UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Julio Carmona Flores, Petitioner, v. Todd Blanche, Attorney General, Markwayne Mullin, Secretary, U.S. Department of Homeland Security, David J. Venturella, Acting Director of Immigration and Customs Enforcement, and David Easterwood, Acting Director, St. Paul Field Office Immigration and Customs Enforcement, Respondents.	Case No. 26-cv-4358 **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS** Expedited Handling Requested Pursuant to 28 U.S.C. § 1657

INTRODUCTION

1. Petitioner Julio Carmona Flores, ("Mr. Flores"), by and through undersigned counsel, hereby files this petition for a writ of habeas corpus and a complaint for declaratory and injunctive relief to require U.S. Immigration and Customs Enforcement ("ICE") to release Petitioner from unconstitutional and unlawful detention.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1361 (federal employee mandamus action); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2241 (habeas corpus); Art. I, § 9, c. 2 of the U.S. Constitution ("Suspension Clause"); 5 U.S.C. § 702 (waiver of sovereign immunity); and 28 U.S.C. § 2201 (Declaratory Judgment Act).

3. Federal question jurisdiction exists because Petitioner seeks to challenge custody as a violation of the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*

4. 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 federal immigration authorities. *Demore v. Kim*, 538 U.S. 510 516-17 (2003) and *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-41 (2018).

5. 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 the District of Minnesota.

PARTIES

6. Petitioner is a resident of Bloomington, Minnesota, who is currently detained at the Sherburne County Detention Center in Elk River, Minnesota. Petitioner is under the direct control of the respondents and has no scheduled release date.

7. Respondent Todd Blanche is sued in his official capacity as the Attorney General of the United States and the head of the Department of Justice.

8. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of the Department of Homeland Security.

9. Respondent David J. Venturella is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement.

10. Respondent David Easterwood is sued in his official capacity as the Acting Field Office Director for the St. Paul Field Office for ICE within DHS.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

11. Petitioner Mr. Flores is a citizen of Mexico who has lived in the United States for the past approximately two decades.

12. Mr. Flores entered the United States without inspection, has not had contact with immigration officials since his arrival, and does not have a final order of removal.

13. For the past approximately two decades, Mr. Flores has lived in the twin cities metro area. He lives with and is the primary caregiver for two U.S. citizen sons, who are both current high school students. Aside from minor traffic related offenses (ie parking and speeding tickets, expired tabs), Mr. Flores has no criminal record.

14. Mr. Flores was arrested by ICE agents mid morning on October 8, 2026. He was driving when he saw a large black SUV do a u-turn in front of him and then start following him. Mr. Flores thought the SUV might have been state law enforcement. He pulled over into an auto-zone parking lot. A total of three vehicles and six agents surrounded him, yelling at him to get out of the car and placing him in handcuffs. Mr. Flores cooperated and was taken into custody. At no point in time during or prior to his arrest was he shown a warrant or any other paperwork.

15. After his arrest, he was transported to the Bishop Henry Whipple Federal building in Fort Snelling, Minnesota. Respondents' agents questioned Mr. Flores, attempted to get him to sign paperwork agreeing to self-deport, and gave him notice of an upcoming immigration court date.

16. Mr. Flores was transferred to and remains confined in the Sherburne County Detention Facility in Elk River, Minnesota.

STANDARD OF LAW

Habeas Petitions

17. A detained noncitizen may petition for a writ of habeas corpus when their custody violates the U.S. Constitution or a federal law. 28 U.S.C. § 2241(c)(3). Such a petition should be granted if the petitioner proves the illegality of the detention by a preponderance of evidence. *Aditya W. H. v. Trump*, 782 F. Supp. 3d 691, 703 (D. Minn. 2025). Detained noncitizens face no statutory exhaustion requirements to invoke 28 U.S.C. § 2241. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025).

18. Federal immigration officers may detain people only as authorized by the Immigration and Nationality Act (INA), 8 U.S.C. §1101, *et seq*. The Constitution places additional limits on federal immigration detentions, independent of the question of statutory authority. *See Counselman v. Hitchcock*, 142 U.S. 547, 565 (1892), (overruled on other grounds by *Kastigar v. United States*, 406 U.S. 441 (1972)). Due process and Fourth Amendment protections apply regardless of a person's immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) and *United States v. Castellanos*, 518 F.3d 965, 971-72 (8th Cir. 2008).

