for a removable [noncitizen] to remain present in the United States." *Arizona v. United States*, 567 U.S. 387, 407 (2012) (*citing INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984)). Therefore, if ICE "stops someone based on nothing more than *possible* removability, the usual predicate for an arrest is absent." *Id.* (emphasis added).

76. Probable cause that a person has violated an immigration law has to be based on actual facts and knowledge of a violation of immigration law, not on an accent or skin color: "apparent ethnicity alone cannot furnish reasonable suspicion[.]" *Noem v. Vasquez Perdomo*, 146 S. Ct. 1, 5 (2025) (Kavanaugh, J., concurring); *see also Parada v. Anoka Cnty.*, 332 F.Supp.3d 1229, 1243 (D. Minn. 2018) (finding continued detention beyond the time reasonably required to issue a traffic citation in order to await transfer to immigration authorities based solely on "a perceived civil violation of U.S. immigration laws" to be an "egregious" Fourth Amendment violation).

77. Probable cause that a person might escape requires a "particularized assessment" sufficient to conclude that the subject is likely to abscond before an arrest warrant can be obtained. *Orellana*, 230 F. Supp. 3d at 946 (citing *Maryland v. Pringle*, 540 U.S. 366, 371 (2003)); *accord, e.g., United States v. Pacheco-Alvarez*, 227 F. Supp.

3d 863, 889 (S.D. Ohio 2016); *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1006-07 (N.D. Ill. 2016); *Ramirez Ovando v. Noem,* 810 F. Supp. 3d. 1209, 1217 (D. Colo. 2025) (requiring "particularized inquiry" that subject is likely to abscond).

78. The facts informing the assessment of whether a person is likely to escape "may vary." *See Escobar Molina v. U.S. Dep't of Homeland Sec.*, 811 F. Supp. 3d 1, 13 (D.D.C. 2025). "Courts have also 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." *Id.* (collecting cases).

79. The Government itself admits these two distinct probable cause requirements for warrantless immigration arrests. *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1052 (7th Cir. 2025) (citing ICE's own "Broadcast Statement of Policy," which requires ICE officers to have probable cause both that the noncitizen is present in violation of immigration laws and is likely to escape before a warrant may be obtained.).

80. It is Respondents' burden to establish both probable cause predicates for reliance on 8 U.S.C. § 1357's exceptions to the warrant requirement, and the absence of either one warrants Petitioner's immediate release. *See, e.g., Cutberto R.P. v. Bondi*, No. 26-CV-1934 (MJD/DTS) Doc. No. 11, 13 (D. Minn. April 10, 2026). Failure to establish probable cause, such as through reliance on a deficient or inadequate Form I-200 administrative warrant, is insufficient to satisfy Section 1357(a)(2) and its associated regulations. *See, e.g., Sergio P. v. Bondi*, No. 26-CV-01538, 2026 WL

497290 (D. Minn. Feb. 23, 2026) (overruled on other grounds by *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. Mar. 25, 2026)).

81. The only appropriate manner for immigration authorities to make warrantless arrests for perceived civil violations of immigration law is laid out in 8 C.F.R. § 287.3.

82. The arrestee must be interviewed by an immigration officer other than the arresting officer, "unless no other qualified officer is readily available and locating one would entail unnecessary delay." *See Puc-Ruiz v. Holder*, 629 F.3d 771, 780 (8th Cir. 2010) (quoting 8 C.F.R. § 287.3(a)).

83. The arrestee must "be advised of the reasons for his arrest, of his right to legal representation, and that any statement made may be used against him in a subsequent proceeding," and "be given a list of the free legal services available in the district where the hearing will be held." *Id.* (quoting 8 C.F.R. § 287.3(c)).

84. Warrants presented by Respondents often include a litany of insufficiencies. For example:

> [M]uch about the warrant remains unclear. Respondents do not provide an accompanying declaration explaining the legal basis for the warrant, attesting to its validity, identifying the officers who issued and obtained it, or confirming that those officers had received the necessary training to issue and serve warrants. *Cf.* 8 C.F.R. § 287.5. It appears likely that the I-200 warrant was issued either in the field or after Petitioner was arrested and detained.
>
> *Fedrik D.W. v. Bondi*, Civ. Case No. 26-1294 (JRT/JFD) Doc. No. 10, 3 (D. Minn. Feb. 14, 2026).

