UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Diego Mauricio Andrade Lozada,

Petitioner,

v.

TODD BLANCHE, Attorney General; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; DEPARTMENT OF HOMELAND SECURITY; DAVID VENTURELLA, Acting Director of Immigration and Customs Enforcement; IMMIGRATION AND CUSTOMS ENFORCEMENT; SIRCE E. OWEN, Acting Director for Executive Office for Immigration Review; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; DAVID EASTERWOOD, Acting Field Director, St. Paul Field Office Immigration and Customs Enforcement; and JOEL BROTT, Sheriff of Sherburne County,

Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Diego Mauricio Andrade Lozada ("Petitioner") has lived in the United States since March 8, 2024.

2. On Saturday, October 3, 2026, Petitioner was detained by Burnsville police on suspicion of driving under the influence and brought to the Dakota County Jail in Hastings, Minnesota. Following his release from state custody on Monday, October 5, 2026, he was detained by Immigration and Customs Enforcement ("ICE").

3. Petitioner did not enter the United States *without* inspection. He was inspected and admitted as a B-2 nonimmigrant visitor on March 8, 2024.

4. Because Petitioner was lawfully admitted, the mandatory detention provision of 8 U.S.C. § 1225(b)(2)(A), which the Eighth Circuit addressed in *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026), does not apply to him. Petitioner has no criminal convictions, so none of the mandatory detention grounds in 8 U.S.C. § 1226(c) apply either. The only statute that could authorize his detention is the discretionary authority of 8 U.S.C. § 1226(a).

5. DHS has known that Petitioner was removable since at least September 8, 2024 when he and his family applied affirmatively for asylum. (Exhibit C). DHS did not seek to detain him at his fingerprint appointment scheduled on October 10, 2024, nearly two years ago. (Exhibit D). USCIS granted him employment authorization beginning March 28, 2025 which is valid through March 27, 2030. (Exhibit E).

6. The only new fact is that he was detained by Burnsville Police and charged with driving under the influence and careless driving (charged in the alternative). (Exhibit K).

7. ICE agents did not present a judicial warrant. On information and belief, they did not have an administrative warrant of arrest (Form I-200) naming Petitioner.

8. The Fifth Amendment's Due Process Clause requires that civil detention bears a reasonable relationship to a legitimate governmental purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001). Immigration detention has only two such purposes: ensuring the noncitizen's appearance at future proceedings and preventing danger to the community. *Id.*

9. Neither purpose is served here. Petitioner entered lawfully, was included in his wife's asylum application within the timeframe allotted by the law, and attended his fingerprint appointment to submit to background checks. Although he was arrested and briefly detained, Dakota County released him with a notice to appear at a hearing via zoom in December. (Exhibits K-L). He has not been convicted and does not have a prior record. (Exhibits H – J).

10. There is also no removal order to execute. His detention serves no legitimate purpose.

11. Petitioner's arrest and detention violate the Immigration and Nationality Act ("INA") and its implementing regulations, the Fourth and Fifth Amendments to the Constitution, and the Administrative Procedure Act ("APA").

12. Each day that Petitioner remains in detention, he suffers irreparable harm. The deprivation of a constitutional right "for even minimal periods of time,

unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (regarding first amendment freedoms) (plurality opinion).

13. Petitioner respectfully seeks an order that does three things. First, it should issue a writ of habeas corpus directing his immediate release from ICE custody. Second, it should declare his arrest and detention unlawful. Third, it should enjoin Respondents from re-detaining him unless they first give notice to his counsel and prove, at a hearing before a neutral decisionmaker, a material change in circumstances justifying detention.

14. Pending adjudication of this Petition, Petitioner also seeks an order restraining Respondents from transferring him outside of Minnesota. He further asks that Respondents be required to give seventy-two (72) hours' notice of any intended movement or removal, so that he may meaningfully consult with and be represented by counsel.

JURISDICTION AND VENUE

15. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1361 (federal employee mandamus action), § 1651 (All Writs Act), and § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). This action further arises under the Constitution of the United States and the INA, including 8 U.S.C. §§ 1226 and 1357.

