IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Raul Olmedo ZHICAY QUITO,

Petitioner,

v.

Todd BLANCHE, in his official capacity as Acting Attorney General of the United States;

Markwayne MULLIN, in his official capacity as Secretary of the Department of Homeland Security;

David J. VENTURELLA, in his official capacity as Acting Director of United States Immigration and Customs Enforcement;

David EASTERWOOD, in his official capacity as Acting Director, St. Paul Field Office, U.S. Immigration and Customs Enforcement;

Ryan SHEA, in his official capacity as Sheriff of Freeborn County.

Respondents.

Case No.: 0:26-cv-4276

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. This case seeks the immediate release of Raul Zhicay Quito from unlawful immigration detention by the Department of Homeland Security's ("DHS") U.S. Immigration and Customs Enforcement ("ICE"). ICE has been detaining Petitioner since at least October 1, 2026, at Freeborn County Jail. *See* Ex. A.

2. In light of the information and belief that ICE has rapidly moved individuals in its custody out of the District of Minnesota, this petition also requests that the Court's Order to Show Cause ("OSC") immediately enjoin Respondents from moving Petitioner

outside of the District of Minnesota. Ordering that relief in the OSC is now a nearly universal practice in this District.

3. Petitioner is a citizen of Ecuador who has resided in the United States for more than 26 years. He entered without authorization in September 2000, and has never left.

4. In October 2017, DHS detained and commenced removal proceedings against Petitioner. *See* Ex. B.

5. In October 2017, upon information and belief, DHS released Petitioner on a $12,000 bond.

6. In the following years, Petitioner continued building a life for himself and attended all immigration hearings.

7. Petitioner has no criminal history, apart from a few, minor traffic tickets, nearly all of which are petty misdemeanors and not crimes in Minnesota.

8. Petitioner's only "crimes" involve a 2008 charge and subsequent misdemeanor conviction for "No valid drivers license" and "Fail to produce proof of insurance - whether or not the owner" in violation of Minn. Stats. §§ 171.02(1) and 169.791(2) and a 2012 charge and subsequent misdemeanor conviction for "Driving after suspension" and "Traffic Regulation-Uninsured Vehicle-Driver Violation" in violation of Minn. Stats. §§ 171.24.1 and 169.797.3. Both of these incidents occurred before Petitioner was detained by ICE and released on bond in 2017.

9. Petitioner filed Form EOIR-42B and applied for Cancellation of Removal for Certain Non-Permanent Residents ("Cancellation of Removal") before the Immigration

Court, as he has lived in the United States for more than 10 years, is a person of good moral character, and has qualifying relatives who will suffer extreme hardship should he be removed.

10. On July 14, 2022, Petitioner attended his final hearing at Fort Snelling, Minnesota on his Cancellation of Removal application, at which time the Immigration Judge stated that she was "inclined to grant," his case.

11. Immigration Judges are typically required to reserve their official decisions on cases involving non-detained Cancellation of Removal for Certain Non-Permanent Residents, until a visa number becomes available.

12. As a result, Petitioner has been waiting for a visa number to become available, for the Immigration Court to officially issue the decision granting his case, and thus, granting him lawful permanent residency.

13. Petitioner does not have any final order of removal.

14. On October 1, 2026, around 7:30 AM when Petitioner was on his way to pick up his son, he was followed by "ICE Agents."

15. Petitioner stopped his car and then men asked him to show identification. Petitioner handed them his valid Minnesota Driver's License, and was then told he was under arrest for "not being a citizen of the United States."

16. Petitioner was brought by the men to a Home Depot parking lot in Minneapolis, where Petitioner told another man that he already completed his immigration hearing, and was simply waiting for the judge to issue the final decision.

17. Petitioner was transported to the Whipple Federal building.

18. At the Federal Whipple Building, officers continued his detention and put him through "processing."

19. To date, Petitioner was never shown any I-200 administrative warrant for arrest.

20. To date, Petitioner was never read any I-200 administrative warrant for arrest.

21. To date, Petitioner was never given any I-200 administrative warrant for arrest.

22. To date, Petitioner was never served any I-200 administrative warrant for arrest.

23. On October 2, 2026, Petitioner's counsel requested a copy of any I-200 related to Petitioner from the Office of Principal Legal Advisor.

24. To date, Petitioner's counsel has not received any response.

25. An eyewitness who watched the entire arrest of Petitioner when he was arrested and detained by ICE (before being transported to a Home Depot parking lot, then the Whipple Federal building, then Freeborn County Jail) confirms at no point did she see any "ICE agents" show, read, or hand Petitioner a paper of any kind.

26. Petitioner's detention is unlawful for at least five reasons.

27. *First*, the government has no legitimate interest in detaining Petitioner when he is neither a flight risk nor a danger—the only two constitutionally permissible reasons for immigration detention. Respondents already determined that Petitioner does not pose such a risk when, in October 2017, the Department of Homeland

Security appropriately granted him bond, without even requiring him to ask an immigration judge. Because Petitioner's subsequent conduct in no way invalidated his prior determination, Respondents have no legitimate basis for re-detention. Accordingly, his present detention violates his substantive due process rights, requiring his immediate release.

28. *Second*, due process required that the government show, in a pre-deprivation hearing before a neutral adjudicator, materially changed circumstances before re-detaining Petitioner. When the government released Petitioner from its custody in October 2017, it determined that he was neither a flight risk nor a danger to the community. Since then, nothing has changed to undermine that determination. On the contrary, support for that determination has only strengthened – he has attended all of his immigration hearings and has not been convicted of any crimes following his release. Petitioner's detention without any pre-deprivation process violates his procedural due process rights and this alone warrants his immediate release.

29. *Third*, Petitioner's warrantless arrest violates his Fourth Amendment rights, as well as statute and regulation, similarly mandating his release. *See*, *e.g.*, *Wilson L.L. v. Blanche*, No. 26-2475 (JRT/EMB), 2026 WL 1283186, at *1 (D. Minn. May 11, 2026) ("Because the Court concludes that Respondents did not lawfully effectuate a warrantless arrest as required under 8 U.S.C. § 1357, the Court will grant the petition and order Petitioner's immediate release.").

30. *Fourth*, Respondent's decision to re-detain Petitioner was arbitrary, capricious, an abuse of discretion, and contrary to constitutional right. As such, Respondents also violated the Administrative Procedure Act ("APA").

31. *Fifth*, Respondents' re-detention of Petitioner revoked a prior custody determination in violation of the APA and in violation of the *Accardi* doctrine's requirement that agencies comply with their own regulations.

32. For these reasons and as further explained below, Petitioner respectfully asks this Court to declare that his detention is unlawful and order his immediate release. *See Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("Habeas is at its core a remedy for unlawful executive detention," for which "[t]he typical remedy is, of course, release.").

JURISDICTION & VENUE

33. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 (habeas corpus), and art. I, § 9, cl. 2 of the U.S. Constitution ("Suspension Clause").

34. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, the Suspension Clause, and the Court's inherent equitable powers.

35. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) ("[T]he primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases."). Because Petitioner seeks to

challenge his custody as a violation of the U.S. Constitution, laws, or treaties of the United States, jurisdiction is proper in this Court.

36. Venue lies in this District because it is the judicial district in which Petitioner is currently detained. Venue is also proper in this Court under 28 U.S.C. § 1391(b)(2), (e)(1)(A)-(B) because Respondents are employees, officers, and agencies of the United States, because a defendant resides in this District, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

37. Petitioner, Raul Olmedo Zhicay-Quito, has lived in the United States for more than 26 years. Prior to his detention on or about October 1, 2026, he was residing in Minneapolis, Minnesota. Petitioner is currently detained at Freeborn County Jail. Petitioner is in the direct control of Respondents.

38. Respondent Todd Blanche is sued in his official capacity as the Acting U.S. Attorney General. As Acting Attorney General, he has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

39. Respondent Markwayne Mullin is sued in his official capacity as Secretary of Homeland Security. As head of the U.S. Department of Homeland Security, the federal agency tasked with enforcing immigration laws, Secretary Mullin is Petitioner's ultimate legal custodian.

40. Respondent David J. Venturella is sued in his official capacity as Acting Director of ICE. As ICE's Acting Director, Respondent Venturella is a legal custodian of Petitioner.