85. Retroactively served or issued warrants cannot cure an otherwise unlawful detention or an otherwise invalid warrant. *Alberto C.M. v. Noem*, No. CV 26-380 (DWF/SGE), 2026 WL 184530, at *2 (D. Minn. Jan. 23, 2026) (finding warrant

invalid where the warrant "was not issued until after his arrest and initial detention") and *Marlon S.T.L., P, v. Pamela Bondi, et al.*, No. 26-665 (DWF/LIB), 2026 WL 251975, at *2 (D. Minn. Jan. 30, 2026) ("A detainee being held pursuant to § 1226(a), as Petitioner is here, must have been served an arrest warrant prior to detainment.").

86. The law requires Respondents to obtain warrants **before** arrest and detention. *Id.*; *Victor O. v. Bondi*, Civ. Case No. 26-1122 (ECT/LIB), Doc. No's 1, 5 (where a warrant shows a signature dated February 7, 2026, when the petitioner's detention was on February 5, 2026); and *Oscar R. v. Bondi*, Civ. Case No. 26-1204 (JRT/SGE), Doc. No. 5 (describing how Respondents' warrant was served an hour after the habeas petition was filed).

87. Moreover, for a warrant to be valid, it must be issued with or after the notice to appear. 8 CFR § 236.1(B)(1). It can only be issued by specific officers identified in § 287.5(e)(2) and it may only be served by specific officers listed in § 287.5(e)(3). None of this occurred and any warrant Respondents rely on was invalid.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

88. Petitioner incorporates by reference all preceding paragraphs as if fully set forth herein.

89. Petitioner is currently in removal proceedings.

90. Petitioner was detained by ICE on or around July 28, 2026.

91. ICE did not issue a warrant or notice to appear upon arresting Petitioner.

92. There was evidence in Petitioner's file at the time of his arrest that demonstrated, for purposes of 8 C.F.R. § 241.4(i)(7) and 8 C.F.R. § 241.13 that there was and is no significant likelihood of his removal due to his ongoing and active deferred action.

93. Neither USCIS nor DHS issued any notice or rationale for revoking Petitioner's lawful status as a DACA recipient.

94. Petitioner's DACA status is active until April 23, 2027.

95. Petitioner received a bond hearing pursuant to 8 U.S.C. 1226(a) so any argument by Respondents that he is held in mandatory detention under § 1225(b)(2) is untenable. *See Souleimane C. v. Blanche*, No. 26-CV-2215-LMP-JFD (D. Minn. Apr. 30, 2026); *Vasquez Valestrini v. Blanche*, No. 26-CV-1903-MJD-SGE (D. Minn. Apr. 28, 2026).

96. At the bond hearing, the Immigration Judge did not address the lawfulness of his arrest, the warrant, or the statutory process through which ICE obtained custody of petitioner.

97. It is well established that Respondents' policy of effecting warrantless immigration arrests under § 1357(a)(2) without regard for regulation exceeds statutory jurisdiction and authority. *See Cristian Z. v. Bondi*, No. 26-cv-157, 2026 WL 123116, at *2 (D. Minn. Jan. 16, 2026) ("While a Form I-200 was issued, that form was not issued until after his arrest and initial detention. Issuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a)) (citation modified); *see also* 8 U.S.C. § 1226(a) ('On a warrant issued by the

Attorney General, [a noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States.'); *Ramirez Ovando v. Noem*, 810 F. Supp. 3d 1209, 1235 (D. Colo. Nov. 25, 2025) (citations omitted); *Alberto C.M. v. Noem*, No. 26-CV-380-DWFSGE, --- F. Supp. 3d – 2026 WL 184530, at *2 (D. Minn. Jan. 23, 2026).

98. Petitioner did not receive an individualized assessment prior to being unlawfully detained, was not interviewed by an immigration officer other than the arresting officer, was lawfully present and in contact with USCIS pursuant to his DACA status, and upon information and belief, did not receive the regulatory predicates during Respondent's detention process.

99. Petitioner is currently unlawfully detained at Sherburne County Detention Facility in Elk River, Minnesota.

REMEDY

100. Respondents' detention of Petitioner violates the Due Process Clause of the United States Constitution. Petitioner's ongoing detention violates the Fifth Amendment's guarantee that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const., amend. V.

101. Immigration detention is civil in nature, and as a result Congress must have expressly authorized it by statute. The constitution requires that detention "bear [] a reasonable relation to the purpose for which the individual [was] committed." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Jackson v. Indiana*, 406 U.S.