16. Custody is "separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding." 8 C.F.R. § 1003.19(d). *Compare* 8 U.S.C. § 1229a,

with 8 U.S.C. § 1226(a). Because Petitioner challenges the legality of his custody, not his removability, jurisdiction is proper. *Zadvydas*, 533 U.S. at 687–88.

17. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *Demore v. Kim, 538 U.S. 510, 516–17 (2003); see also Jennings v. Rodriguez, 583 U.S. 281, 292–96 (2018) (plurality opinion); Nielsen v. Preap, 586 U.S. 392, 401–02 (2019) (plurality opinion).*

18. Despite the limitations on judicial review in 8 U.S.C. § 1252, "§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention." *Zadvydas*, 533 U.S. at 688. Although this case involves pre-removal-order detention, the same logic applies. Detention is independent of removal and can be reviewed in a habeas action.

19. No jurisdiction-limiting provision of the INA bars review. Section 1252(g) applies only to three discrete actions: the decision to commence proceedings, to adjudicate cases, or to execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). It does not reach a challenge to the lawfulness of detention. Section 1252(b)(9) likewise does not bar challenges to detention that do not seek review of a removal order. *Jennings, 583 U.S. at 292–95 (plurality opinion); Preap, 586 U.S. at 402 (plurality opinion). Section 1226(e) does not bar challenges to the statutory authority for detention or constitutional claims. Demore, 538 U.S. at 516–17; Jennings, 583 U.S. at 295–96 (plurality opinion).*

20. Petitioner's claims do not depend on the Eighth Circuit's decision in *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026). *Avila* addressed noncitizens who are present in the United States without having been admitted. Petitioner was admitted. (Exhibit B).

21. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (e)(1)(B), and 2241(d) because Petitioner is detained within this District. He is currently detained at the Sherburne County Jail in Elk River, Minnesota. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondents operate in this District.

22. This Court's jurisdiction attaches when the Petition is filed, and it is not defeated by Petitioner's later transfer. *See Ex parte Endo*, 323 U.S. 283, 304–07 (1944); *Rumsfeld v. Padilla*, 542 U.S. 426, 440–41 (2004).

PARTIES

23. Petitioner is a native and citizen of Ecuador and a resident of Dakota County, Minnesota.

24. Petitioner is in custody at the Sherburne County Jail in Elk River, Minnesota.

25. Respondent **Todd Blanche** is being sued in his official capacity as the Attorney General of the United States and the head of the Department of Justice ("DOJ"), which encompasses the Board of Immigration Appeals ("BIA") and the immigration judges through the Executive Office for Immigration Review ("EOIR"). Attorney General Blanche shares responsibility for implementation and enforcement of the

immigration detention statutes, along with Respondent Markwayne Mullin named below. Attorney General Blanche is a legal custodian of Petitioner.

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

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

28. Respondent **David Venturella** is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Respondent Venturella is responsible for Petitioner's detention.

29. Respondent **Immigration and Customs Enforcement** is the subagency within the Department of Homeland Security responsible for implementing and enforcing the Immigration & Nationality Act, including the detention of noncitizens.

30. Respondent **Sirce E. Owen** is the Acting Director of Executive Office for Immigration Review and has ultimate responsibility for overseeing the operation of

the immigration courts and the Board of Immigration Appeals, including bond hearings. She is sued in her official capacity.

31. Respondent **Executive Office for Immigration Review** is the adjudicatory body within EOIR with jurisdiction over the removal and bond cases of Petitioner. Its authority includes individuals detained in Minnesota, Iowa, North Dakota, and South Dakota through the Fort Snelling immigration court.

32. Respondent **David Easterwood** is being sued in his official capacity as the Acting Field Office Director for the Saint Paul 28 U.S.C. § 2243

33. Field Office for ICE within DHS. In that capacity, Acting Field Office Director Easterwood has supervisory authority over the ICE agents responsible for detaining Petitioner. The address for the Fort Snelling Field Office is 1 Federal Drive, Fort Snelling, Minnesota 55111.