41. Respondent David Easterwood is sued in his official capacity as Field Office Director of the St. Paul Field Office, Enforcement and Removal Operations, ICE. In that capacity, Field Office Director Easterwood has supervisory authority over the ICE agents responsible for detaining Petitioner. In his official capacity, Respondent Easterwood is a legal custodian of Petitioner.

42. Respondent Ryan Shea is sued in his official capacity as Sheriff of Freeborn County. As Sheriff of Freeborn County, Respondent Shea oversees Freeborn County Jail, the facility where Petitioner is presently detained and is therefore one of his legal custodians.

REQUIREMENTS OF 28 U.S.C. § 2243

43. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

44. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (citation omitted). "The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the

trial courts do not act within a reasonable time." *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978).

45. Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

EXHAUSTION OF LEGAL REMEDIES

46. Detained immigrants petitioning under 28 U.S.C. § 2241 *et seq.* face no statutory exhaustion requirements. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025). Nor is a judicially imposed prudential exhaustion requirement appropriate where, as here, time is of the essence, facts are largely undisputed, and the parties' disagreement is based on a legal conclusion. *Id.* at 967–68; *see also Giron Reyes v. Lyons*, 801 F. Supp. 3d 797, 803 (N.D. Iowa 2025). Further administrative exhaustion is unnecessary in this case as it would be futile. *See, e.g.*, *Eliseo A.A. v. Olson*, No. 25-3381 (JWB/DJF), 2025 WL 2886729, at *7 (D. Minn. Oct. 8, 2025).

47. Additionally, the Immigration Court does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies related to that claim. *See, e.g., Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (BIA 2020); *Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992). *Cf. Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) ("[E]exhaustion would be a futile exercise because the agency does not have jurisdiction to review [the] claim.").

LEGAL FRAMEWORK

I. Detention Authority Under the Immigration and Nationality Act.

48. The INA prescribes essentially three forms of detention for noncitizens in removal proceedings.

49. *First*, 8 U.S.C. § 1226 authorizes the detention of noncitizens in removal proceedings under 8 U.S.C. § 1229a who are "already in the country." *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Section 1226(a) "sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of [a noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Id.* at 288 (quoting § 1226(a)). "To detain a noncitizen under § 1226(a), a warrant is required." *Martha C.G.P. v. Blanche*, No. 26-cv-2308, 2026 WL 1329557, at *3 (D. Minn. May 13, 2026) (citing *Ahmed M. v. Bondi*, No. 25-cv-4711, 2026 WL 25627, at *3) (D. Minn. Jan. 5, 2026) (collecting cases)). It thus follows that, absent a warrant, a noncitizen may not be arrested and detained pursuant to this section. *Id.*

50. Noncitizens properly detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a custody-redetermination hearing before an IJ—also known as a bond hearing—unless they have been arrested, charged with, or convicted of certain crimes that subject them to mandatory detention under § 1226(c). *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (providing that Immigration Judges may review custody determinations made by DHS), 1236.1(d) (providing the same).

51. *Second*, the INA provides for mandatory detention of noncitizens who are subject to expedited removal under 8 U.S.C. § 1225(b)(1), in addition to other arriving noncitizens who are deemed to be "seeking admission" to the United States under 8 U.S.C.

§ 1225(b)(2). *See Avila v. Bondi*, 170 F.4th 1128, 1135–36 (8th Cir. 2026) (holding that all applicants for admission are necessarily "seeking admission" and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)).

52. *Third*, the INA authorizes detention of noncitizens who have received a final order of removal. 8 U.S.C. § 1231(a).

53. While Respondents will likely maintain that this case concerns their detention authority under 8 U.S.C. § 1225(b)(2), because Respondents previously released Petitioner after granting him a bond, he was released under 8 U.S.C. § 1226(a)(2)(A).

54. Respondents' detention of Petitioner is unlawful under either detention authority – whether it be under 8 U.S.C. § 1226 or 8 U.S.C. § 1225(b)(2) – as they did not serve any I-200 warrant and Petitioner posed no threat of escaping or fleeing.

II. The Due Process Clause Imposes Substantive and Procedural Limits on Immigration Detention.

55. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *accord Trump v. J.G.G.*, 605 U.S. 670, 673 (2025); *see also Lopez v. Heinauer*, 332 F.3d 507, 512 (8th Cir. 2003) ("The Supreme Court has long recognized that deportable [noncitizens] are entitled to constitutional protections of due process." (citing *Yamataya v. Fisher*, 189 U.S. 89, 100–01 (1903)).

56. While the immigration laws afford the government discretion over its decision to arrest, detain and revoke prior release decisions, those decisions are nonetheless

constrained by the laws Congress has enacted and the requirements of the Constitution, including the Due Process Clause. *See generally, Zadvydas*, 533 U.S. at 69

57. Indeed, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. This fundamental due process protection applies to all noncitizens within the United States, including both deportable and inadmissible noncitizens. *See id.* at 693 (explaining procedural due process applies to all "persons" within the United States, including noncitizens, "whether their presence here is lawful, unlawful, temporary, or permanent"); *Plyler v. Doe*, 457 U.S. 202, 212 (1982).

58. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risk of danger to the community and prevent flight. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. Thus, to withstand constitutional scrutiny, the nature and duration of immigration detention must be reasonably related to these purposes. Absent adequate procedural protections, substantive due process requires a "special justification" that "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690; *accord, e.g.*, *Fernandez v. Lyons*, 2025 WL 2531539, at *4 (D. Neb. Sept. 3, 2025) (describing the standard for substantive due process violation).

59. Relatedly, even where detention is substantively justified, procedural due process protects noncitizens against deprivation of liberty without adequate notice and the opportunity to be heard. *A.A.R.P. v. Trump*, 605 U.S. 91, 95-96 (2025); *J.G.G.*, 604 U.S. at 673. Prior to detaining a noncitizen in civil immigration detention, even for a legitimate

purpose, the government must provide and follow sufficient procedural protections. *See Yrysbaev v. Arnott*, No. 6:26-cv-3047, 2026 WL 395897, at *3 (W.D. Mo. Feb. 12, 2026) ("In the immigration context, the Constitution requires the government to afford notice of any action against [a noncitizen] and requires the opportunity for the [noncitizen] to be heard. The opportunity to be heard must be meaningful, that is, an opportunity granted at a meaningful time and in a meaningful manner." (internal citations omitted)).

60. To evaluate whether civil immigration detention violates procedural due process, some courts apply the three-part balancing test in *Mathews v. Eldridge*, weighing (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." 424 U.S. 319, 335 (1976); *see, e.g.*, *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *2 (S.D. Iowa Apr. 17, 2026) (ordering outright release under due process clause—Mathews framework—for someone previously released on order of recognizance); *Aleksei v. Warden*, No. 5:26-CV-05030-RAL, 2026 WL 1133615, at *1 (D.S.D. Apr. 27, 2026) (ordering outright release on due process grounds—Mathews framework—for individual previously granted humanitarian parole).

61. Importantly, even noncitizens subject to "mandatory immigration detention" are nevertheless "entitled to due process of law under the Fifth Amendment." *Mark O. v. Blanche*, No. 26-cv-02448, Doc. 7 at 5 (D. Minn. May 18, 2026); *see also id.* at 7 (holding

that *Banyee*, *Demore*, and *Thuraissigiam* "are inapposite" to Petitioner's procedural due process claim); *Heriberto R.E. v. Blanche*, No. 26-cv-2227 (JWB/LIB), No. 12 at 6 (D. Minn. May 1, 2026) ("Due process does not turn on statutory classifications alone, such as treating a noncitizen as an applicant for admission. It depends on the nature of the deprivation and the circumstances in which it is imposed.").