715, 738 (1972)). It also requires a neutral decision-maker, and the ability to be heard at a meaningful time and in a meaningful manner.

102. When a habeas petitioner's detention is without legal basis, the typical and appropriate remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the "typical remedy" for "unlawful executive detention"); *Edison D.M.J. v. Bondi*, No. 26-CV-1588, 2026 WL 559747 (D. Minn. Feb. 27, 2026) ("The remedy for a warrantless arrest is immediate release."); *Sergio P. v. Bondi,* No. 26-CV-01538, 2026 WL 497290 (D. Minn. Feb. 23, 2026) ("Release is an available and appropriate remedy for detention that lacks a lawful predicate," including where the government fails to satisfy its burden that Section 1357(a)(2)'s probable cause-based exceptions to the warrant requirement apply); *Pedro Eduardo R. P. v Bondi*, No. 26-CV-01323, 2026 WL 473140 (D. Minn. Feb. 17, 2026) (recommending immediate release after the government failed to contest petitioner's Fourth and Fifth Amendment arguments), report and recommendation adopted, 2026 WL 478607 (Feb. 19, 2026); *Jose L.R.O. v. Bondi,* No. 5:26-CA-850, Doc. No. 11 at 25 (W.D. Tex. Mar. 23, 2026) ("[W]here the Court finds an ongoing detention unlawful, 'the typical remedy for such detention is, of course, release.'" (quoting Munaf, 553 U.S. at 693)). As a sister court in the Western District of Texas recently explained "bond hearings are no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Jose L.R.O.*, No. 5:26-CA-850, Doc. No. 11 at 26.

103. There is no valid arrest warrant in Petitioner's case, making his continued detention unlawful.

104. In terms of constitutionally sufficient procedural due process safeguards, an impartial decisionmaker is essential. *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) (stressing importance of decisionmaker's conclusion being grounded in the evidence presented and accompanied by a statement indicating the reasons for the decision and the evidence relied upon). Current circumstances surrounding immigration bond hearings "raise substantial concerns as to whether any non-citizen can receive the impartial hearing that due process requires." *Haiguang Z. v. Rokosky,* No. 26-CV-01689, 2026 WL 800203, at *3,7 (D.N.J. Mar. 23, 2026) (questioning "whether the constitutional guarantee of an impartial decisionmaker is being honored in any case brought before an IJ [immigration judge]" today after hundreds of IJs were terminated and the Government seeks to fill vacancies created by those firings by openly advertising for "deportation judge" roles).

105. Moreover, courts have scrutinized the burden of proof applied in immigration bond hearings. If the Government permits a bond hearing at all, it places the burden of proof on detainees. *E.g., Matter of Adeniji*, 22 I&N Dec. 1102 (B.I.A. 1999); *Matter of R-A-V-P-*, 27 I&N Dec. 803 (BIA 2020). That does not provide constitutional due process and is a structural error that constitutes *per se* prejudice. The Supreme Court has struck down civil detention schemes that placed the burden on the detainee to prove non-dangerousness but has upheld civil detention processes where the government bore the burden of proof by clear and convincing evidence.

Zadvydas, 533 U.S. at 691 (*citing Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) and *United States v. Salerno*, 481 U.S. 739, 747,750-52 (1987)); *see also Hernandez-Lara v. Lyons*, 10 F.4th 19, 40 (1st Cir. 2021) (under the second *Mathews* factor, the Government carries the burden of proof). Thus, immediate release is the appropriate remedy where, as here, "a new [bond] hearing would either be unnecessary, futile, or an inadequate remedy", and "would effectively allow the Government to transform an unlawful detention into a lawful one through *post-hoc* justifications." *Haiguang Z.*, 2026 WL 800203, at *10-11.

106. Upon information at belief, the immigration court system is compromised and cannot provide Petitioner a fair and impartial tribunal, with respect to post-habeas bond proceedings under § 1226(a).

107. Petitioner seeks immediate release because of his unlawful arrest and detention.

CAUSES OF ACTION

COUNT I: UNLAWFUL DETENTION IN VIOLATION OF THE INA AND THE STATUTORY REQUIREMENTS GOVERNING IMMIGRATION ARRESTS 8 U.S.C. §§ 1226(a) & 1357(a); 8 C.F.R. §§ 236.1, 287.3

108. Petitioner incorporates by reference all preceding paragraphs as though fully set forth herein.

109. Congress authorized Respondents to arrest and detain noncitizens within the interior of the United States only in the manner prescribed by the Immigration and Nationality Act.