34. Respondent **Joel Brott** is being sued in his official capacity as the Sheriff responsible for the Sherburne County Law Enforcement Center. Because Petitioner is detained in the Sherburne County Law Enforcement Center, Respondent has immediate day-to-day control over Petitioner.

EXHAUSTION

35. Detained immigrants petitioning under 28 U.S.C. § 2241 *et seq.* face no statutory exhaustion requirement. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 965-966 (D. Minn. 2025). Nor is a judicially imposed prudential exhaustion requirement appropriate. *Id.* at 967–68; *see also Giron Reyes v. Lyons*, 801 F.Supp.3d 797 (N.D. Iowa 2025).

36. Prudential exhaustion is not required where the administrative remedy is inadequate, where the agency lacks authority to resolve the claims presented, or where requiring exhaustion would subject the petitioner to irreparable harm. *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992). All three circumstances are present here.

37. First, no administrative remedy can provide the relief Petitioner seeks. Petitioner does not ask for a bond or conditions of release. He contends that Respondents had no lawful authority to arrest and detain him in the first place. An Immigration Judge ("IJ") custody redetermination can, at most, set the conditions of continued custody. It cannot declare the arrest unauthorized or order unconditional release.

38. Second, IJs and the Board of Immigration Appeals lack authority to rule on the constitutionality of the statutes and regulations they administer. *Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992). An IJ likewise does not have jurisdiction to review the legality of an arrest under the Fourth Amendment or 8 U.S.C. § 1357(a)(2) in a custody proceeding. *See Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (BIA 2020); *cf. Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995).

39. Third, every day of unlawful detention separates Petitioner from his wife and children and inflicts irreparable harm that no later administrative ruling can undo.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

40. The Court must grant the petition for writ of habeas corpus or issue an order to show

41. (OSC) cause to the Respondents "forthwith," unless the petitioner is plainly not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* Nevertheless, the fact that Petitioner is detained, and removal proceedings have not commenced, outweighs any good cause argument for extension.

42. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been called "perhaps the most important writ known to the constitutional law of England, 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) *overruled in part on other grounds by Coleman v. Thompson,* 501 U.S. 772 (1991).

43. Petitioner is "in custody" for the purpose of § 2241 because he is presently detained by Respondents.

LEGAL FRAMEWORK

A. Petitioner Was Admitted, and § 1226(a) Is the Only Detention Authority That Could Apply

44. The INA establishes three detention regimes. Section 1225(b) governs "applicants for admission." Section 1226 governs noncitizens arrested and detained pending a decision on removal. Section 1231 governs noncitizens subject to a final order of removal. *See Jennings*, 583 U.S. at 287–89; 8 U.S.C. § 1231(a).Jimenez v.

45. The INA defines "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

46. Petitioner was inspected and admitted as a B-2 visitor on March 8, 2024. (Exhibit B).

47. Section 1231 cannot apply because Petitioner has no removal order, final or otherwise. (Exhibit F).

B. Avila Does Not Reach Noncitizens Who Were Admitted

48. In *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026), the Eighth Circuit held that noncitizens who entered without inspection and were never admitted are "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

49. *Avila*'s reasoning starts from the statutory definition. Section 1225(a)(1) deems an "applicant for admission" to be a noncitizen "present in the United States who has not been admitted." The *Avila* majority then read "seeking admission" in § 1225(b)(2)(A) to cover the same population as that deemed status.

50. Petitioner has been admitted. (Exhibit B). By the plain terms of § 1225(a)(1), he is not an applicant for admission. Under *Avila*'s own reasoning, a person who is not an applicant for admission cannot be "seeking admission" within the meaning of § 1225(b)(2)(A).

51. Petitioner's pending application for asylum does not change this analysis. Section 1225(a)(1) turns on whether a person "has not been admitted," not on whether the

person later seeks an immigration benefit. This Court owes no deference to any contrary agency interpretation. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

C. Petitioner Is Not Subject to Mandatory Detention Under § 1226(c)

52. Section 1226(c)(1)(A)–(D) mandates detention only for noncitizens who are inadmissible or deportable on enumerated criminal or terrorism-related grounds. Section 1226(c)(1)(E) requires both inadmissibility under 8 U.S.C. § 1182(a)(6)(A), (6)(C), or (7) and a charge, arrest, conviction, or admission of an enumerated offense such as burglary, theft, larceny, shoplifting, assault of a law enforcement officer, or a crime resulting in death or serious bodily injury.