62. Accordingly, several courts in the Eighth Circuit have granted post-*Avila* habeas petitions filed by unadmitted noncitizens challenging various forms of mandatory detention on procedural due process grounds. *See, e.g.*, *Manuel G. v. Blanche*, No. 26-CV-2385 (SRN/ECW), 2026 WL 1256358, at *3 (D. Minn. May 7, 2026) ("While *Avila* addressed a noncitizen's statutory rights, it did not address his due process rights."); *Heriberto R.E. v. Blanche*, No. 26-cv-2227 (JWB/LIB), No. 12 at 8 (D. Minn. May 1, 2026); *Axel J.M.C.*, 2026 WL 1171344, at *4; *Aleksei v. Warden*, No. 5:26-CV-05030-RAL, 2026 WL 1133615, at *1 (D.S.D. Apr. 27, 2026); *David J.C.P. v. Blanche*, No. 26-cv-2181 (DWF/ECW), 2026 WL 1102725, at *3 (D. Minn. Apr. 23, 2026); *Dharamnir Singh v. Mullin*, No. C26-00053-LTS-KEM, 2026 WL 1078710, at *1 (N.D. Iowa Apr. 20, 2026); *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *2 (S.D. Iowa Apr. 17, 2026); *Ermekov v. Mullin*, No. C26-41-LTS-KEM, 2026 WL 1046766, at *3 (N.D. Iowa Apr. 17, 2026); *Osman J.M.A. v. Blanche*, No. 26-cv-2123 (DWF/DJF), 2026 WL 1005056, at *3 (D. Minn. Apr. 14, 2026)).

III. Regardless of Initial Detention Authority, the Immigration and Nationality Act, Accompanying Regulations, and Due Process Clause Demand Pre-Deprivation Process Prior to Re-Detention.

63. Even if a noncitizen is subject to mandatory detention under § 1225(b)(2), Respondents cannot arbitrarily re-detain a noncitizen previously released from immigration detention absent pre-deprivation process.

64. The source of DHS's authority to release noncitizens from custody depends on which detention statute applies. Section 1222(c) is the most restrictive provision and authorizes release only when necessary under federal witness protection statutes. See 8 U.S.C. § 1226(c)(4). Section 1226(a) is broader in scope. Under § 1226(a), DHS can release noncitizens on bond, on their own recognizance (i.e., "conditional parole"), or on humanitarian parole. See 8 U.S.C. §§ 1226(a)(2)(A)-(B); 8 C.F.R. § 236.1(8)

65. Regardless of the statutory vehicle for release, a DHS officer may not release a noncitizen unless the individual does not pose a risk of flight or danger to the community. See 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8) (noncitizen must "demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding"); 8 C.F.R. § 212.5 (humanitarian parole available only when "the [noncitizens] present neither a security risk nor a risk of absconding"); 8 U.S.C. § 1226(c)(4) (permitting release of individual detained under § 1226(c) only when it is determined "that the [noncitizen] will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding"); see also Govea Perez v. South Texas ICE Processing Center, No. SA-26-CA-02187-XR, 2026 WL 1078577, at *2 (W.D. Tex. Apr. 17, 2026) ("Release from initial detention … can be granted only based on individualized findings that the noncitizen represents neither a flight risk nor a danger to the community.").

66. As a result, any "[r]elease" of a noncitizen "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions,* 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); *see also Mark O.*, No. 26-cv-02448, Doc. No. 7 at 15 ("[The fact remains that Petitioner was previously released, which 'in and of itself reflects a determination that the individual is neither a flight risk nor a danger to the community[.]'" (quoting *Orlando R.V.V.*, No. 26-cv-1903, Doc. No. 11 at 15 (D. Minn. Apr. 28, 2026); *Govea Perez*, 2026 WL 1078577, at *2 ("[E]very noncitizen who has been paroled or released into the interior of the country has been found by a government official to pose neither a security risk nor a flight risk."); *Alegria Palma*, No. 25-cv-1942 at *2, n.2 (noting that ICE respondents stated that "a determination that Petitioner was not a danger to the community or a flight risk … would be a consideration" prior to releasing him on his own recognizance).

67. Statutory and regulatory provisions governing re-arrest also depend on the manner of release. Under the text of the INA and federal regulations, certain DHS officials "at any time may revoke a bond or [conditional] parole authorized under [§ 1226(a)], rearrest the [noncitizen] under the original warrant, and detain the [noncitizen]." 8 U.S.C. § 1226(b); see 8 C.F.R. § 236.1(c)(9). For decades, however, DHS has had a consistent policy and practice of re-detaining noncitizens in removal proceedings only when the individual circumstances related to their flight risk or danger to the community had materially changed. *See Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981) (holding that the government cannot re-arrest and re-detain a noncitizen

released by an immigration judge on bond "absent a change of circumstance" warranting detention); *Saravia*, 280 F. Supp. 3d at 1197; Federal Defendants' Supplemental Brief at 1, *Saravia v. Sessions*, No. 3:17-cv-03615-VC, (N.D. Cal. Nov. 3, 2017), Dkt. No. 90. (representing to a federal district court that the government historically arrested previously released noncitizens only after "a material change in circumstances" as to whether they are a flight risk or dangerous).

68. DHS has placed explicit limits on re-detention under 8 U.S.C. § 1226(b) by requiring authorization from a high-level official within the field office. By regulation, such revocations of release from custody may only be carried out in the "discretion of the district director, acting district director, deputy director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign)." 8 C.F.R. § 236.1(c)(9); *see also Mohamed A. v. Blanche*, No. 26-CV-2799 (JMB/DTS), ECF Dkt. No. 31 at 13, n. 7 (D. Minn. June 18, 2026) (granting outright release based on "the analysis in Barco Mercado [S.D.N.Y.] [concluding] that re-detention absent a revocation [pursuant to 8 C.F.R. § 236.1] of the prior release order violates the Due Process Clause"); *Dos Santos Silva*, 2026 WL 926725, at *1.

69. Additionally, despite "the breadth of [the] statutory language" in 8 U.S.C. § 1226(b), the federal government's authority is subject to "an important implicit limitation": As reflected its previous policy and practice, the government cannot lawfully re-detain someone without "a material change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197; *see also, e.g., Matter of Sugay*, 17 I. & N. Dec. at 640; *Doh H. v. Blanche*, No. 26-cv-02413, Doc. 8 at 8 (D. Minn. May 6, 2026) (recognizing the requirement that

"officials invoking section 236.1(c)(9) [to re-detain an noncitizen] … make at least a showing of material changed circumstance before revoking release" and collecting cases from "numerous other courts around the country … conclud[ing] the same"); *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *8 (S.D. Iowa Apr. 17, 2026) (acknowledging "dozens of years of practice").

70. This limitation means that a person who immigration authorities released on bond cannot be re-detained "solely on the ground that he is subject to removal proceedings[,]" without some new, intervening cause. *Saravia*, 280 F. Supp. at 1196. Indeed, the Fourth Amendment, which also applies to seizures by immigration authorities, prohibits such re-arrests, which courts have long held could result in "harassment by continual rearrests." *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971) (Stevens, J.) (prohibiting re-arrest without change in circumstances in criminal context); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal context to "limit" scope of immigration agents' seizure authority).

71. This prohibition also derives from fundamental constitutional principles enshrined in the Due Process Clause of the Fifth Amendment. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without a reasonable justification in the service of a legitimate government objective." *Cnty. of Sacremento v. Lewis*, 523 U.S. 833, 846 (1998). Due process requires that all forms of

civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 736 (1972).

72. As described *supra*, the Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings (or, in the case of a removal order, at removal) and preventing danger to the community. *Zadvydas*, 533 U.S. at 690-92; *see Demore*, 538 U.S. at 519–20, 527–28, 531. It has also held that, in general, these purposes may not be assessed on a blanket or categorical basis. Instead, immigration custody decisions generally must be based on an "individualized determination" of flight risk and danger to the community. *See INS v. Nat'l Ctr. For Immigrants' Rts., Inc.*, 502 U.S. 183, 194 (1991); *see also Zadvydas*, 533 U.S. at 690.

73. Moreover, individuals who are released from government custody have a protected liberty interest in remaining out of custody. The government's decision to release an individual from custody creates "an implicit promise" that their liberty "will be revoked only if [they] fail[] to live up to the … conditions [of release]." *Morrissey*, 408 U.S. at 4.

74. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. 481–82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." Id. at 482. The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss

on the parolee and often others." Id. In turn, "[b]y whatever name, the liberty is valuable and must be seen as within the protections of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 4.

75. Accordingly, in the criminal context, the Supreme Court has repeatedly recognized that re-detention after some form of conditional release requires a pre-deprivation hearing. *See, e.g., Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*, 411 U.S. at 781–82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). *See also, e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("[A] person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated.") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

76. Similarly, and following this Supreme Court guidance, numerous courts have concluded that these principles apply with at least equal force to people released from civil immigration detention because they too have a protected liberty interest in their ongoing freedom from confinement. *See Abdirashid H.M. v. Noem*, No. 25-4779 (JRT/EMB), 2026 WL 127698, at *4 (D. Minn. Jan 9, 2026) ("The Court joins several district courts around the country in recognizing the self-evident idea that an individual who has been released from custody to live a productive life in the community obtains a protected interest in their 'continued liberty.'"); *Singh v. Mullin*, No. C26-56-LTS-MAR,

2026 WL 1021846, at *4 (N.D. Iowa Apr. 15, 2026) ("[W]hen the Government decides to release an individual …it creates an implicit promise ... that their liberty 'will be revoked only if they fail to live up to the conditions of release.") (internal citations omitted).