110. Under 8 U.S.C. § 1226(a), Respondents may detain a noncitizen pending removal proceedings after lawfully invoking the detention authority Congress conferred.

Congress separately prescribed the circumstances under which immigration officers may effectuate an arrest through 8 U.S.C. § 1357(a), authorizing either an arrest pursuant to an administrative warrant or, absent a warrant, a warrantless arrest only where the statutory requirements of § 1357(a)(2) are satisfied.

111. Respondents arrested Petitioner without an administrative warrant or the warrant they had was invalid as not having been issued with or after the notice to appear, and as not having been issued or served by the appropriate officer.

112. Respondents have identified no individualized facts establishing that Petitioner was likely to escape before an administrative warrant could be obtained, as required by 8 U.S.C. § 1357(a)(2).

113. Because Respondents failed to satisfy the statutory conditions Congress imposed before exercising detention authority under §§ 1226(a) and 1357(a), Respondents exceeded the authority delegated by Congress and Petitioner's continued detention is unauthorized by the Immigration and Nationality Act and thus unlawful under 28 U.S.C. § 2241. *See Jennings*, 583 U.S. at 293–99; *Hamdi*, 542 U.S. at 517; *Ramirez Ovando*, 2025 WL 3293467, at *6–8.

114. Respondents likewise failed to comply with the mandatory procedures governing warrantless immigration arrests, including those set forth in 8 C.F.R. §§ 236.1 and 287.3.

115. Respondents therefore exceeded the authority Congress delegated under 8 U.S.C. § 1357(a) and acted contrary to the Immigration and Nationality Act and its implementing regulations. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 517 (2004)

(recognizing that executive detention must rest on congressional authorization); *Ramirez Ovando v. Noem*, No. 1:25-cv-03183-RBJ, 2025 WL 3293467, at *6–8 (D. Colo. Nov. 25, 2025) (holding that § 1357(a)(2) requires individualized facts supporting both removability and likelihood of escape before a warrantless immigration arrest); *see also United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954) (requiring agencies to follow their own regulations).

116. Accordingly, Respondents exercised arrest authority beyond that delegated by Congress and placed Petitioner into civil immigration detention without first satisfying the statutory conditions Congress required.

117. Petitioner is entitled to a writ of habeas corpus directing Respondents to immediately release him from custody.

COUNT II: VIOLATION OF THE FIFTH AMENDMENT DETENTION OF A DEFERRED ACTION RECIPIENT WITHOUT LEGITIMATE PURPOSE OR INDIVIDUALIZED JUSTIFICATION

118. Petitioner re-alleges and incorporates by reference each preceding paragraph as though fully set forth herein.

119. The Due Process Clause of the Fifth Amendment applies to all persons within the United States, including noncitizens, whether their presence is lawful, unlawful, temporary, or permanent. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

120. Freedom from physical detention is the most elemental of the liberty interests the Clause protects. *Zadvydas*, 533 U.S. at 690; *Hamdi*, 542 U.S. at 529.

121. Petitioner holds a liberty interest that arises from Respondents' own affirmative grant. Respondents approved Petitioner for deferred action under DACA in or around 2015, renewed that grant repeatedly, and most recently extended it through April 23, 2027. Respondents' regulations provide that a DACA recipient is considered lawfully present during the period of deferred action. 8 C.F.R. § 236.21(c)(3).

122. A core benefit of that grant is the ability to live and work in the United States without fear of arrest. Courts have accordingly held that a grant of deferred action confers a liberty interest protected by the Due Process Clause. *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *10 (W.D. Tex. Oct. 2, 2025); *Morales Martinez v. Warden*, No. 8:26-CV-319, 2026 WL 2056542, at *1 (D. Neb. July 16, 2026) (collecting cases).

123. That conclusion follows from the ordinary rule that a person released to the community by the government's own decision may not be returned to custody without process. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Young v. Harper*, 520 U.S. 143, 147–49 (1997).

124. Petitioner spent twenty-one years at liberty in the United States, including approximately eleven years at liberty with Respondents' express permission under DACA. He worked, paid taxes, maintained employment authorization, and remained in regular contact with USCIS throughout.

125. Whether Petitioner's detention comports with procedural due process is assessed under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Each of the three factors favors Petitioner.

126. **Private interest.** Petitioner's interest in his physical liberty is at its maximum. He has been separated from his family and removed from his employment of five years. *Hamdi*, 542 U.S. at 529.