53. Subsection (c)(1)(E) is triggered by being "charged with" or "arrested for" an enumerated offense. None of the charges brought against Petitioner in the Dakota County criminal case are enumerated.

54. Subsection (c)(1)€ also requires an inadmissibility under § 1182(a)(6)(A), (6)(C), or (7) and an admitted B-2 overstay is not in admissible on those grounds.

D. Section 1226(a) Authorizes Arrest Only on a Warrant, and a Warrantless Arrest Requires a Likelihood of Escape

55. Section 1226(a) provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The warrant is a statutory precondition to arrest and detention under § 1226(a).

56. DHS regulations implement that requirement. After a Notice to Appear issues, a respondent may be arrested and taken into custody under the authority of a Form I-200, Warrant of Arrest, issued by an officer authorized to do so. 8 C.F.R. §§ 236.1(b)(1), 287.5(e)(2).

57. Outside the warrant requirement, immigration officers may arrest without a warrant only if they have reason to believe that the person is in the United States in violation of law and **"is likely to escape before a warrant can be obtained for his arrest."** 8 U.S.C. § 1357(a)(2) (emphasis added). DHS's regulations repeat the rule: "A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii).

58. The likelihood-of-escape requirement cannot be satisfied when the government has previously issued the Petitioner a visa, inspected, and admitted him, which involves the collection of a tremendous amount of information about him. (Exhibit B). It cannot be satisfied when the government knows exactly where the Petitioner lives due to his asylum application. (Exhibit C). It cannot be satisfied when the Petitioner has previously presented himself voluntarily for fingerprinting. (Exhibit D). And it cannot be satisfied when the Petitioner has been issued a work authorization document by the government. (Exhibit E).

E. Even With a Warrant, DHS Must Make an Individualized Custody Determination

59. An administrative Form I-200 is not a judicial warrant. It is signed by an ICE officer and is not reviewed by any judge or neutral magistrate before it issues. Its issuance authorizes an arrest. It does not reflect any determination that continued detention, as opposed to release, is warranted.

60. DHS's regulations require that determination. Within forty-eight hours of a warrantless arrest, DHS must decide whether the person will be continued in custody or released on bond or recognizance. 8 C.F.R. § 287.3(d). An officer may release a noncitizen who demonstrates that release would not pose a danger to property or persons and that the noncitizen is likely to appear for future proceedings. 8 C.F.R. § 236.1(c)(8).

61. An agency must follow its own regulations, and action taken in disregard of them is unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

62. Although 8 C.F.R. § 287.3(d) has a voluntary departure carve-out, Petitioner's signing of Form I-210 was not knowing and voluntary. Therefore, no valid grant exists.

63. Further the I-210 was signed after his arrest. Even a valid voluntary departure grant can't retroactively satisfy the warrant requirement in 8 U.S.C. § 1226(a) or the likelihood-of-escape requirement under 8 U.S.C. § 1357(a)(2).

64. On October 6, 2026, Petitioner, through counsel, submitted a request to withdraw the Form I-210 for those reasons. On October 7, 2026 that request was updated with Petitioner's asylum receipt number and revised argument. (Exhibit G, M).

F. Civil Detention Must Serve a Legitimate, Non-Punitive Purpose

65. "Freedom 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. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

66. Civil immigration detention is constitutional only when it serves its regulatory purposes of preventing flight and protecting the community. *Zadvydas*, 533 U.S. at 690–91; *Demore*, 538 U.S. at 527–28. Detention that is not reasonably related to a legitimate goal is punishment. *Bell v. Wolfish*, 441 U.S. 520, 538–39 (1979); *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

67. Section 1226(a) authorizes detention only "pending a decision on whether the alien is to be removed."

G. A Person the Government Has Knowingly Left at Liberty Has a Protected Interest in Remaining Free

68. A person whom the government has allowed to live at liberty, even conditionally, has a protected liberty interest in remaining free. That interest may not be taken away without due process. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Young v. Harper*, 520 U.S. 143, 147–49 (1997).