19. Here, Respondents must comply with 1) statutory and due process limitations on Respondents' authority to keep a noncitizen in civil detention, and 2) statutory and Fourth Amendment limitations on Respondents' ability to perform the initial arrest.

Due Process Requires a Legitimate Statutory Purpose for Civil Detentions

20. The Fifth Amendment states that no individual may be "deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V.

21. Even where Congress has authorized immigration detention, "the Constitution, not legislation, sets the floor for due process." *Felipe S.P. v. Blanche*, No. 26-CV-02212, 2026 WL 1911656, at *9 (D. Minn. July 2, 2026).

22. Unlike some legal rules, due process "is not a technical conception with a fixed content unrelated to time, place and circumstances"; instead, it is a critical liberty interest that must be considered in factual context. *Cafeteria & Rest. Workers Union v. McElroy*, 367 U.S. 886, 895 (1961) (quoting *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 162-163 (1951) (Frankfurter, J. concurring)).

23. To comply with Due Process, civil immigration detention must at a minimum "bear[] a reasonable relation to the purpose for which the individual was committed." *Zadvydas*, 533 U.S. at 690 (*citing Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). "Executive detention must rest on more than categorical, unsubstantiated, or facially deficient grounds, particularly where the government has not demonstrated with evidence that the detainee poses a danger to the community, presents a flight risk, or is subject to removal based on any criminal or national security ground." *Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn. 2025). Generally, absent an individualized determination that confinement is necessary to ensure appearances in immigration court or to protect the community, indiscriminate detention does not serve a legitimate purpose contemplated by the immigration statutes and violates due process.

24. The Fifth Circuit found that mandatory detention under 8 U.S.C. § 1225(b)(2) for more than 90 days without any individualized determination presumptively violates noncitizens' due process rights. *Sosnava Rodriguez v. Ortega*, No. 26-50183, 2026 WL

1906557, at *1 (5th Cir. July 2, 2026) *vacated pending rehearing en banc* (July 10, 2026).

Arrests by Federal Immigration Agents Must Comply with the Fourth Amendment

25. The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV; *see also Trump v. Illinois*, 607 U.S. ___, 146 S. Ct. 432, 436 n.4 (2025) (Kavanaugh, J., concurring) ("The basic constitutional rules . . . are longstanding and clear: The Fourth Amendment requires that . . . arrests must be based on probable cause"). Federal statutes and regulations lay out the processes that implement the constitutional requirements of the Fourth Amendment.

26. Detention statutes such as 8 U.S.C. §§ 1225(b)(2), 1226(a), and 1231 provide Respondents with the authority to detain a noncitizen. Those detention statutes are distinct from 8 U.S.C. § 1357(a), which establishes the statutory requirements for when an ICE agent can make a warrantless arrest. It is § 1357(a) and the Fourth Amendment that govern when a warrantless arrest is lawful, independent from statutory provisions related to detention.

27. Fourth Amendment analysis of immigration seizures varies depending on which statute offers the basis for the arrest and detention. For example, arrest and detention pursuant to 8 U.S.C. § 1226(a) requires issuance and service of an I-200 warrant; and, further, because an I-200 warrant on its face invokes the authority of § 1226(a), that basis for detention is being asserted to an arrestee upon its service. *Jefferson G.H.L. v. Blanche*, No. 26-CV-2344, 2026 WL 1229623, at *2 (D. Minn. May 5, 2026). Similarly, an I-205

warrant is issued for arrest and detention pursuant to 8 U.S.C. § 1231 of noncitizens who are subject to final removal orders. 8 C.F.R. § 241.3(a) ("Once the removal period defined in section 241(a)(1) of the Act begins, an alien in the United States will be taken into custody pursuant to the warrant of removal."); 8 C.F.R. § 241.2(a)(1) (defining "Form I-205" as a "Warrant of Removal"); and *Inti C.-L. v. Blanche*, No. 26-CV-02777, 2026 WL 2474390, at *2 (D. Minn. June 9, 2026) ("Section § 1231(a)(2) does indeed mandate *detention*, but the regulations are clear that a[n I-205] warrant of removal is nevertheless necessary to effect *arrest*." (emphasis in original)).

