UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ABELARDO M.-G.,
Petitioner,

v.

DAVID EASTERWOOD, *Acting Director of St. Paul Field Office, U.S. Immigrations and Customs Enforcement;* DAVID VENTURELLA, *Acting Director, U.S. Immigration and Customs Enforcement;* MARKWAYNE MULLIN, *Secretary of the U.S. Department of Homeland Security; and* MIKE STASKO, *Warden of the Freeborn Adult Detention Center,*
Respondents.

Case No._____

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

INTRODUCTION

1. Petitioner Abelardo M.-G. ("Mr. M.-G.") is a thirty-year-old citizen of Mexico who is eligible for Asylum and/or Withholding of Removal, and is currently in removal proceedings before the Executive Office for Immigration Review ("EOIR").
2. Petitioner's Alien Registration Number is A[redacted]
3. Petitioner entered the United States on September of 2020, through the U.S. border with Mexico near Laredo, Texas.
4. Petitioner was not arrested upon his arrival.

5. Mr. M.-G. fled Mexico to escape violence and terror perpetrated by [redacted] throughout his childhood and early adulthood, [redacted]

6. Ever since his arrival in 2020, Mr. M.-G. has been continuously employed as a roofer.

7. On July 9, 2026, Petitioner was detained by Immigration and Customs Enforcement ("ICE") without an arrest warrant previously issued for his arrest. Petitioner was not the target of the operation; he was a passenger in the backseat of a vehicle and was detained as collateral damage.

8. On August 3, 2026, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to secure his release from unlawful detention, arguing that his arrest violated his Fifth Amendment Due Process rights and his Fourth Amendment rights against unreasonable searches and seizures.

9. On August 27, 2026, this Court granted Petitioner's Petition for Writ of Habeas Corpus and ordered his release from immigration custody. The Court concluded that Respondents lacked probable cause to determine that Petitioner was "likely to escape" before a warrant could be obtained, as required for a warrantless immigration arrest under 8 U.S.C. § 1357(a)(2). See *Abelardo M.-G. v. Easterwood et. al,* 0:26-cv-03479 (LMP/SGE) (D. Minn. August 27, 2026).

10. On August 28, 2026, following his court-ordered release, Respondents scheduled Petitioner to attend an ICE check-in appointment on October 1, 2026.

11. On the same day as his release, ICE issued an Order of Release on Recognizance ("OREC") (see Exhibit A), imposing multiple compliance restrictions, including: (1) mandatory reporting for hearings or interviews; (2) mandatory surrender upon entry of a

removal order; (3) mandatory in-person reporting on October 1, 2026, at 9:16 a.m.; (4) prior authorization requirement for address changes; (5) compliance with local, state, and federal laws; (6) mandatory assistance in obtaining travel documents; (7) prohibition against associating with known gang members or criminal associates; (8) compliance with all release conditions; (9) reporting of any meetings with parole or probation officers (Petitioner is not on parole or probation); (10) adherence to medical advice; (11) submission of written proof to ICE regarding travel document requests to the Mexican consulate; (12) submission of responses received from the consulate; and (13–14) explicit notice that any violation would result in the revocation of employment authorization and potential re-arrest.

12. Although ICE released Petitioner under an OREC following this Court's order, ICE failed to disclose the OREC on Form I-830 (Notice to EOIR Alien Address) filed with the Fort Snelling Immigration Court, instead checking only the generic "other" box under the manner of release conditions (see Exhibit B).

13. In strict compliance with his OREC conditions, Petitioner voluntarily appeared at the designated ICE facility for his scheduled check-in on October 1, 2026, at approximately 9:16 a.m. CDT.

14. Upon arrival, Petitioner was processed at the front desk and instructed to appear for a future check-in date. However, before Petitioner could leave the facility, ICE officers re-arrested and detained him.

15. Petitioner has fully complied with all required conditions of release, and the legal and factual basis for his re-arrest by ICE remains unstated.

16. Petitioner voluntarily presented himself to ICE exactly as directed. He did not attempt to evade immigration authorities, fail to appear for his scheduled appointment, or engage in any conduct demonstrating that he was likely to escape before a warrant could be obtained.

17. ICE has not provided Petitioner nor counsel with a copy of any Form I-200, and therefore is unclear if the agency has issued one prior to Petitioner's arrest.

18. ICE has provided no justification for Petitioner's re-arrest. This practice of re-arresting individuals following court-ordered releases reflects an alarming trend in Minnesota, see Cait Kelley, *Catch, Release, Catch: Inside ICE's New 'Farce' Tactic*, Sahan Journal (Oct. 5, 2026), https://sahanjournal.com/news-partners/catch-release-catch-inside-ices-new-farce-tactic/ (last visited Oct. 6, 2026).