127. **Risk of erroneous deprivation.** Respondents made no individualized determination before taking Petitioner into custody. They have identified no change in his circumstances since his most recent DACA renewal that would bear on flight risk or dangerousness.

128. The custody hearing Petitioner received did not cure that defect. The Immigration Judge did not address Petitioner's active deferred action, the lawfulness of his arrest, or the statutory authority through which Respondents obtained custody. The Immigration Judge also placed the burden of proof on Petitioner rather than on Respondents. A hearing that does not reach the questions presented here provides no meaningful check on the risk of error.

129. An adequate alternative was available and remains available. Respondents' own regulations set out a procedure for terminating a grant of deferred action, under which Petitioner would receive notice, an opportunity to respond, and continued liberty pending the outcome. 8 C.F.R. § 236.23(d)(1). Following that procedure would eliminate the risk of erroneous deprivation entirely.

130. **Government interest.** Respondents have no legitimate interest in Petitioner's detention. Civil detention must bear a reasonable relation to the purpose for which the individual was committed. *Zadvydas*, 533 U.S. at 690.

131. The interest in securing a noncitizen's appearance is weak or nonexistent where removal seems a remote possibility at best. *Zadvydas*, 533 U.S. at 690. Petitioner's removal is not merely remote. Respondents may not remove him at all while his grant of deferred action remains in effect. Where an individual is protected from removal through deferred action, his detention serves no valid purpose. *Santiago*, 2025 WL 2792588, at *10; *Sepulveda Ayala v. Bondi*, No. 25-cv-1063, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025); *Primero v. Mattivelo*, No. 1:25-CV-11442-IT, 2025 WL 1899115, at *5 (D. Mass. July 9, 2025).

132. Nor is there any interest in detaining Petitioner to protect the community. Detention on that basis is permissible only as to specially dangerous individuals and subject to strong procedural protections. *Zadvydas*, 533 U.S. at 690–91. To obtain and renew DACA, Petitioner submitted biographical and biometric information and cleared background and security checks on each occasion. 87 Fed. Reg. 53,152, 53,158–61 (Aug. 30, 2022); 8 C.F.R. §§ 236.21–236.23. Respondents renewed his grant each time. Before the misdemeanor conviction that postdates his arrest, Petitioner's record consisted of petty misdemeanor traffic offenses.

133. Because Respondents' detention of Petitioner serves no purpose the Constitution permits, and because it was imposed without individualized justification and

without adequate procedural safeguards, that detention violates the Due Process Clause of the Fifth Amendment.

134. The appropriate remedy is release. A further custody hearing would not address the defect, because there is no legitimate governmental interest for an adjudicator to weigh. *Munaf v. Geren*, 553 U.S. 674, 693 (2008); *Santiago*, 2025 WL 2792588, at *13–14; *Sepulveda Ayala*, 2025 WL 2209708, at *4–5.

135. Petitioner is entitled to a writ of habeas corpus ordering his immediate release.

COUNT III: VIOLATION OF THE FIFTH AMENDMENT
UNLAWFUL DEPRIVATION OF LIBERTY WITHOUT DUE PROCESS

136. Petitioner re-alleges and incorporates by reference each preceding paragraph as though fully set forth herein.

137. The Fifth Amendment prohibits the federal government from depriving any person of liberty without due process of law. Civil immigration detention must bear a reasonable relationship to its legitimate purpose and remain authorized by law. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

138. Freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause. *Hamdi*, 542 U.S. at 529; *Parham v. J.R.*, 442 U.S. 584, 600 (1979).

139. Congress established the circumstances under which immigration officers may arrest and detain noncitizens pending removal proceedings. Respondents possess only the authority Congress conferred, and only in the manner Congress prescribed.

See Arizona v. United States, 567 U.S. 387, 408 (2012); *Jennings*, 583 U.S. at 293–99; *Nielsen v. Preap*, 586 U.S. 392, 401–03 (2019); *Hamdi*, 542 U.S. at 517.

140. Respondents continue to detain Petitioner despite failing to satisfy the statutory prerequisites Congress imposed before exercising that detention authority. As a result, Petitioner's continued detention exceeds the authority granted by Congress and is not reasonably related to any lawful governmental purpose. Executive detention that exceeds the authority granted by Congress violates due process. *See Hamdi*, 542 U.S. at 517–18 (executive detention requires congressional authorization).

