UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Warsame Mahamud Mohamed,

Petitioner,

v.

Todd Blanche, U.S. Attorney General,

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.

Respondents.

0:26-cv-4265

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Agency #: [redacted]

INTRODUCTION

1. Respondents are detaining Petitioner, Mr. Warsame Mahamud Mohamed ("Petitioner") in violation of law.

2. Respondents unlawfully detained Petitioner without a warrant or probable cause, 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 St. Paul ICE Field Office in Fort Snelling, Minnesota.

PARTIES

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

12. Petitioner Mohamed is currently in Immigration and Customs Enforcement ("ICE") custody at the St. Paul ICE Field Office in Fort Snelling, 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 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.

15. 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.

16. 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.

EXHAUSTION

17. 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 Yahure 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).

18. 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)).

19. 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).

20. 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).

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

22. 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).

23. Petitioner entered the United States without inspection, was released on interim 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.

24. As such, exhaustion would be futile here.

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

25. Petitioner Mohamed is a native and citizen of Mexico.

26. Petitioner entered the United States without inspection near Indio, California.

27. U.S. Customs and Border Protection ("CBP") took Petitioner into custody on or about January 19, 2022. *See* Exh. A.

28. Petitioner notified the detaining border agent that he was seeking protection in the United States. *See* Exh. B.

29. An unknown officer drafted Form I-860 Notice and Order of Expedited Removal on January 21, 2022. *See* Exh. C.

30. The Order section of the Form I-860 was never signed. *See id.*

31. The certificate of service on the bottom of Form I-860 was not completed. *See id.*

32. CBP never served Petitioner with Form I-860.

33. An accompanying form I-296 was also prepared. Form I-296 is "Notice to Alien Ordered Removed / Departure Verification." *See* Exh. D.

34. It contains Petitioner's photograph and signature. A Border Patrol Agent signed that he or she served the form. *See id.*

35. For the credible fear interview process to commence, ICE or CPB must issue the noncitizen a Form M-444, Information About Credible Fear Interview, and that "[t]he Asylum Division cannot proceed with a credible fear interview of an alien unless the credible fear referral packet includes a completed Form M-444." U.S. Immigration and Customs Enforcement, Credible Fear Procedures Manual, at Section III.C., https://www.uscis.gov/sites/default/files/document/guides/CredibleFearProceduresManual.pdf.

36. There is no indication that Respondents issued Petitioner a Form M-444. Petitioner signed an acknowledgement of receipt, but Petitioner did not receive the actual document.

37. There is no indicating Respondents forwarded a M-444 packet to U.S. Citizenship and Immigration Services ("USCIS").

38. Petitioner was not scheduled for an expedited removal credible fear interview as required under 8 U.S.C. § 1225(b)(1)(A)(ii) and 8 C.F.R. § 235.3(b)(4).

39. On January 31, 2022, CBP elected to release Petitioner on "parole with reporting requirements." *See* Exh. E.

40. The continuation page directs Petitioner to report any address changes to the immigration judge. This is indicative of a person not in expedited removal proceedings. *See id.*

41. Petitioner was released on his own recognizance and through interim parole. Respondents issued him a Form I-286. It states, "Pursuant to the authority contained in section 236 of the Immigration & Nationality Act and part 236 of title 8, Code of Federal Regulations, you will be released...." *See* Exh. F.

42. Petitioner applied for asylum by filing an affirmative asylum application with USCIS on September 12, 2022.

43. Petitioner filed his asylum application within one year of arriving in the United States. *See* Exh. G.

44. Petitioner attended all requested biometric appointments through USCIS' Application Support Center.

45. Petitioner applied for and received an employment authorization document after his application for asylum was pending for more than 180 days. *See* Exh. H.

46. The subsequent conduct by Respondents all supports a finding that Petitioner was not in expedited removal proceedings when he applied for asylum.

47. USCIS did not schedule an interview for Petitioner.

48. Respondents, through its USCIS Asylum Vetting Center, sent Petitioner a notice dated June 12, 2025. *See* Exh. I.

49. Respondents notified Petitioner that Respondents dismissed his pending application for asylum because "you were apprehended by DHS officials, placed in expedited removal proceedings, and issued a Form I-860, Notice and Order of Expedited Removal." *See id.*

50. There is no indication that an actual USCIS official reviewed Petitioner's administrative file before sending its dismissal notice.

51. The administrative record contradicts Respondents' notice.

52. On July 14, 2026, Petitioner filed a complaint against Respondents in the District of Minnesota, challenging the dismissal of his affirmative asylum application. *See Mohamed v. Mullin et al*, No. 0:26-cv-03296-JWB-ECW, ECF No. 1 (D. Minn. July 14, 2026).

53. On August 12, 2026, Petitioner filed the summons returned executed as to USA in that case. *See Mohamed v. Mullin et al*, No. 0:26-cv-03296-JWB-ECW, ECF No. 5 (D. Minn. Aug. 12, 2026).

54. The case remains pending in this District, and the defendants have not yet filed their answer.

55. On October 2, 2026, Petitioner appeared at a scheduled ICE check-in at the St. Paul ICE Field Office in Fort Snelling, Minnesota.

56. Respondents took Petitioner into custody at his scheduled ICE check-in.

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

58. Petitioner does not have removal proceedings pending before the immigration court. *See* Exh. J.

59. At the moment of Petitioner's seizure, Petitioner was living at a stable home address and had been in the United States for almost five years. Petitioner has built ties to his community. Petitioner appeared at his scheduled ICE check-in. 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.

60. Respondents' action in detaining Petitioner appears to be in retaliation to Petitioner's pending litigation against Respondents in this District.

61. Petitioner is presently held in ICE custody in the St. Paul ICE Field Office in Fort Snelling, Minnesota.

LEGAL FRAMEWORK

62. 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).