19. To vindicate Petitioner's constitutional, statutory, and regulatory rights, this Court should grant this Petition for Writ of Habeas Corpus and order his release.

20. Petitioner respectfully requests that this Honorable Court declare his re-arrest and continued detention unlawful and order Respondents to release him immediately.

ARGUMENT

I. PETITIONER'S REARREST VIOLATES THE FOURTH AMENDMENT AND DOES NOT SATISFY THE REQUIREMENTS FOR A WARRANTLESS IMMIGRATION ARREST UNDER 8 U.S.C. § 1357(a)(2)

21. The Fourth Amendment protects individuals against unreasonable searches and seizures, requiring that any arrest be supported by probable cause. U.S. Const. amend. IV; *Beck v. Ohio*, 379 U.S. 89, 91 (1964). " Freedom from imprisonment lies at the heart of the

liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

22. The statutory limitations governing warrantless immigration arrests enforce these baseline Fourth Amendment protections. The Supreme Court has explained that "[a]s a general rule, it is not a crime for a removable [noncitizen] to remain present in the United States," and that officers may not arrest an individual "based on nothing more than possible removability." *Arizona v. United States*, 567 U.S. 387, 407 (2012). Rather, the federal statutory framework governs when an immigration arrest may occur. Where "no federal warrant has been issued, [immigration] officers have more limited authority." *Id.* at 408.

23. While 8 U.S.C. § 1226(a) governs arrests executed pursuant to an administrative warrant, ICE officers lacking a warrant may only effectuate an arrest under the narrow authority of 8 U.S.C. § 1357(a)(2). § 1357(a)(2) authorizes a warrantless arrest only where the officer has "reason to believe" that the individual is likely to escape before a warrant can be obtained for his arrest. The statutory phrase "reason to believe" in § 1357(a)(2) "means constitutionally required probable cause" under the Fourth Amendment. *United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010).

24. Executing a pre-planned, warrantless arrest inside an ICE facility during a mandatory compliance check-in, where no emergency or flight risk exists, renders the seizure per se unreasonable under the Fourth Amendment.

25. This Court has already applied this constitutional and statutory standard to Petitioner. In its August 27, 2026, Order, the Court concluded that Respondents lacked probable cause

to determine that Petitioner was "likely to escape" and therefore ordered his immediate release from custody.

26. The circumstances surrounding Petitioner's October 1 rearrest provide no greater basis for finding probable cause that he was likely to escape. On the contrary, Petitioner voluntarily appeared at the precise time and location designated by ICE for his scheduled check-in. ICE therefore knew exactly when and where Petitioner would appear, and Petitioner demonstrated his complete compliance by appearing as directed.

27. This Court has recognized that "[l]ikely to escape" under § 1357(a)(2) means "'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) (quoting *Hussen v. Noem*, 822 F. Supp. 3d 944, 988 (D. Minn. 2026)).

28. Likewise, a noncitizen's lack of lawful immigration status does not, standing alone, establish Fourth Amendment probable cause that the individual is likely to escape. To hold otherwise "would effectively collapse § 1357(a)(2)'s two distinct requirements into one." *Francisco M. A. v. Blanche*, No. 26-cv-2032 (JRT/EMB), 2026 WL 1229701, at *3 (D. Minn. May 5, 2026).

29. Under the Fourth Amendment and § 1357(a)(2), the determination that a noncitizen is likely to escape requires a particularized assessment of the circumstances known to officers at the time of the arrest. See *Orellana v. Nobles County*, 230 F. Supp. 3d 934, 946 (D. Minn. 2017). Here, Petitioner's conduct demonstrates the exact opposite of evasion. He voluntarily presented himself for his scheduled ICE appointment, was processed by ICE, and was even instructed to return for another check-in at a later date before being seized.

30. Where ICE knew precisely when and where Petitioner would appear, and Petitioner in fact appeared voluntarily at the time and place directed by ICE, there was no objective factual basis to conclude that he was likely to escape before a warrant could be obtained. Accordingly, Petitioner's renewed detention under materially similar circumstances violates the Fourth Amendment and presents the same statutory defect that required his release pursuant to this Court's August 27, 2026 Order.

II. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION PURSUANT TO 8 U.S.C. 1225(b)(2) AS ICE HAS RELEASED UNDER 8 U.S.C. 1226(a).