77. And the fact that the release "decision-making process involves discretion does not prevent an individual from having a protectable liberty interest." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (citing *Young v. Harper*, 520 U.S. 143, 150 (1997)); *see also Singh v. Warden of Golden State Annex Det. Facility*, No. 1:26-CV-1284 DJC CSK, 2026 WL 731053, at *4 (E.D. Cal. Mar. 16, 2026), report and recommendation adopted sub nom. *Singh v. Warden of the Golden State Annex Det. Facility*, No. 1:26-CV-1284 DJC CSK, 2026 WL 802319 (E.D. Cal. Mar. 23, 2026) ("Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute.") (citing Young, 520 U.S. at 147–49).

78. Similarly, even in cases where release could have arguably been contrary to law, an individual acquires a protected liberty interest in their release. *See Govea Perez v. South Texas ICE Processing Center*, No. SA-26-CA-02187-XR, 2026 WL 1078577, at *9, n.10 (W.D. Tex. Apr. 17, 2026) (explaining that, even if a "noncitizen[] should never have been released in the first place … even an erroneously conferred benefit can create a constitutionally protected property interest where there was reason to rely on it"); *see also Wolff v. McDonnell*, 418 U.S. 539, 558 (1974) (due process clause applies "even when the liberty itself is a ... creation of the State"); *Hurd*, 864 F.3d at 692–93 ("The Due

Process Clause may itself confer a procedurally protected liberty interest on someone living openly in society for years after what, unbeknownst to him, was his premature release from prison."); *DeWitt v. Ventetoulo*, 6 F.3d 32, 34–35 (1st Cir.1993); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process supports the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the release was not his fault and he had appropriately adjusted to society, so it "would be inconsistent with fundamental principles of liberty and justice" to return him to prison) (cleaned up).

79. Thus, an individual subject to mandatory detention under 8 U.S.C. § 1225(b)(2) who is released—even if the government later argues that such release is contrary to the law requiring their detention—has a protected liberty interest in their continued release from detention.

80. Importantly, the Eighth Circuit's decision in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), does not change that analysis. In that case, the court considered the narrow question of whether the length—over "a year in a county jail"—of an individual's mandatory detention under 8 U.S.C. § 1226(c) violated due process. *Banyee*, 115 F.4th at 931; *see also Singh v. Mullin*, No. C26-56-LTS-MAR, 2026 WL 1021846 (N.D. Iowa Apr. 15, 2026) ("*Banyee* simply reaffirmed that the span of a removal proceeding did not change the due process dimension of the [noncitizen]'s detention." (emphasis added)). In response to this question, the Eighth Circuit merely held that "[d]ue process imposes no time limit on detention pending deportation[.]" *Banyee*, 115 F.4th at 930 ; id. at 930–31 ("In [Mr. Banyee's] view, the lengthy detention violated due process[.]" (emphasis

added)); *id.* at 931 ("[W]e must … decide whether the year-long detention violated his rights[.]" (emphasis added)); *id.* at 932 ("[N]othing suggests that length determines legality." (emphasis added)). As such, *Banyee* is inapposite to the issue of whether re-detention of someone previously released is lawful. *See, e.g., Mark O.*, No. 26-cv-02448, Doc. 7 at 7 (holding that *Banyee*, *Demore*, and *Thuraissigiam* "are inapposite" to Petitioner's procedural due process claim); *Orlando R.V.V. v. Blanche*, No. 26-cv-1903, Doc. No. 11 (MJD/SGE) (D. Minn. Apr. 28, 2026) ("The *Banyee* court's analysis is rooted in detention under § 1226(c), and its reliance on Supreme Court precedent reinforces that limited scope."); *Axel J.M.C. v. Stanski*, No. 26-cv-2281 (JRT/EMB), 2016 WL 1171344, at *3 (D. Minn. Apr. 29, 2026) (finding that unlike the statutory framework in *Banyee*, "Respondents' purported basis for detention is § 1225(b)(2)(A), a different provision only recently interpreted by the Government to permit mandatory detention."); *Manuel G. v. Blanche*, No. 26-cv-2385, 2026 WL 1256358, at *4 (D. Minn. May 7, 2026) ("Respondents' purported basis for [Petitioner's] detention is § 1225(b)(2)(A), not § 1226(c), which distinguishes this case from *Banyee* and *Demore*.")

81. Based on the protected liberty interests an individual has in their prior release, numerous courts have therefore concluded that it is a violation of procedural due process to re-detain an individual without notice, evidentiary findings, or an opportunity to be heard. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) ("An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case.") (internal quotation marks and citation omitted) (emphasis added); *see also Feisal O. v.*

Noem, No. 26-CV-81 (JMB/EMB), 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026) ("[T]he redetention of a person previously ordered released under section 1226—without Respondents first formally revoking that order of release or following any procedures prior to making a decision that conflicts with an order of release—violates due process."); *Singh v. Warden of Golden State Annex Det. Facility*, No. 1:26-CV-1284 DJC CSK, 2026 WL 731053, at *4 (E.D. Cal. Mar. 16, 2026), report and recommendation adopted sub nom. *Singh v. Warden of the Golden State Annex Det. Facility*, No. 1:26-CV-1284 DJC CSK, 2026 WL 802319 (E.D. Cal. Mar. 23, 2026) ("Petitioner has a liberty interest in not being incarcerated after prior release without pre-custodial hearing or notice."); *Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) ("Respondent violated the Fifth Amendment's Due Process Clause by revoking her parole and subjecting her to detention without notice, evidentiary findings, or an opportunity to be heard."); *see also Hurd*, 864 F.3d at 683 (citing *Young*, 520 U.S. at 152) (holding that re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon*, 411 U.S. at 782 (holding the same, in context of probation); *Morrissey*, 408 U.S. 471 (holding the same, in context of parole)

FACTUAL ALLEGATIONS

82. Petitioner is resident of Minneapolis, Minnesota and a citizen of Ecuador, who has resided in the United States since September 2000.

83. Petitioner has three United States citizen children and one United States citizen grandchild. Prior to his detention, Petitioner provided financially for his family by working full-time and being a present father and grandfather in their lives.

84. Petitioner has a few, minor traffic tickets, nearly all of which are petty misdemeanors and not crimes in Minnesota.

85. Petitioner's only "crimes" involve a 2008 charge and subsequent misdemeanor conviction for "No valid drivers license" and "Fail to produce proof of insurance - whether or not the owner" in violation of Minn. Stats. §§ 171.02(1) and 169.791(2) and a 2012 charge and subsequent misdemeanor conviction for "Driving after suspension" and "Traffic Regulation-Uninsured Vehicle-Driver Violation" in violation of Minn. Stats. §§ 171.24.1 and 169.797.3.

86. In October 2017, Petitioner was detained by Respondents and released by the Department of Homeland Security/ICE on a $12,000 bond.

87. Respondents did not revoke Petitioner's 2017 bond for $12,000 before unlawfully detaining him.

88. On October 1, 2026, in the early morning hours, ICE surveilled Petitioner when he was driving to pick up his son.

89. Around 7:30 AM, Petitioner stopped his car and was asked by "ICE Agents" who stopped in unmarked cars, for identification.

90. Petitioner handed the men his valid Minnesota Driver's License.

91. The agents told Petitioner he was under arrest for "not being a U.S. citizen," arrested and detained him, and brought him to the parking lot of a Home Depot in Minneapolis, Minnesota.

92. At the Home Depot parking lot, Petitioner spoke with another presumed agent, and explained he had completed his court case and was simply waiting for the judge to issue a decision.

93. The presumed agent told Petitioner they had a different address listed for him, one that Petitioner did not recognize.

94. Petitioner timely and correctly updated his address with both the Immigration Court and the Department of Homeland Security on December 6, 2021, and has resided at that address ever since.