28. Detention pursuant to 8 U.S.C. § 1225(b)(2) is characterized by the Government as "mandatory," but invoking this statute as the basis for detaining a noncitizen does not eliminate the Fourth Amendment requirement for the Government to have probable cause when making warrantless arrests in the interior of the country. Those probable cause requirements are outlined in 8 U.S.C. § 1357(a).

29. Therefore, discretionary detentions pursuant to 8 U.S.C. § 1226(a) are conducted based upon arrests pursuant to I-200 warrants. So-called "mandatory" detention arrests under the catchall provision of 8 U.S.C. § 1225(b)(2) may be affected in the interior of the country without a warrant only if arresting officers satisfy 8 U.S.C. § 1357(a)(2).

30. Even where statutory language of 8 U.S.C. § 1225(b)(2)—as interpreted by the Eighth Circuit—provides for "mandatory" *detention* without a bond hearing and only narrow discretionary release exceptions under 8 U.S.C. § 1182(d)(5)(A), the language of "§ 1225 contains no independent grant of *arrest* authority." *Carlos F.P.P. v. Blanche*, No. 26-CV-03123, Doc. 14, slip op. at 10-14 (D. Minn. Sep 21, 2026) (emphasis added).

Government powers to *arrest* persons who have lived in the country for years remain implicitly discretionary under the statutory scheme set forth in 8 U.S.C. § 1357. The Government's policy of scouring the interior of the country to satisfy large, arbitrary noncitizen arrest quotas has forced courts handling habeas cases to confront constitutional limits on the use—and abuse—of discretionary arrest powers under § 1357(a). *See Almeida-Sanchez v. United States*, 413 U.S. 266, 271-74 (1973) (the "permissible scope of intrusiveness" under the Fourth Amendment is greater at "the border itself" or "its functional equivalents" than in the interior of the country).

Arrests Under 8 U.S.C. § 1226(a) Require Valid I-200 Warrants *and* Notices to Appear

31. In order for an I-200 warrant to authorize arrest, it must have been issued at the same time or after a valid Notice to Appear was issued:

> A noncitizen "may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest." 8 C.F.R. § 236.1(b)(1); *see* 8 U.S.C. § 1226(a). A Form I-200 warrant "empowers [immigration agents] to arrest aliens during removal proceedings," *Cesar F.F.* Order at 4. Therefore, an I-200 warrant is valid only if it is issued "[a]t the time of issuance of the notice to appear, or at any time thereafter[.]" 8 C.F.R. § 236.1(b)(1).

Pedro D.C. v. Blanche, No. 26-cv-02450, 2026 WL 1759444, at *1 (D. Minn. June 18, 2026) (*quoting Cesar F.F. v. Blanche*, No. 26-CV-02540, Doc. No. 8, slip op. at 4 (D. Minn. June 2, 2026)).

32. Timing matters because a Notice to Appear initiates the removal proceeding for which the Form I-200 then authorizes arrest. *Giordan M.G., v. Blanche*, No. 26-cv-02585, 2026 WL 2364399, at *2-3 (D. Minn. Aug. 14, 2026) (citing *Niz-Chavez v. Garland*, 593 U.S. 155, 163–64 (2021) (a notice to appear is a single written instrument that "serves as the basis for commencing a grave legal proceeding" and, by statute, "time and place information must be included" (emphasis added))); *Jesus F.D. v. Mullin*, No.

26-CV-02486, 2026 U.S. Dist. LEXIS 137045 (D. Minn. June 10, 2026) ("a warrant issued before removal proceedings have begun purports to exercise authority that does not yet exist."); 8 U.S.C. § 1229(a); *see also Pereira v. Sessions*, 585 U.S. 198 (2018) (statutes require NTAs to inform noncitizens when and where to appear for removal proceedings).

33. Moreover, I-200 warrants for arrest must at least have been issued prior to an arrest, and any arrest that occurs prior to issuance of an I-200 warrant is analyzed as a warrantless arrest. *E.g., Venancio P.J. v. Blanche*, No. 26-CV-02740, 2026 WL 1862252 (D. Minn. June 29, 2026).