31. On the OREC issued on August 28, 2026, by ICE, it clearly stated that "[i]n accordance with section 236 of the Immigration and Nationality Act … you are being released on your own recognizance".

32. Due to Petitioner's the manner of entry he was initially classified as under 8 U.S.C. § 1225(b)(2), ICE itself decided to re-classify Petitioner's detention as governed under 8 U.S.C. § 1226(a).

33. Under the *Accardi* doctrine, (see *Accardi v. Shaughnessy*, 347 U.S. 260 (1954)), and the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), ICE is legally bound by its own official administrative records and determinations, and any attempt to disavow its § 1226(a) designation is arbitrary, capricious, and not in accordance with law.

34. Additionally, this District has repeatedly rejected the argument that § 1225 detention is justified where the Government's own records reflect detention was initiated under § 1226. *Armindo H.V. v. Blanche, et al.*, No. 26-CV-3950 (NEB/EMB) (D. Minn September 28, 2026); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 969 (D. Minn. 2025) (appeal dismissed

sub nom. *Escalante v. Bondi*, No. 25-3126, 2025 WL 4698552 (8th Cir. Dec. 5, 2025); *Yonatan P. v. Blanche,* No. 26-CV-2949 (JMB/EMB), 2026 WL 1842652, at *3–5 (D. Minn. June 26, 2026) (ordering release of petitioner whom DHS had previously released subject to conditions under Section 1226); *Martha C.G.P. v. Blanche*, No. 26-CV-2308 (DWF/JFD), 2026 WL 1329577, at *2 (D. Minn. May 13, 2026) (rejecting respondents' contention that petitioner was subject to mandatory detention under Section 1225(b) where Form I-200 warrant served during petitioner's arrest represented that detention was under Section 1226); *Hector J.A.S. v. Shea*, No. 26-CV-2242 (JRT/DLM), 2026 WL 1243500, at *2 (D. Minn. May 6, 2026) (same); *Souleimane C. v. Blanche*, No. 26-CV-2215 (LMP/JFD), 2026 WL 1180075, at *3–4 (D. Minn. Apr. 30, 2026).

III. RESPONDENTS VIOLATED PETITIONER'S FIFTH AMENDMENT DUE PROCESS RIGHTS BY REVOKING HIS LIBERTY INTEREST WITHOUT LAWFUL STATUTORY AUTHORITY OR ADEQUATE PROCEDURAL PROTECTIONS

35. The Due Process Clause of the Fifth Amendment prohibits the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. " Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. (2001). This core constitutional protection applies to all persons within the territory of the United States, regardless of immigration status. *Id.* at 693.

36. Once the government granted Petitioner's OREC in August 28, 2026, Petitioner acquired a constitutionally protected liberty interest in remaining free from arbitrary re-detention.

See *Morrissey v. Brewer*, 408 U.S. 471, 481–82 (1972) (holding that conditional liberty creates a substantial liberty interest protected by procedural due process).

37. Under established procedural due process principles, the government cannot summarily revoke a grant of conditional liberty without providing minimal procedural safeguards. At a minimum, fundamental due process requires: (1) advance written notice of the alleged violations or grounds for revocation, (2) an opportunity to be heard before a neutral decisionmaker, and (3) a reasoned explanation based on individualized evidence demonstrating a material change in circumstances or a violation of release conditions. See *Morrissey*.

38. Respondents completely disregarded these constitutional safeguards when they rearrested Petitioner on October 1, 2026. Petitioner was provided no prior notice, no hearing, and no opportunity to contest the revocation of his release. He was re-detained despite fully complying with all terms of his OREC, including reporting in person for his scheduled ICE check-in as instructed.

39. Because Respondents re-detained Petitioner without statutory authority, without notice, and without any pre- or post-deprivation hearing, Petitioner's ongoing detention violates the Due Process Clause of the Fifth Amendment and requires his immediate release.

40. Petitioner complied with all the requirements set forth in the OREC, Petitioner's re-arrest is a clear direct violation of Petitioner's due process rights.