95. Petitioner was detained and transported to the Whipple Federal Building.

96. While Petitioner was detained at the Whipple Federal Building, undersigned counsel emailed ICE, requesting that they permit Petitioner to call her. To date, undersigned counsel has not received response.

97. Petitioner was transported to Freeborn County, where he has remained since.

98. At no point was Petitioner shown, read or given any I-200 administrative warrant.

99. Undersigned counsel requested a copy of any I-200 administrative warrant from the Department of Homeland Security, if one exists, and to date, has not received a response.

100. On October 2, 2026, undersigned counsel filed a motion with the immigration court to grant Petitioner's application for Cancellation of Removal, now that he is detained and not subject to the backlog with proof through the "ICE Online Detainee Locator" that Petitioner is detained at Freeborn County Jail.

101. On October 2, 2026, in the afternoon, a clerk at the Fort Snelling Immigration Court told an associate from undersigned counsel's office that the Department of Homeland Security has not updated Petitioner's address to reflect that he is detained, and so there is nothing they can do on the motion until the Department of Homeland Security updates his address.

102. To date, neither Petitioner nor undersigned Counsel have received evidence that the Department of Homeland Security has updated Petitioner's address with the immigration court, despite being detained for more than 48 hours.

103. Petitioner is not scheduled for any immigration court hearings, as he completed his hearing in July 2022, and has been waiting on the visa backlog for the immigration judge to issue her decision.

104. Petitioner does not have any final order of removal.

CLAIMS FOR RELIEF

COUNT ONE
Violation of the Fifth Amendment Due Process Clause
Substantive Due Process

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

106. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *see also, e.g.*, *Mark O.*, No. 26-cv-02448, Doc. 7 at *5 ("[T]he Court feels it necessary to acknowledge both [sic] that Petitioner is entitled to due process of law under the Fifth Amendment.").

And "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

107. Because "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," the government may imprison people as a preventive measure only within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

108. Immigration detention is civil detention and must "bear a reasonable relation to the purpose for which the individual was committed" so that it remains "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690 (citation modified); *see also Schall v. Martin*, 467 U.S. 253, 264-69 (1984) (stating that detention must be a proportional—not excessive—response to a legitimate state objective); *see also Santillan Quiroz*, No. 26-6019, Doc. 91-1, at 44 (noting that immigration detention requires a "strong special justification") (citing *Zadvydas*, 533 U.S. at 690.

109. Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk pending removal and preventing danger to the community. *See Zadvydas,* 533 U.S. at 690–91.

110. To satisfy substantive due process under the Fifth Amendment, a noncitizen's detention must be tied to flight risk or a danger to the community. *Zadvydas*, 533 U.S. at 690.

111. Neither purpose is served by Petitioner's detention. Respondents have not made any claim that Petitioner presents a flight risk or a danger to the community, nor

could they. When Petitioner was previously granted a bond by DHS in 20217, and then released from detention, the government came to precisely the opposite conclusion—that he did not present any risk of flight or danger. *See Mark O.*, No. 26-cv-02448, Doc. No. 7 at 15 ("[The fact remains that Petitioner was previously released, which 'in and of itself reflects a determination that the individual is neither a flight risk nor a danger to the community[.]'" (quoting *Orlando R.V.V.*, No. 26-cv-1903, Doc. No. 11 at 15 (D. Minn. Apr. 28, 2026); *Govea Perez*, 2026 WL 1078577, at *2 ("[E]very noncitizen who has been paroled or released into the interior of the country has been found by a government official to pose neither a security risk nor a flight risk. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018

112. Since then, Petitioner's actions proving he is not a flight risk or danger, and his ties to this country have only grown stronger. *See Osorio-Martinez v. Att'y Gen. United States of Am.*, 893 F.3d 153, 173-75 (3d Cir. 2018). Petitioner attended every immigration hearing and is simply waiting on the judge's ability to grant his case. The immigration judge stated on the record at his final hearing that she was "inclined to grant" his case. Now that he is detained and thus he is no longer subject to the backlog, he is waiting on the Department of Homeland Security to update his address with the Court so that the immigration judge *can* issue a decision. Petitioner timely updated his address when he moved in 2021. He built his entire life here. Petitioner has valid work authorization and was gainfully employed through his business doing remodeling. He has three United States citizen children and a United States citizen grandchild who live here, and he has resided in

the country for more than 26 years. He has no criminal history apart from a few minor traffic offenses. Petitioner has done everything Respondents have required of him.

113. Because the government is not detaining Petitioner to serve legitimate interests in protecting against danger or flight risk, his detention violates substantive due process under the Fifth Amendment, and this Court should order his immediate release.

COUNT TWO
Violation of the Fifth Amendment Due Process Clause
Procedural Due Process, Re-Detention without Process

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

115. 106. Even "[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner." *Salerno*, 481 U.S. at 746.

116. The government's infringement on Petitioner's liberty interest triggers a right to contest that infringement, for example, through a hearing before the right is deprived. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569–70 (1972). The essence of procedural due process is that a person risking a serious loss have "an opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Yrysbaev v. Arnott*, 2026 WL 395897, at *3 (citation omitted).

117. Some courts use the three-factor *Mathews v. Eldrige* test to determine what process is due to noncitizens challenging detention. *See Mathews v. Eldridge*, 424 U.S. 319 (1976). The *Mathews* factors assess: (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." Id. at 335.

118. The first *Mathews* factor weighs heavily in Petitioner's favor. "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. "[I]t is axiomatic that "the interest in being free from physical detention" is "the most elemental of liberty interests." *Abdirashid H.M.*, 2026 WL 127698, at *4 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

119. Petitioner has a particularly strong liberty interest in light of his prior release on bond from DHS. *Id.* at *4; *Yrysbaev*, 2026 WL 395897, at *3. "[O]nce the government opts to provide a liberty interest, it cannot arbitrarily revoke that interest without due process of law." *Muse v. Mullin*, No. 26-cv-4024, 2026 WL 1008532, at *4 (N.D. Iowa Apr. 14, 2026); *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *7 (S.D. Iowa Apr. 17, 2026) (finding "[t]he first *Mathews* factor … weighs heavily in Petitioner's favor" where the government re-detained him "after previously having allowed him to live and work in the community"). As such, courts in this district and across the Eighth Circuit have repeatedly found that noncitizens released by DHS on parole or on their own recognizance have a substantial private interest in being out of custody and that detention denies them that liberty interest. *See, e.g., Orlando R.V.V. v. Blanche*, No. 0:26-cv-01903, Doc. 11, at 13-23 (D. Minn. Apr. 28, 2026) (finding a

protected liberty interest for someone paroled into the United States, even after that parole had expired); *Osman J.M.A. v. Blanche*, No. CV 26-2123 (DWF/DJF), 2026 WL 1005056, at *3 (D. Minn. Apr. 14, 2026) (same for release on recognizance); *Aleksei v. Warden*, No. 5:26-CV-05030-RAL, 2026 WL 1133615, at *1 (D.S.D. Apr. 27, 2026) (same for individual previously granted humanitarian parole); *Sandhu v. Mullin*, No. 7:26CV5009, 2026 WL 1146643, at *2 (D. Neb. Apr. 28, 2026) (same for release on recognizance).

120. In addition, the length of time—nine years—that Petitioner relied on this protected expectation of continued liberty "elevate[s] and underscore[s] [Petitioner's] liberty interest." *Singh v. Warden*, 2026 WL 731053, at *5, *report and recommendation adopted sub nom. Singh v. Warden*, 2026 WL 802319 (noting the liberty interest of petition release for over three and a half years); *see also Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1030-33 (N.D. Cal. 2025) (holding that noncitizens on conditional release "possess an interest in their continued liberty, which grows over time, and a due process right to a hearing before being re-detained" (emphasis added)); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1033 (N.D. Cal. 2025) (finding that, in the past five years, petitioner developed "extensive relations of support and interdependence" that underscore the high stakes of [his] liberty").