34. If an I-200 warrant is used, then immigration authorities are invoking 8 U.S.C. § 1226(a) as the basis for detention and are representing the same to the detainee. *Jefferson G.H.L.*, 2026 WL 1229623, at *2. Under § 1226(a), detention is discretionary and requires the detainee to be provided with a bond hearing.

35. If the I-200 warrant is found invalid, such as if it cannot be shown that the warrant was accompanied or predated by a valid Notice to Appear, or if the I-200 warrant was served only after the noncitizen was taken into custody, the arrest is only lawful if the threshold exceptions for a warrantless arrest pursuant to 8 U.S.C. § 1357(a) were met. *Jefferson G.H.L.*, 2026 WL 1229623, at *2; *Jouquin C.S. v. Bondi*, No. 26-01438, 2026 WL 483256, at *2 (D. Minn. Feb. 20, 2026); *see also Carlos F.P.P.*, No. 26-CV-03123, Doc. 14, slip op. at 9-10 (D. Minn. Sep 21, 2026) ("Compliance with . . . post-arrest procedures [of 8 C.F.R. § 287.3] does not supply the statutory authority that § 1357(a)(2) required at the time of the warrantless arrest."). Neither § 1357(a) nor any other section

of the immigration statutes explicitly grants Respondents authority to serve I-200 warrants post-arrest, and I-200 warrants are issued by and for executive branch law enforcement personnel acting for a common purpose without the deliberate, impartial judgment of a judicial officer interposed between the arrestee and the law enforcement officials *ex ante*. *Wong Sun v. United States*, 371 U. S. 471, 481-482 (1963); *accord United States v. Grubbs*, 547 U.S. 90, 99 (2006). Requiring service at the time or arrest in civil immigration matters is appropriate, for instance, as a matter of constitutional avoidance. *See Abel v. United States*, 362 U.S. 217, 230 (1960) (constitutionality of administrative immigration "warrants" not reached).

Warrantless Arrests Under 8 U.S.C. § 1225(b)(2) Must Comply with 8 U.S.C. § 1357(a)

36. While 8 U.S.C. § 1225(b)(2) does not explicitly reference warrants, arresting officers are constrained by the independent requirements of 8 U.S.C. § 1357(a) when making any warrantless arrest. *Jefferson G.H.L.*, 2026 WL 1229623, at *2 ("it does not follow that [a noncitizen] can be arrested and detained pursuant to § 1225(b)(2) without first complying with 8 U.S.C. § 1357(a), which addresses federal immigration officials' authority to make warrantless arrests."); *Carlos F.P.P.*, No. 26-CV-03123, Doc. 14, slip op. at 10-14 (D. Minn. Sep 21, 2026); *Cutberto R.P. v. Bondi*, No. 26-CV-01934, Doc. No. 11, slip. op. at 8-14 (D. Minn. April 10, 2026).

37. Warrantless arrests in the interior of the country are permissible only when the arresting officer has reason to believe the noncitizen is "in the United States in violation of any such law or regulation **and** is likely to escape before a warrant can be obtained for his arrest . . . ." 8 U.S.C. § 1357(a)(2) (emphasis added); *see also* 8 C.F.R. §§ 287.3(a) &

(d) and 287.8(c)(2)(i)-(ii) *and Arizona v. United States*, 567 U.S. 387, 408 (2012) (citing § 1357(a)(2) to find that immigration officers "may arrest an alien for being 'in the United States in violation of any [immigration] law or regulation,' for example, but only where the alien 'is likely to escape before a warrant can be obtained.'").

38. The "reason to believe" requirement of 8 U.S.C. § 1357(a)(2) "means constitutionally required probable cause." *United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010).

39. Probable cause that a person has violated an immigration law has to be based on actual facts substantiating a suspected violation of immigration law, not on an accent or skin color: "apparent ethnicity alone cannot furnish reasonable suspicion[.]" *Noem v. Vazquez Perdomo*, 606 U.S. ___, ___, 146 S. Ct. 1, 3 (2025) (Kavanaugh, J., concurring); *see also Parada v. Anoka Cnty.*, 332 F. Supp. 3d 1229, 1243 (D. Minn. 2018) (continued detention to await transfer to immigration authorities based solely on "a perceived civil violation of U.S. immigration laws" was an "egregious" Fourth Amendment violation); *Hussen v. Noem*, 822 F. Supp. 3d 944 (D. Minn. 2026) ("compelling and troubling" evidence established that, during Operation Metro Surge, the government "adopted a policy authorizing federal immigration officers to conduct investigatory stops based on ethnicity or race without reasonable suspicion that the individuals were violating immigration laws."); Order at 10–11, *Juan J.B. v. Blanche*, No. 26-cv-02977 (D. Minn. July 2, 2026) Dkt. No. 11 (insufficient evidence of reason to believe an individual was unlawfully present at time of arrest).