41. If applied, the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), makes clear that the continued detention of Petitioner without access to a custody hearing is a clear violation of his due process rights:

(1) *Petitioner's Private Interest:* Petitioner's private interest here is of paramount importance. "[T]he interest in being free from physical detention by one's own government," is indeed "the most elemental of liberty interests." *Hamdi v. Rumsfeld,* 542 U.S. 507, 525 (2004) at 529. Petitioner, who is presently incarcerated at the Freeborn County Jail, under conditions like those he would be subjected to had he committed a crime, has been deprived of that elemental interest. *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. 2025) (noting that when courts assess the first Mathews factor, they "consider the conditions under which detainees are currently held, including whether a detainee is held in conditions indistinguishable from criminal incarceration");

(2) *Risk of Erroneous Deprivation and Value of Additional Safeguards*: The risk of erroneous deprivation under ICE's current summary re-arrest procedure is extraordinarily high. ICE revoked Petitioner's release and re-arrested him without providing advance notice, stating any factual or legal grounds for revocation, producing an administrative warrant (Form I-200) or custody determination (Form I-286), or providing an opportunity to contest the re-arrest before a neutral decisionmaker. The probable value of basic procedural safeguards, such as written notice of any alleged violation and a prompt hearing before a neutral decisionmaker, is immense, as it would directly prevent arbitrary and unfounded re-detentions of compliant individuals;

(3) The Government's Interest: The government's interest in summary re-detention without a hearing is minimal. The government holds no legitimate interest in arbitrarily re-detaining noncitizens who fully comply with their release

conditions and voluntarily appear at scheduled check-ins. Furthermore, providing basic notice and a custody hearing imposes negligible administrative or financial burdens on the government relative to the total deprivation of Petitioner's fundamental liberty.

42. Because all three *Mathews* factors weigh overwhelmingly in Petitioner's favor, Respondents' summary revocation of Petitioner's OREC and continued detention without a prompt custody hearing violate Fifth Amendment Procedural Due Process

JURISDICTION

43. This instant action is rooted in the United States Constitution and the Immigration and Nationality Act (INA).

44. This Honorable court has jurisdiction over this matter under 28 U.S.C. § 2241 (Habeas Corpus), 28 U.S.C. § 1331 (Federal Question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

VENUE

45. Venue is proper because the petitioner is currently detained at the Freeborn Adult Detention Center, located at 411 South Broadway Avenue Albert Lea, MN 56007, therefore, the Petitioner remains detained in the District of Minnesota.

REQUIREMENTS SET FORTH ON 28 U.S.C. § 2243

46. The Honorable Court must grant this instant petition for writ of habeas corpus or issue an order to show-cause to the respondents "forthwith", unless the petitioner is not entitled to relief, 28 U.S.C § 2243. If an order to show cause is issued, the Honorable Court must require respondents to file a return "within three days unless for good cause additional

time, not exceeding twenty days, is allowed"

PARTIES AND FACTS ALLEGED

47. The Petitioner, Mr. M.-G upon information provided by ICE, is currently detained at the Freeborn Adult Detention Center, located at 411 South Broadway Avenue Albert Lea, MN 56007,

48. Respondent David Easterwood is sued in his official capacity as the Acting Director of St. Paul Field Office for U.S. Immigration and Customs Enforcement (ICE).

49. Respondent David Venturella is sued in his capacity as the Acting Director for the U.S. Immigration and Customs Enforcement (ICE).

50. Respondent Markwayne Mullin is sued in his capacity as the Secretary of the U.S. Department of Homeland Security (DHS).

51. Respondent Mike Stasko is sued in his capacity as the Warden for the Freeborn Adult Detention Center.

52. All respondents are named in their official capacities.

CLAIMS FOR RELIEF

COUNT ONE

Unlawful Warrantless Arrest Under 8 U.S.C. § 1357(a)(2)

53. Under 8 U.S.C. § 1357(a)(2), an officer of the Department of Homeland Security may make a warrantless administrative arrest only if the officer has reason to believe the noncitizen is in the United States unlawfully and is "likely to escape before a warrant can be obtained for his arrest."

54. Petitioner appeared voluntarily at the ICE Office on October 1, 2026, for a regularly scheduled check-in, demonstrating full compliance with immigration authorities.

55. Petitioner's voluntary appearance at a law enforcement facility conclusively refutes any objective or reasonable belief that Petitioner was "likely to escape."

56. Because Respondents failed to satisfy the mandatory statutory prerequisite of § 1357(a)(2), Petitioner's warrantless arrest and subsequent detention are unlawful.

COUNT TWO

Violation of 8 C.F.R. § 287.8(c)(2)(ii) & Failure to Obtain a Warrant When Time Permitted

57. 8 C.F.R. § 287.8(c)(2)(ii) and 8 U.S.C. § 1357(a)(2) require immigration officers to obtain an administrative arrest warrant (Form I-200) whenever time and circumstances reasonably permit prior to making an arrest.

58. Respondents established Petitioner's check-in date of October 1, 2026, upon his release on August 28, 2026, providing Respondents over 30 days to apply for and secure an administrative warrant.