69. Due process generally requires notice and a hearing before the government deprives a person of liberty, not after. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). What process is due depends on the private interest affected, the risk of erroneous deprivation, and the government's interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

70. DHS, with full knowledge of his presence and status through his entry, asylum application, biometrics, and employment authorization document, repeatedly chose not to detain him. (Exhibits C - E); *Cf. Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981).

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

Petitioner's Entry into the United States and Family in Minnesota

71. Petitioner is a native and citizen of Ecuador.

72. He entered the United States on March 8, 2024. (Exhibit B).

73. On September 16, 2024, his wife filed Form I-589, Application for Asylum listing Petitioner and his children as derivatives. (Exhibit C).

74. Prior to his detention, Petitioner lived with his wife and three children in Eagan, Minnesota. He was their primary financial support.

75. Petitioner, his wife, and their children all attended fingerprint appointments in Saint Paul, Minnesota based on the previously filed Form I-589 (Exhibit D). The appointments were all scheduled between October 7, 2024 and October 10, 2024.

76. At the time of his arrest, he had a valid, unexpired employment authorization document issued by the U.S. government with validity dates of March 28, 2025 through March 27, 2030. (Exhibit E).

77. At the time of his detention by ICE his criminal history consisted of a paid petty misdemeanor citation for no driver's license from August 2024 (Exhibits H – J) and a pending, unresolved case involving a charge for driving under the influence (Exhibit K – L). *See* Minn. Stat. § 609.02, subd. 4a (petty misdemeanors are not crimes).

Arrest and ICE Detention

78. On Saturday, October 3, 2026, Petitioner was detained by Burnsville Police on suspicion of driving under the influence. (Exhibit K).

79. He was transferred to the Dakota County jail in Hastings, Minnesota.

80. On Monday, October 5, 2026, Dakota County released Petitioner with a notice to appear for a Zoom hearing in December.

81. ICE detained Petitioner before he left the jail.

82. ICE agents did not present a judicial warrant.

83. On information and belief, they did not have an administrative warrant of arrest (Form I-200) naming Petitioner.

84. Sometime after his detention by ICE, he was transported to the Bishop Henry Whipple building in Fort Snelling, Minnesota, and then to Sherburne County Jail in Elk River, Minnesota.

85. Upon arrival Petitioner was presented with documents in English.

86. Petitioner is not fluent in spoken or written English.

87. Petitioner was told that if he signed for voluntary departure he would be in Ecuador in 5 days and that if he didn't sign it would take over a month.

88. He was not told he could see a Judge and that he was eligible for a bond hearing.

89. He was not told he could pursue his asylum application in front of the Judge in removal proceedings.

90. He was told that if he signed, nothing would happen to his wife and children.

91. Based on what he was both told and not told, he signed for voluntary departure, he believes, on October 5, 2026.

Request to Withdraw I-210 Voluntary Departure Agreement

92. Petitioner spoke with counsel for the first time on Tuesday, October 6, 2026.

93. Counsel immediately filed an electronic Form G-28, Appearance as Attorney electronically and submitted a request to withdraw the Form I-210 voluntary departure agreement based upon 8 U.S.C. § 1229c(b)(1) and 8 C.F.R. § 1240.26(a)(1).

94. On October 7, 2026 that request was updated with Petitioner's asylum receipt number and revised argument. (Exhibit G, M).

95. Prior to speaking with counsel, Petitioner did not know that he had the right to see a judge, to pursue his asylum application, or to request bond. Petitioner believed that he was protecting his family by signing the document. Given his incomplete

and incorrect understanding of his situation, his I-210 should be rescinded or withdrawn.

Detention Without Removal Proceedings

96. As of 10:00 a.m. on October 7, 2026, Petitioner is listed in the ICE Detainee Locator as being in Elk River, Minnesota in the Sherburne County Jail (Exhibit A).