63. A Form I-200 warrant empowers ICE to arrest noncitizens only *during* removal proceedings. *See Ferrer Flores v. Blanche at al.*, No. 0:26-cv-02540-PJS-DTS, ECF No. 8, at *4 (D. Minn. June 2, 2026) (citing 8 C.F.R. § 236.1(b)(1); 8 U.S.C. § 1226(a)); *Inti C.-L. v. Blanche et al.*, No. 0:26-cv-2777-PJS-SGE, ECF No. 10, at *2–*3 (D. Minn. June 9, 2026).

64. A warrant issued *before* removal proceedings have begun is invalid because it "purports to exercise authority that does not yet exist." *Ferrer Flores v. Blanche at al.*, No. 0:26-cv-02540-PJS-DTS, ECF No. 8, at *4 (D. Minn. June 2, 2026) (citing *Gonzalez Ochoa v. McCleary*, 816 F. Supp. 3d 921, 927 (S.D. Iowa 2026) ("The temporal aspects of this language are clear: an arrest warrant may be issued '[a]t the time of issuance' of the Notice to Appear or 'thereafter.' Not 'before.'") (quoting 8 C.F.R. § 236.1(b)(1)).

65. In order for a warrant to be valid, it "must be issued '[a]t the time of issuance of the notice to appear, or at any time thereafter.'" *Id.* (citing 8 C.F.R. § 236.1(b)(1); *Martha C.G.P. v. Blanche*, No. 26-CV-2308 (DWF/JFD), 2026 WL 1329577, at *3 (D. Minn. May 13, 2026) ("Respondents may arrest a noncitizen using a Form I-200 only if the Form I-200 issues at the same time or after the Department of Homeland Security issues an NTA."); *Jouquin C.S. v. Bondi*, No. 26-CV-1438 (DWF/DJF), 2026 WL 483256, at *2 (D. Minn. Feb. 20, 2026) (same).

66. 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).

67. 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).

68. 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).

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

70. "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)).

71. 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.").

72. Courts have interpreted the phrase "likely to escape before a warrant can be obtained for his arrest" to mean "likely to evade detention by immigration officers." *See Walther Ademir A.S. v. Blanche*, No. 26-cv-2804 (LMP/SGE), 2026 WL 1734906, at *3 (D. Minn. June 16, 2026) (collecting cases).

73. "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.'" *Id.* at *4 (quoting *Escobar Molina v. U.S. Dep't of Homeland Sec.*, 811 F. Supp. 3d 1, 31, (D.D.C. 2025) (collecting cases involving noncitizens with jobs, property, and families in the United States)).

74. 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.

75. 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).

76. 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.

77. 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)).

78. "'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)).

79. "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).

80. 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.

81. "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)).

82. 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). The first factor favors Petitioner.

83. 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). The second factor favors Petitioner.

84. 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.

85. Courts in this district have sided with Petitioner on this issue post-*Avila*. *See, e.g.*, *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.).

86. 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.).

87. In this district, Judge Brasel ordered that a petitioner detained under materially similar circumstances had to be immediately released. *See Ismahan N. v, Bondi, et al.*, 26-cv-01418-NEB-DTS (Feb. 20, 2026). While this decision predated *Avila*, it did not rely on the core distinction between Sections 1225 and 1226 that underpinned that case.

88. Before that, Judge Susan Richard Nelson held in a materially similar case that "all three *Mathews* factors support Petitioner's claim that his due process rights are currently being violated, absent the opportunity for a bond hearing." *Selvin Adonay E.M. v. Noem*, 817 F. Supp. 3d 720, 735 (D. Minn. 2025).

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

REMEDY

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

91. 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.

92. 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); *Ferrer Flores v. Blanche at al.*, No. 0:26-cv-02540-PJS-DTS, ECF No. 8, at *6 (D. Minn. June 2, 2026); *Inti C.-L. v. Blanche et al.*, No. 0:26-cv-2777-PJS-SGE, ECF No. 10, at *5 (D. Minn. June 9, 2026); *see also Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the "typical remedy" for unlawful executive detention).

93. 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

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

95. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner's warrantless arrest violates 8 U.S.C. § 1357(a)(2) such that Respondents must release Petitioner.

96. 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

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

98. 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.

99. 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).

100. 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

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

102. 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).

103. 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.*

104. 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).

105. 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).

106. 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)).

107. 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).

108. At the moment of Petitioner's seizure, Petitioner was living at a stable home address and had been in the United States for almost five years. Petitioner has built ties to his community. Petitioner appeared at his scheduled ICE check-in. 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.

109. 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, yet his

detention continued well beyond 48 hours, rendering it presumptively unconstitutional.

110. 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).

111. 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

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

113. Regulations provide that Respondents may only issue a Form I-200 warrant of arrest *during* removal proceedings, not before. *See* 8 C.F.R. § 236.1(b)(1).

114. A Form I-200 warrant issued before removal proceedings is invalid. *See id.*

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

116. 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).

117. 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).

118. Respondents have not complied with these regulations.

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

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

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

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

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

COUNT FIVE

Violation of the APA – Arbitrary and Capricious

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

125. 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).

126. 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)).

127. 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).

128. 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.

129. Respondents' action is therefore arbitrary and capricious.

130. 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. Declare that Petitioner's warrantless arrest violates 8 U.S.C. § 1357(a)(2).

7. 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.

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

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

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

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

DATED: October 2, 2026

Respectfully submitted,

/s/ David Wilson
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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 and Petitioner's family and reviewed relevant documents. The attached exhibits were secured through FOIA requests in relation to Petitioner's pending litigation in this District and were filed as exhibits in that litigation. 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/ David Wilson Date: October 2, 2026