121. The second *Mathews* factor also weighs in Petitioner's favor. Petitioner was previously released from detention on a money bond after being found that he is neither a danger nor a flight risk. Had Respondents found Petitioner to be a danger or a flight risk, they would have held him on no bond and he could have sought review by the

immigration judge. Instead, Respondents found that was unnecessary, and they granted Petitioner a bond right away. His re-detention—without prior notice, any revocation of the 2017 bond, a showing of changed circumstances, or a meaningful opportunity to respond—make the risk of erroneous deprivation of liberty not just high, but certain. *See, e.g., Aleksei M.*, 2026 WL 1133615, *6 (noting "[o]ther district courts have characterized the risk of erroneous deprivation as 'severe' when 'Respondents are proposing no procedure at all" (quoting *Abbas*, No. 4:26-cv-00132, at 12 (emphasis in original))); *Gunaydin v. Trump,* 784 F. Supp. 3d 1175, 1188 (D. Minn. 2025) (noting that lack of consideration of "individualized or particularized facts . . . increases the potential for erroneous deprivation of individuals' private rights"); *Selvin Adonay E.M.*, 2025 WL 3157839, at *9 (finding the second factor weighed in a petitioner's favor when the government took the position detention was mandatory without individualized review).

122. The third factor favors Petitioner as well. Respondents' interest in detaining Petitioner without a hearing is low, and the burden on Respondents to refrain from re-detaining him unless and until he is provided with a hearing that comports with due process is "minimal." *See Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *6 (E.D. Cal. March 3, 2025). Their administrative burden is low, given that the government conducts bond and bail hearings every day as a matter of course. Their fiscal burden is also low, particularly in relation to the high cost of detention. *Idle H. v. Bondi*, No., 2026 WL 266462, at *7 (D. Minn. Feb. 2, 2026) (noting the "staggering" costs of immigration detention); *see also Rodriguez Vega,* 2026 WL 482906, at *6 ("[L]imiting the use of detention to only those noncitizens who are dangerous or a flight

risk may save the government, and therefore the public, from [unnecessarily] expending substantial resources." (citation omitted)). Unnecessary detention also "imposes substantial societal costs," such as "reduced economic contributions and tax payments by detained immigrants," as well as the separation of individuals from their families and communities. *Rodriguez Vega*, 2026 WL 482906, at *6 (citation omitted). Finally, unlawful detention and violation of noncitizens' constitutional rights disserves the public interest; rather, the government's interest lies in ensuring the Constitution is followed and that the procedural due process rights of noncitizens such as the Petitioners in this case are upheld. In any event, detention with no process is wholly unnecessary to allow Respondents to detain those who truly pose a legitimate risk of flight or danger. *Ochoa v. Vergara*, No. 1:26-cv-266, 2026 WL 482211, at *3 (W.D. Tex. Feb. 20, 2026).

123. Respondents violated procedural due process by re-detaining Petitioner without adequate procedural protections before the deprivation of his liberty. *See, e.g., Aleksei v. Warden*, No. 5:26-CV-05030-RAL, 2026 WL 1133615, at *1 (D.S.D. Apr. 27, 2026) (finding re-detention of noncitizen previously granted humanitarian parole violated his procedural due process rights); *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *2 (S.D. Iowa Apr. 17, 2026) (same for noncitizen previously released on order of recognizance); *Ermekov v. Mullin*, No. C26-41-LTS-KEM, 2026 WL 1046766, at *3 (N.D. Iowa Apr. 17, 2026) (ordering outright release to the same position prior to detention, as required under due process clause—but declining to apply *Mathews* framework—for someone previously released on order of recognizance); *Feisal O. v. Noem*, 2026 WL 92857, at *3 (concluding that the redetention of a person previously

ordered released without any pre-redetention process violated the Due Process Clause); *Selvin Adonay E.M.*, 2025 WL 3157839, at *8-10 (similar); *Abdirashid H.M.*, 2026 WL 127698, at *4-5 (similar). Ordering outright release for an individual previously released on order of recognizance despite being subject to Section 1226(c) is proper. *Don H. v. Blanche*, No. 0:26-cv-02413,2026 WL (D. Minn. May 6, 2026) ("*Mathews* requires DHS officials invoking section 236.1(c)(9) to make at least a showing of material changed circumstance before revoking release.''); *see also Yohan A.G. v. Warden*, No. 2:26-CV-0997 (LK), 2026 WL 1162705, at *5 (W.D. Wash. Apr. 29, 2026) (providing that DHS requires a showing of changed circumstances before revoking release under section 236.1(c)(9), and citing November 2025 DHS brief setting forth same). Therefore, this Court should order Petitioner's release without any restraints on his liberty and prohibit any re-detention absent pre-deprivation process. *Feisal O.*, 2026 WL 92857, at *3 (ordering release on that basis); *see also Mahad S. v. Noem*, 2026 WL 177860, at *3; *Ochoa v. Vergara*, 2026 WL 482211, at *3 (collecting cases finding mandatory detention violated procedural due process and ordering release as the appropriate remedy). As such, Petitioner's detention is unlawful, and his release is warranted. *See Sandhu v. Mullin*, No. 7:26CV5009, 2026 WL 1146643, at *2 (D. Neb. Apr. 28, 2026); *Aleksei v. Warden*, No. 5:26-CV-05030-RAL, 2026 WL 1133615, at *1 (D.S.D. Apr. 27, 2026); *Dharamnir Singh v. Mullin*, No. C26- 00053-LTS-KEM, 2026 WL 1078710, at *1 (N.D. Iowa Apr. 20, 2026); *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *2 (S.D. Iowa Apr. 17, 2026); *Ermekov v. Mullin*, No. C26-41-LTS-KEM, 2026 WL 1046766, at *3 (N.D. Iowa Apr. 17, 2026).

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

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

125. 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).

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

127. 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).

128. Even where a noncitizen is "subject to mandatory detention under 8 U.S.C. § 1225(b)(2), federal immigration officials must still comply with 8 U.S.C. § 1357(a)(2)." *Martha C.G.P. v. Blanche*, No. CV 26-2308 (DWF/JFD), 2026 WL 1329577, at *3 (D. Minn. May 13, 2026) (internal citations omitted); *see also, e.g.*, *Wilson L.L. v. Blanche*, No. CV 26-2475 (JRT/EMB), 2026 WL 1283186, at *2 (D. Minn. May 11, 2026) ("Because Respondents have not shown that Petitioner was likely to escape, they failed to comply with 8 U.S.C. § 1357—the requirement for arresting a noncitizen without a warrant. Respondents therefore improperly arrested and detained Petitioner under 8 U.S.C. § 1225(b)(2).").

129. Only where circumstances permit a warrantless arrest as outlined in 8 U.S.C. § 1357(a)(2) do the regulations at 8 C.F.R. § 287.3 come into play. See 8 C.F.R. 287.3(a) (regulating noncitizens "arrested without a warrant of arrest *under the authority contained in [8 U.S.C. § 1357(a)(2)]*" (emphasis added)).

130. U.S.C. § 1357(a)(2) requires that an immigration officer have both "reason to believe" the person is unlawfully present and is "likely to escape before a warrant can be obtained" before arresting the person without a warrant. See also 8 C.F.R. § 287.8(b)(2).

131. Respondents did not revoke Petitioner's 2017 bond before unlawfully detaining him.

132. Respondents have not stated that Petitioner violated his 2017 bond in any way.

133. There is no "change in circumstances" that could exist in Petitioner's case that would justify a revocation of his release on bond. 8 C.F.R. § 236.1(c)(9), *Matter of Sugay*, 17 I. & N. Dec. at 640; (2).

134. Respondents did not present Petitioner or undersigned Counsel with a warrant stating a valid reason for his arrest. 8 USC § 1226(a).

135. Petitioner was not shown, read, given or served any I-200 warrant.

136. An eyewitness to Petitioner's initial arrest and detention at the first location, confirms that they did not see the men show, read or give Petitioner any paper before handcuffing and detaining him in their car.

137. Undersigned counsel requested a copy of an I-200 warrant related to Petitioner. To date, undersigned counsel has not received a response from the Department of Homeland Security.

138. If Respondents attempt to post-hoc create an I-200 warrant that was never served and thus invalid, none of the five possible grounds listed on I-200 warrants could apply to Petitioner. Petitioner has remained law abiding, attended every hearing, and him

being in removal proceedings due to entering unlawfully was already known when the Department of Homeland Security released Petitioner on bond October 2017.

139. Regardless of Petitioner's detention authority--1225(b)(2)(A), 1226(a), or 1226(c)--warrantless arrests are proper only where there is probable cause that the noncitizen is *both* unlawfully present in the United States and a flight risk. See, e.g., *Hector J.A.S. v. Shea*, No. CV 26-2242 (JRT/DLM), 2026 WL 1243500, at *3 (D. Minn. May 6, 2026) ("[[E]ven if Respondent is detained under 8 U.S.C. § 1225(b)(2)—which may not require a warrant—Respondents have failed to show that the warrantless arrest was justified under 8 U.S.C. § 1357.").