97. As of 10:00 a.m. on October 7, 2026, on information and belief, no case has been filed in removal proceedings, and he is therefore unable to request bond from an Immigration Judge. (Exhibit F)

98. Pending the adjudication of his Petition, Petitioner seeks an order restraining the Respondents from transferring him to a location while he cannot reasonably consult with counsel, such a location to be construed as any location outside of the State of Minnesota.

CAUSES OF ACTION

COUNT ONE: VIOLATION OF THE INA AND ITS IMPLEMENTING REGULATIONS – ARREST AND DETENTION WITHOUT STATUTORY AUTHORITY (8 U.S.C. §§ 1226(a), 1357(a)(2); 8 C.F.R. §§ 236.1, 287.3(d), 287.8(c))

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

100. Because Petitioner was admitted and has no criminal convictions, 8 U.S.C. §§ 1225(b)(2)(A) and 1226(c) do not apply to him, and he has no removal order that could trigger § 1231. The only statute that could authorize his detention is 8 U.S.C. § 1226(a).

101. Section 1226(a) authorizes arrest and detention only "[o]n a warrant issued by the Attorney General." On information and belief, Respondents arrested Petitioner without any warrant. Petitioner was presented with various documents at the jail in English and does not know what they contain.

102. Absent a warrant, Respondents could arrest Petitioner only under 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii), which require reason to believe he was likely to escape before a warrant could be obtained. No such reason could exist under these circumstances. He is the financial support for his wife and children, they had valid work authorizations and a pending asylum application, because of the applications the government had the address, phone numbers, and emails, and they had previously appeared at a time and place that they were directedm to in order to provide biometric information, including fingerprints.

103. To the extent Respondents allege an existing administrative Form I-200, such a document is issued by an ICE officer without review by any judge or neutral magistrate, and on information and belief was not based on any individualized determination that Petitioner's detention, as opposed to his continued liberty, was warranted.

104. In either event, Respondents failed to make the individualized custody determination required by 8 C.F.R. §§ 236.1(c)(8) and 287.3(d). Any such determination made in good faith would have required release, given Petitioner's record of compliance, lawful entry, timely filing for asylum, absence of criminal convictions, family ties, and voluntary appearance at an appointment for biometrics collection.

105. ICE's own guidance confirms these requirements. A warrantless arrest is permitted only where the officer has probable cause to believe the person is both removable and "likely to escape" before a warrant can be obtained. Memorandum from Todd M. Lyons, Acting Dir., U.S. Immigration & Customs Enforcement, to All ICE Personnel, *Civil Immigration Arrest Authority: Administrative Arrest Warrants and Warrantless Arrests* (Jan. 28, 2026) ("Lyons Memorandum") (Exhibit N). The likelihood-of-escape determination must be made "based on the totality of the circumstances known to the immigration officer at the time of the encounter and prior to the arrest," and the officer must document the relevant factors "as soon as practicable" afterward. *Id.* Under ICE's own definition, a person is "likely to escape" only if he "is unlikely to be located at the scene of the encounter or another clearly

identifiable location once an administrative warrant is obtained." *Id.* Petitioner was in the custody of the Dakota County jail when ICE encountered him. That is precisely such a "clearly identifiable location," and ICE knew exactly where he was. On information and belief, no officer made the required pre-arrest determination, and none could have made it in good faith on these facts.

106. Petitioner's arrest and detention therefore exceed Respondents' statutory authority and violate their own regulations. *Accardi*, 347 U.S. at 268. Petitioner's continued detention flows directly from that unlawful arrest and is itself unlawful.

COUNT TWO: VIOLATION OF THE FOURTH AMENDMENT – UNREASONABLE SEIZURE

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

108. Noncitizens, like citizens, are protected by the Fourth Amendment against unreasonable seizures, including in the immigration context. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878DH (1975).