141. Petitioner has suffered and continues to suffer the loss of his physical liberty, separation from his family, and the inability to live and work in the community while Respondents continue to detain him without lawful authority.

142. Respondents' continued detention of Petitioner therefore violates the Due Process Clause of the Fifth Amendment.

143. Petitioner is entitled to a writ of habeas corpus ordering his immediate release. In the alternative, if this Court concludes Respondents possess statutory authority to continue Petitioner's detention, Petitioner requests such additional relief as is necessary to remedy the constitutional violation.

EXPEDITED CONSIDERATION

144. Petitioner incorporates by reference all preceding paragraphs as though fully set forth herein.

145. This action is brought pursuant to 28 U.S.C. Chapter 153. Accordingly, Petitioner respectfully requests expedited consideration pursuant to 28 U.S.C. § 1657(a), which requires federal courts to expedite actions brought under Chapter 153.

146. Petitioner remains in Respondents' physical custody and continues to suffer the ongoing deprivation of his liberty. Each additional day of allegedly unlawful detention constitutes irreparable injury that cannot be adequately remedied through a later award of damages.

147. Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, applicable to this proceeding through Rule 1(b), Petitioner respectfully requests that the Court promptly review the Petition and issue an Order directing Respondents to file a response showing the legal authority for Petitioner's continued detention.

148. Petitioner further requests that the Court issue an Order to Show Cause directing Respondents to file their response within three (3) days of the Court's Order, including the statutory authority and evidence upon which Respondents contend Petitioner's present detention is authorized.

149. Should this matter be referred to a United States Magistrate Judge, Petitioner respectfully requests that the Court shorten the time for filing objections to any Report and Recommendation pursuant to 28 U.S.C. § 1657(a), given the continuing deprivation of Petitioner's liberty.

150. Petitioner further requests that, pending disposition of this Petition, Respondents be prohibited from transferring Petitioner outside the geographic jurisdiction of this Court without prior authorization of this Court and be required to provide at least

seventy-two (72) hours' written notice before any transfer or removal from the State of Minnesota.

151. Because the legality of Petitioner's present detention is the sole issue before this Court, expedited consideration will serve the interests of justice and judicial economy.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, Gustavo Isai Flores Amilcar, respectfully requests that this Court:

152. Assume jurisdiction over this matter.

153. Expedite consideration of this Petition pursuant to 28 U.S.C. § 1657 because this action is brought under 28 U.S.C. Chapter 153 of Title 28.

a. Issue an Order to Show Cause directing Respondents to state the legal and factual basis for Petitioner's continued detention within three (3) days of the Court's Order.

b. If this matter is referred to a magistrate judge, shorten the time for filing objections to any Report and Recommendation from fourteen (14) days to three (3) days pursuant to 28 U.S.C. § 1657.

c. Direct the Clerk of Court to promptly serve a copy of the Petition and any subsequent Order upon Respondents pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

154. Pending resolution of this Petition, issue a preliminary order prohibiting Respondents from transferring Petitioner outside the geographic jurisdiction of this Court without prior authorization from this Court.

155. Pending resolution of this Petition, order Respondents to provide Petitioner's counsel with no less than seventy-two (72) hours' advance written notice before transferring or removing Petitioner.

156. Issue a writ of habeas corpus ordering Petitioner's immediate release from Respondents' custody.

157. Declare that Respondents may not rely upon post-arrest proceedings or post hoc justifications to establish statutory detention authority that did not exist when Petitioner was taken into custody.

158. Declare that Respondents lacked statutory authority to place Petitioner into civil immigration detention because they failed to satisfy the requirements of 8 U.S.C. §§ 1226(a) and 1357(a).

159. Declare that Respondents failed to comply with the statutory and regulatory requirements governing immigration arrests, including 8 U.S.C. § 1357 and 8 C.F.R. §§ 236.1 and 287.3.

160. Declare that Petitioner's continued detention violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

161. Award Petitioner reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A), if applicable.

162. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

RATKOWSKI LAW PLLC

Dated: September 4, 2026

/s/ Joseph T. Heegaard

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Verification by Petitioner Pursuant to 28 U.S.C. § 2242

I am submitting this verification because I am the Petitioner. I hereby verify under 28 U.S.C. § 1746 and 28 U.S.C. § 2242 that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding my detention status, are true and correct to the best of my knowledge and belief.

/s/ Gustavo Isai Flores Amilcar
Gustavo Isai Flores Amilcar

Date: September 4, 2026