140. Respondents cannot establish both, as Petitioner presented no flight risk--let alone reaching the level of probable cause--at the time of his arrest. *See Walther Ademir A.S. v. Blanche*, No. 26-CV-2804 (LMP/SGE), 2026 WL 1734906, at *3 (D. Minn. June 16, 2026) (discussing what does not constitute a flight risk).

141. Indeed, Respondents knew Petitioner's address, as it is on file with the Immigration Court and with the Department of Homeland Security and has been for nearly five years.

142. Petitioner most recently moved in December 2021 to [redacted], where he has resided ever since.

143. Undersigned counsel properly filed Form EOIR-33/IC to update his address with the Immigration Court and the Department of Homeland Security.

144. Specifically, this address update was e-served on the Department of Homeland Security on December 6, 2021. *See* Ex. C.

145. Petitioner's application for Cancellation of Removal properly reflected his current address before his final hearing on July 14, 2022.

146. Petitioner has not moved from this address.

147. Petitioner has no history of fleeing, evading or escaping law enforcement.

148. When Petitioner was unlawfully arrested by Respondents, he complied by handing over his identification and never resisted or attempted escape.

149. Petitioner attended every immigration hearing, and complied with all of the rules.

150. Petitioner's warrantless arrest occurred without probable cause that he was a flight risk. An individualized determination of probable cause is required—one's classification as a noncitizen present without admission does not, on its own, give reason to believe that they are "likely to escape before a warrant can be obtained[.]" 8 U.S.C. § 1375(a)(2); *see also Jefferson G.H.L. v. Blanche*, No. CV 26-2344 (JRT/ECW), 2026 WL 1229623, at *3 (D. Minn. May 5, 2026) ("Just because a noncitizen is unlawfully present in the United States does not mean that he or she is likely to escape."); *Ruben D.A.G.*, Civ. No. 26-2041, slip op. at 8 ("Anyone without a lawful presence does not immediately present a likelihood of escape merely by being a noncitizen."). In contrast, "[c]ourts 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). At the moment of his seizure, Petitioner had been in the United States for twenty-six years and built strong ties to his

community. Petitioner attended every immigration court hearing and is waiting on the immigration judge to issue the decision. Moreover, 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.

151. 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. He received no such judicial determination, yet his detention continued well beyond 48 hours, rendering it presumptively unconstitutional.

152. Because Respondents failed to establish probable cause for Petitioner's warrantless arrest under 8 U.S.C. § 1357(a)(2), the regulations outlined in 8 C.F.R. § 287.3 are inapplicable. Even so, *arguendo*, these regulations require a noncitizen arrested without a warrant 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). 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.

153. In addition, Respondents violated Petitioner's Fourth Amendment right against unreasonable seizure. Under the Fourth Amendment, the government cannot rearrest someone without changed circumstances that amount to new probable cause. *See*

Carlson v. Landon, 342 U.S. 524, 546-47 (1952) (holding that re-arrest for immigration detention required a new warrant after previous release from immigration detention on bail). When the government releases a person from detention, the purpose of their detention has been accomplished. *See Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020) ("It is axiomatic that seizures have purposes. When those purposes are spent, further seizure is unreasonable."). As a result, any probable cause justifying the prior arrest, if any, is extinguished. Thus, Petitioner's re-detention after a prior release, without any new showing of probable cause, was also unconstitutional.

154. Respondents' warrantless re-arrest of Petitioner without changed circumstances, and their refusal to provide a prompt (or any) probable cause determination, violated the Fourth Amendment, the INA, and implementing regulations. Thus, this Court should order his release, as no post-detention process can cure this violation. *See, e.g. Wilson L.L. v. Blanche*, No. 26-cv-2475 (JRT/EMB), 2026 WL 1283186, at *2 (D. Minn. May 11, 2026) (ordering immediate release where the I-200 "was not served on Petitioner until after his arrest and detention") (citing *Francisco M.A.*, 2026 WL 1229701, at *1-2).

COUNT FOUR
Violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)

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

156. The APA provides that a "reviewing court shall … hold unlawful and set aside agency action, findings, and conclusions" that are (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to constitutional

right, power, privilege or immunity; (c) in excess of statutory jurisdiction, authority, limitations, or short of statutory right, or (d) without obstruction of procedures required by law. 5 U.S.C. § 706(2). In order to be reviewable under the APA, the challenged action must constitute a final agency action, which includes "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). Final agency action is arbitrary and capricious if the agency fails to "articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (internal citations omitted). Courts may not consider an agency's "impermissible post hoc rationalizations." *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020) (internal citations omitted).

157. Although the INA purports to authorize DHS to revoke a release "at any time," DHS has long applied the rule promulgated by the BIA in *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) in the context of parole revocation—that DHS requires a showing of a "material change in circumstances" before re-detaining noncitizens it previously released. *See Saravia*, 280 F. Supp. 1168. Regardless, "[e]ven when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute." *Vilela*, 2025 WL 3101334, at *3.

158. DHS's decisions to re-detain Petitioner constitutes reviewable final agency action because the re-detentions mark the "consummation" of the DHS's decision-making process on the question of Petitioner's custody, and it is an action "by which

rights or obligations have been determined, or from which legal consequences will flow." *Bennet v. Spear*, 520 U.S. 154, 178 (1977) (internal citations omitted). Indeed, the "practical and legal effects of the agency action" are that Petitioner has been deprived of his liberty with no end in sight. *Or. Natural Desert Ass'n v. U.S. Forest Service*, 465 F.3d 977, 982 (9th Cir. 2006).

159. DHS's decision to re-detain Petitioner was an abuse of discretion and contrary to law where it departed from its policy and practice of requiring a "material change in circumstances" before re-detaining noncitizens it had originally released on parole. *See Saravia*, 280 F. Supp. 3d at 1187. The decisions were also arbitrary and capricious in violation of the APA where the agency failed to contemporaneously—or ever—articulate any flight-risk or danger-based justifications for those decisions. *Motor Vehicle Mfrs. Ass'n of U.S.*, 463 U.S. at 42–43; *Regents*, 591 U.S. at 21. And as described *supra/infra*, the decisions were also contrary to constitutional right.

160. As such, DHS's decision to re-detain Petitioner was in violation of the APA. Such action must be set aside, and release ordered.

COUNT FIVE
Violation of the Administrative Procedure Act,
5 U.S.C. § 706(2)(A) – *Accardi* Doctrine
Unlawful Failure to Follow/Effective Rescission of 8 C.F.R. § 236.1(c)(9);
8 C.F.R. § 1236.1(c)(9)

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

162. Under the *Accardi* doctrine, federal agencies are required to follow their own binding regulations, and failure to do so renders resulting agency action unlawful.

United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 267–68 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). The *Accardi* doctrine is particularly important "[w]here the rights of individuals are affected," and it gives rise to a claim against an agency "even where the internal procedures are possibly more rigorous than otherwise would be required" by statute. *Morton*, 415 U.S. at 235. *Accardi* thus applies with full force in immigration proceedings and is enforceable through habeas corpus where regulatory violations result in detention.

163. DHS regulations implementing 8 U.S.C. § 1226(b) authorize revocation of release from custody under the statute only in the "discretion of the district director, acting district director, deputy director, assistant director for investigations, assistant director for detention and deportation, or officer in charge (except foreign)." 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9); *see also Sandhu v. Mullin*, No. 7:26CV5009, 2026 WL 1146643, at *4 (D. Neb. Apr. 28, 2026) ("[A]s the regulation shows, that discretion [to revoke parole] must be exercised by someone. Here, there is no evidence a 'district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge' exercised discretion to revoke Sandhu's conditional parole." (emphasis in original) (citing 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9)).

164. The re-detention of Petitioner revoked a prior custody determination by government officials not authorized by law to make this determination in violation of the APA and in violation of the Accardi doctrine's requirement that agencies comply with their own regulations.

165. Immediate release is warranted. *See Mohamed A.*, No. 26-CV-2799 at 13, n.7) (granting outright release based on "the analysis in Barco Mercado [S.D.N.Y.] [concluding] that re-detention absent a revocation [pursuant to 8 C.F.R. § 236.1] of the prior release order violates the Due Process Clause."