109. Congress conditioned warrantless immigration arrests on a likelihood of escape precisely to protect the Fourth Amendment interests of those arrested. 8 U.S.C. § 1357(a)(2). On information and belief, Respondents arrested Petitioner without a warrant, and without any exigency, at a government office, at a time the government itself selected.

110. A seizure of a person at a government appointment, without a warrant, without exigency, and without statutory authority, is unreasonable. Petitioner's continued

detention is the ongoing product of that unlawful seizure and independently violates the Fourth Amendment.

COUNT THREE: VIOLATION OF THE FIFTH AMENDMENT – PROCEDURAL DUE PROCESS

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

112. Petitioner has a protected liberty interest in remaining free. Petitioner has lived in the United States for more than two years with the full knowledge of DHS which has deliberately allowed him to live at liberty, prosecute his case, and work with DHS-issued authorization. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 147–49.

113. Respondents deprived Petitioner of that liberty without prior notice, without any statement of reasons, without any showing of changed circumstances, and without a hearing before a neutral decisionmaker. *Zinermon*, 494 U.S. at 127; *cf. Matter of Sugay*, 17 I. & N. Dec. at 640.

114. Each *Mathews* factor favors Petitioner. His private interest in freedom from physical confinement and in his family life is of the highest order. The risk of erroneous deprivation is severe where no neutral official has considered whether he is a flight risk or a danger. The government's interest in detaining, without process, a man who reported voluntarily to a previous government appointment is minimal. *Mathews*, 424 U.S. at 335.

115. Petitioner's detention therefore violates the procedural protections of the Due Process Clause of the Fifth Amendment.

COUNT FOUR: VIOLATION OF THE FIFTH AMENDMENT – SUBSTANTIVE DUE PROCESS

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

117. Civil immigration detention must bear a reasonable relationship to preventing flight or protecting the community. *Zadvydas*, 533 U.S. at 690–91; *Demore*, 538 U.S. at 527–28.

118. Petitioner is not a flight risk. He entered the U.S. lawfully, has lived in the United States with his wife and children since March 2024, at an address known to the U.S. government, voluntarily attended a government appointment to provide his fingerprints, and has never failed to appear when asked.

119. He is also not a danger. He has one prior civil citation for no driver's license for the year he arrived in the U.S. He was recently arrested on suspicion of driving under the influence, but he has not been convicted. (Exhibits H - K). I zoom hearing has been scheduled for December in state court. (Exhibit L).

120. Removal proceedings have never been initiated against Petitioner. (Exhibit F). His detention therefore cannot serve to secure his appearance at any imminent proceeding, and it has no foreseeable end point.

121. Because Petitioner's detention bears no reasonable relationship to any legitimate purpose, it is punitive and violates the substantive component of the Due Process Clause of the Fifth Amendment. *Bell*, 441 U.S. at 538–39; *Salerno*, 481 U.S. at 755.

COUNT FIVE: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT – ARBITRARY AND CAPRICIOUS AGENCY ACTION, ACTION IN EXCESS OF STATUTORY AUTHORITY, AND ACTION WITHOUT OBSERVANCE OF PROCEDURE REQUIRED BY LAW

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

123. The APA requires a reviewing court to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," that is "in excess of statutory jurisdiction, authority, or limitations," or that is taken "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (C), (D).

124. For more than two years, DHS maintained a position that Petitioner need not be detained while his affirmative asylum case proceeded with USCIS. When an agency changes position, it must display awareness that it is doing so, provide good reasons for the new policy, and account for serious reliance interests engendered by its prior policy. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30–33 (2020).

125. Respondents reversed course without any explanation, without identifying any changed circumstance, and without considering Petitioner's reliance interests, including his position as rehis family's financial support, his DHS-issued employment authorization, and his pending petition for relief. That decision fails to consider important aspects of the problem and is arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

126. Respondents' arrest and detention of Petitioner without the warrant, likelihood-of-escape finding, or individualized custody determination required by 8 U.S.C. §§ 1226(a) and 1357(a)(2) and 8 C.F.R. §§ 236.1, 287.3(d), and 287.8(c) is in excess of statutory authority and without observance of procedure required by law.