59. Respondents failed to obtain an administrative arrest warrant despite having ample time, opportunity, and advance notice of Petitioner's exact location and scheduled appearance.

60. The failure to secure a warrant when time permitted renders Petitioner's October 1, 2026 re-arrest unauthorized by law.

COUNT THREE

Violation of Fifth Amendment Right to Due Process Clause

61. The Fifth Amendment to the United States Constitution provides that no person shall be "deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

62. "[A]ll persons, aliens and citizens alike, are protected by the Due Process Clause", *Mathews v. Diaz*, 426 U.S. 67, 78 (1976).

63. "[T]he Due Process Clause applies to all `persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent," *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

64. Civil immigration detention is unconstitutional when it is punitive, arbitrary, or disconnected from any legitimate administrative purpose.

65. Executive detention without statutory authority, without a warrant, and without an individualized finding of risk of flight or danger to the community violates procedural due process.

66. By re-detaining Petitioner during a routine administrative check-in without issuing prior notice, securing a warrant, or making an individualized flight-risk determination compliant with statutory standards, Respondents arbitrarily deprived Petitioner of his fundamental liberty interest.

67. Where Petitioner previously demonstrated full compliance with conditions of release, appeared as directed, and posed no flight risk or public safety concern, re-arresting and detaining him without new statutory justification constitutes arbitrary government action that shocks the conscience and violates substantive due process.

COUNT FOUR

Violation of the Administrative Procedure Act Contrary to Law and Arbitrary and Capricious Agency Policy

68. The Administrative Procedure Act ("APA") requires a reviewing court to hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary,

capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

69. The mandatory detention provision of 8 U.S.C. § 1225(b)(2) does not apply to Petitioner, as he was previously released under an Order of Release on Recognizance (Form I-220A) that explicitly established his release authority and detention status under INA § 236 (8 U.S.C. § 1226).

70. Respondents' execution of a warrantless re-arrest during a routine check-in—in violation of 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2)(ii), and the *Accardi* doctrine—and the misapplication of the improper statutory framework constitute final agency action that is arbitrary, capricious, an abuse of discretion, and contrary to law.

COUNT FIVE

Violation of the Accardi Doctrine & Governing Regulations

71. Under the *Accardi* doctrine, an administrative agency is bound by and must scrupulously adhere to its own promulgated rules and regulations.

72. DHS regulations at 8 C.F.R. § 287.8(c)(2)(ii) strictly mandate that an administrative arrest warrant must be obtained prior to an arrest unless the arresting officer has reason to believe the person is likely to escape before a warrant can be obtained.

73. By executing a warrantless re-arrest of Petitioner during a scheduled, voluntary appearance without establishing a likelihood of escape, Respondents violated 8 C.F.R. § 287.8(c)(2)(ii).

74. Under *Accardi*, Respondents' failure to follow their own governing arrest standards renders the October 1, 2026 arrest and resulting detention legally invalid and void.

PRAYER FOR RELIEF

1) Assume jurisdiction over this matter;
2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days;
3) Order that Respondents not transfer or remove Petitioner from the District of Minnesota during the pendency of these proceedings;
4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment as well as the relevant statutes and regulations governing detention of noncitizens;
5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner, or, in the alternative, ordering Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within ten (10) days, where the Government bears the burden of proving by clear and convincing evidence that Petitioner is a danger to the community or a flight risk;
6) Order Respondents to file a status report with the Court within fourteen (14) days stating the outcome of the bond hearing;
7) Award Petitioner reasonable attorney's fees and costs under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412; and
8) Grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,

ABELARDO M.-G.

By and through undersigned counsel.

Respectfully submitted, October 6, 2026

/s/ Stephen A. Pegnam
Stephen A. Pegnam
Law Offices of Stephen A. Lagana
Tel: (978) 794-2331
lagana.law@gmail.com
BBO-MA: 659290
Counsel for Petitioner (PHV Pending)

RATKOWSKI LAW PLLC
s/ Nico Ratkowski
Nico Ratkowski (Atty. No. 0400413)
332 Minnesota Street, Suite W1610
Saint Paul, MN 55101
P: (651) 755-5150
E: nico@ratkowskilaw.com

Local Counsel for Petitioner

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

I represent Petitioner, Abelardo M.-G. and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Respectfully submitted, on October 6, 2026

/s/ Stephen A. Pegnam
Stephen A. Pegnam
Law Offices of Stephen A. Lagana
Tel: (978) 794-2331
lagana.law@gmail.com
BBO-MA: 659290
Counsel for Petitioner (PHV Pending)