REMEDY

166. The appropriate remedy for Respondents' unlawful conduct is Petitioner's immediate release.

167. When a habeas petitioner's detention is without legal basis, the typical remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the "typical remedy" for "unlawful executive detention").

168. In line with these principles, district courts have found the test set out in *Mathews* to require pre-deprivation hearings prior to civil re-detention in cases like Petitioner's. *See, e.g., Abbas*, 2026 WL 1079292, at *8 ("A post-deprivation hearing is 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." (quoting *Bonilla Chicas*, 2026 WL 539475, at *12)); *Singh v. Warden*, 2026 WL 731053, at *5–6, *report and recommendation adopted sub nom. Singh v. Warden*, 2026 WL 802319 (applying *Mathews* factors to find pre-deprivation hearing required prior to re-detaining an individual.); *Diaz*, 2025 WL 1676854, at *3 (finding that "the three factors relevant to the due process inquiry set out in *Mathews* ...support requiring a pre-deprivation hearing"); *see also Enriquez Reyes*, No. 32025 WL 4481119, at *5 (noting a "due process right to a hearing" for a noncitizen

detained by a Border Patrol agent, released on her own recognizance, granted parole, and then arbitrary re-detained by ICE).

169. Where a pre-deprivation hearing was due, as in Petitioner's case, post-deprivation "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.'" *Govea Perez*, 2026 WL 1078577, at *13 (quoting *Cruz-Reyes v. Bondi*, --- F.Supp.3d ---, 2026 WL 332315, at *5 (S.D. Tex. Feb. 3, 2026) (quotation marks omitted)). "The suggestion that government agents may sweep up any person they wish without consideration of dangerousness flight risk, so long as the person will, at some unknown future date, be allowed to ask some other official for his or her release, offends the ordered system of liberty that is the pillar of the Fifth Amendment." *Gonzalez v. Joyce*, No. 25 Civ. 8250 (AT), 2025 WL 2961626, at *5 (S.D.N.Y. Oct. 19, 2025).

170. As such, where a noncitizen is re-detained absent any pre-deprivation process, courts have concluded that outright release—not post-deprivation process—is required. *See, e.g., Abbas*, 2026 WL, at 13; *Villanueva v. Mullin*, No. 1:26-CV-849-RP, 2026 WL 1045719, at *5 (W.D. Tex. Apr. 15, 2026) ("In recent months, courts across the country have ordered the release of detainees in similar situations." (citation omitted) (collecting cases)); *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13–14 (W.D. Tex. Oct. 2, 2025) (collecting cases and finding that "immediate release appropriately remedies Respondents' violation of [Petitioner's] due process rights through her continued detention."); *Aleksei M. v. Warden*, Lawrence Cnty. Jail, No. 5:26-CV-

05030-RAL, 2026 WL 1133615, at *7 (D.S.D. Apr. 27, 2026); *Dharamnir Singh v. Mullin*, No. C26-00053-LTS-KEM, 2026 WL 1078710, at *1 (N.D. Iowa Apr. 20, 2026) (ordering outright release to the same position prior to detention, as required under due process clause for noncitizen previously released on order of recognizance); *Feisal O.*, 2026 WL 92857, at *3 (ordering immediate release where respondents re-detained a non-citizen previously released without "following any procedures prior to making [that] decision"); *Singh v. Mullin*, 2026 WL 1021846, at *4 (ordering respondents "to release Singh immediately, subject to those conditions (if any) with which he was required to comply immediately prior to his re-detention"); *Singh v. Warden*, 2026 WL 731053, at *7, *report and recommendation adopted sub nom. Singh v. Warden*, 2026 WL 802319 (ordering immediate release for individual re-detained with no procedural due process after release on recognizance); *Alegria Palma*, No. 25-cv-1942, ECF No. 14 at *8 (same); *Bonilla Chicas*, 2026 WL 539475, at *11-12 ("[A] post-deprivation bond hearing cannot cure the core violation of Mr. Bonilla Chica's due process rights that occurred when he was unlawfully redetained under a mandatory detention provision without any individualized determination of the need for detention."); *Ismahan M.*, No. 26-cv-1418, ECF 10 at 6 (D. Minn. Feb. 20, 2026) (similar); Yrsybaev, 2026 WL 395897 at *5 (ordering immediate release following unlawfully revoked parole); *Juan C.R.R.*, 2026 WL 752462, at *3 (recognizing "appropriate cure for a deprivation of due process is to provide Petitioner with the process he is owed" and ordering immediate release).

171. Additionally, where a noncitizen is arrested and detained without a valid warrant, the appropriate remedy is immediate release. *See Martha C.G.P.*, 2026 WL

1329577, at *3 ("The remedy for a warrantless arrest is immediate release."); *see also Wilson L.L.*, 2026 WL 1283186, at *3 (ordering immediate release on these grounds and citing multiple supporting cases from the District of Minnesota). Respondents must comply with 8 U.S.C. 1347 when effectuating all noncitizen arrests—even those subject to mandatory detention under 8 U.S.C. 1225(b)(2). *See, e.g., Martha C.G.P.*, 2026 WL 1329577, at *3; *Wilson L.L.*, 2026 WL 1283186, at *3; *Francisco M.A.*, 2026 WL 1229701, at *3. Thus, Petitioner's detention under this section is unlawful. Nor here would § 1226(a) have supported a lawful detention in the first instance. Detention under § 1226(a) would require a warrant issued by the Attorney General in a manner that complies with the INA and associated regulations. *See, e.g., Hector J.A.S.*, 2026 WL 1243500, at *2; *Joaquin Q. L. v. Bondi*, No. 26-cv-233 (LMP/DTS), 2026 WL 161333, at *2-3 (D. Minn. Jan. 21, 2026) (collecting cases); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 961 (D. Minn 2025). Petitioner was never shown, read, given or served any administrative warrant. Petitioner's counsel has not received a response to her request for a copy of any I-200 if one exists.

PRAYER FOR RELIEF

WHEREFORE, Petitioner asks that this Court:

1. Assume jurisdiction over this matter;
2. Expedite consideration of this action pursuant to 28 U.S.C. 1657, as it is an action brought under 28 U.S.C. Ch. 153, and issue an Order to Show Cause:
    a. Enjoining Respondents and individuals acting in concert with Respondents from removing Petitioner or transferring Petitioner outside of this District pending adjudication of this petition;

b. If Petitioner is transferred outside the jurisdiction of Minnesota during the pendency of this Petition, issue an emergency order requiring Respondents to transport Petitioner back to the jurisdiction of Minnesota immediately;

c. Requiring Respondents to show cause within **three days** as to why this petition should not be granted;

3. Issue a writ of habeas corpus declaring that Petitioner's detention is unlawful and ordering Respondents to release Petitioner from custody within 24 hours of this Court's order, including without restraints beyond those that existed prior to Respondent's unlawful arrest and detention of Petitioner, or in the alternative, limiting any conditions placed on Petitioner to those that do not continue to restrict his liberties, including the use of ATD enrollment in the form of an ankle-monitor, wrist monitor, SMARTLink monitoring, and require Respondents to return all Petitioner's belongings back to him, including any identification documents, immediately upon Petitioner's release from custody;

4. Order that upon Petitioner's release, Respondents must return to Petitioners any personal property, including personal identification documents and employment authorization documents;

5. Enjoin Respondents and individuals acting in concert with Respondents from re-detaining Petitioner without a pre-deprivation hearing before a neutral adjudicator where the government bears the burden of justifying Petitioner's re-detention by clear and convincing evidence;

6. Retain jurisdiction over this matter to decide any future motion for an award of reasonable attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, Local Rule 54.3(a), and on any other basis justified under law; and
7. Grant Petitioner any further relief that this Court deems to be just and proper.

Respectfully submitted,

Dated: October 3, 2026

/s/ Kelsey Allen____
Kelsey Allen
Minnesota Bar No. 0399147
Davis Immigration Lawyers, PLLC
4500 Park Glen Rd., Ste. 400
St. Louis Park, MN 55416
Tel: 612-428-7759
Email: kelsey@dvisalaw.com
ATTORNEY FOR PETITIONER

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. I have discussed the factual assertions in this petition with Petitioner. 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.

Executed this 3rd day of October 2026.

/s/ Kelsey Allen
Kelsey Allen
Attorney at Law