CLAIMS FOR RELIEF: AVAILABILITY OF RELEASE

127. Petitioner seeks immediate release, not a bond hearing.

128. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, *I.N.S. v. St. Cyr*, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) ("A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus"), implicit in habeas jurisdiction is the power to order release. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.").

129. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g., Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("The typical remedy for [unlawful executive detention] is, of course, release."); *see also Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("the traditional function of the writ is to secure release from illegal custody").

130. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, "habeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and that as an equitable remedy, federal courts "[have] broad discretion in conditioning a judgment granting habeas relief [and are]

authorized . . . to dispose of habeas corpus matters 'as law and justice require.'" *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987), quoting 28 U.S.C. § 2243. An order of release falls under court's broad discretion to fashion relief. *See, e.g., Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) ("Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien's release.").

131. A bond hearing is not an adequate remedy here. Petitioner does not challenge the conditions under which he might be released. He challenges Respondents' authority to seize and hold him at all. Where custody was imposed without lawful authority, the remedy is release, not a hearing on whether unlawful custody should continue. *See Munaf*, 553 U.S. at 693.

132. Release is also appropriate because the record already answers every question a custody hearing would ask. Petitioner has lived in the United States for more than two years, has complied with every proceeding and appointment, has no criminal record, lives with his wife and children who depend upon him financially, holds DHS-issued employment authorization valid through 2030, and was arrested following his release with a future zoom hearing scheduled by Dakota County. (Exhibits B – F, H - L).

133. To prevent Respondents from simply re-arresting Petitioner after release, the Court should enjoin re-detention unless Respondents first provide written notice to Petitioner's counsel and prove, at a hearing before a neutral decisionmaker, by clear and convincing evidence, that a material change in circumstances shows Petitioner

to be a flight risk or a danger. *See Addington v. Texas*, 441 U.S. 418, 427, 432–33 (1979); *Foucha*, 504 U.S. at 80–82.

PRAYER FOR RELIEF

WHEREFORE, Petitioner asks this Court for the following relief:

A. Assume jurisdiction over this matter.

B. Issue an order to show cause requiring Respondents to file a return within three days, as required by 28 U.S.C. § 2243, justifying Petitioner's arrest and continued detention, or in the alternative, order Petitioner's immediate release.

C. Issue an order restraining Respondents from moving Petitioner outside the State of Minnesota during the pendency of this Petition and, if Petitioner has already been moved, ordering his prompt return to Minnesota.

D. Issue an order requiring Respondents to provide seventy-two (72) hours' notice to Petitioner's counsel of any intended movement of Petitioner.

E. Declare that Petitioner, as a noncitizen who was admitted to the United States, is not subject to detention under 8 U.S.C. § 1225(b)(2)(A) or § 1226(c), and that his detention, if authorized at all, is governed solely by 8 U.S.C. § 1226(a).

F. Declare that Petitioner's arrest and detention violated 8 U.S.C. §§ 1226(a) and 1357(a)(2), their implementing regulations, and the Fourth Amendment.

G. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

H. Find that Respondents' decision to arrest and detain Petitioner is arbitrary and capricious, an abuse of discretion, in excess of statutory authority, and without

observance of procedure required by law, in violation of the Administrative Procedure Act.

I. Order Petitioner's immediate release from ICE custody, within twenty-four (24) hours and at a safe time and place in Minnesota, with at least two (2) hours' advance notice to counsel.

J. Enjoin Respondents from re-detaining Petitioner unless they first provide written notice to his counsel and prove, at a hearing before a neutral decisionmaker, by clear and convincing evidence, a material change in circumstances showing that Petitioner is a flight risk or a danger to the community.

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

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

Date: October 7, 2026

/s/ *Carrie Huxford Peltier*
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Attorney for Petitioner

Verification by Counsel on Behalf of Petitioner Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney, Petitioner is currently detained by ICE at the Sherburne County jail, and is a Spanish speaker. I have discussed the factual assertions in this petition with Petitioner and his spouse. I thereby 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, information, and belief.

/s/ Carrie Huxford Peltier Date: October 7, 2026

Carrie Huxford Peltier