40. Probable cause that a noncitizen is likely to escape requires distinct factual support beyond just that a person is undocumented. *Jefferson G.H.L.*, 2026 WL 1229623, at *3 ("To hold that a noncitizen is likely to escape merely because they are removable would effectively collapse § 1357(a)(2)'s two distinct requirements into one . . . . If every noncitizen that is here illegally is presumed likely to escape authorities, then § 1357(a)(2)'s second, independent requirement is rendered superfluous."). Probable cause that a person might escape requires a "particularized assessment" sufficient to conclude that the subject is likely to abscond before an arrest warrant can be obtained. *Orellana v. Nobles Cnty.*, 230 F. Supp. 3d 934, 946 (D. Minn. 2017) (citing *Maryland v. Pringle*, 540 U.S. 366, 371 (2003)). The relevant inquiry is "whether it was likely that ICE officers would be able to locate [a noncitizen] after obtaining a warrant to arrest him" and not merely "whether a noncitizen will remain at the scene of encounter with law enforcement before an administrative warrant can be obtained." *Walther Ademir A.S. v. Blanche*, No. 26-CV-02804, 2026 WL 1734906, at *2-5 (D. Minn. June 16, 2026); *see also Anibal P.P. v. Blanche*, 26-cv-03125, 2026 U.S. Dist. LEXIS 153824, at *10 (D. Minn. July 13, 2026); *Carlos F.P.P.*, No. 26-CV-03123, Doc. 14, slip op. at 6-7 (D. Minn. Sep 21, 2026).

41. It is Respondents' burden to establish both of these probable cause predicates for reliance on 8 U.S.C. § 1357's exceptions to the warrant requirement, and the absence of either one warrants Petitioner's immediate release. *See, e.g., Cutberto R.P.*, No. 26-CV-01934, Doc. No. 11, 13 (D. Minn. April 10, 2026); *Jefferson G.H.L.*, 2026 WL 1229623, at *2-3. Failure to establish probable cause, such as through reliance on a

deficient or inadequate Form I-200 administrative warrant, is insufficient to satisfy § 1357(a)(2) and its associated regulations. *Id.*

42. Because "it is important for officers and agents to clearly, succinctly, and contemporaneously document" factors that "are often challenged months or years after the fact," ICE internal policy reflected in a January 28, 2026 memorandum by acting ICE director Todd Lyons requires that "following a warrantless arrest, officers and agents shall document in the narrative section of the Form I-213, Record of Deportable/Inadmissible Alien, all factors considered in determining that the alien was likely to escape before a warrant could be obtained." Todd. M. Lyons, "Civil Immigration Arrest Authority: Administrative Arrest Warrants and Warrantless Arrests" (Jan. 28, 2026), *available as Hussen v. Noem*, No. 26-cv-00324 (D. Minn. Jan. 30, 2026) Doc. 85-1; *see also Sergi A.G. v. Blanche*, No. 26-CV-03393, Doc. 9, slip op. at 15-20 (D. Minn. Aug. 31, 2026).

Regulatory Limits on Warrantless Immigration Arrests

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

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

45. The arrestee must "be advised of the reasons for his arrest, of his right to legal representation, and that any statement made may be used against him in a subsequent

proceeding," and "be given a list of the free legal services available in the district where the hearing will be held. *Id.* (quoting 8 C.F.R. § 287.3(c)).

46. A determination must be made "within 48 hours of the arrest, except in the event of an emergency or other extraordinary circumstance in which case a determination will be made within an additional reasonable period of time, whether the alien will be continued in custody or released on bond or recognizance ***and*** whether a notice to appear and warrant of arrest as prescribed in 8 CFR parts 236 and 239 will be issued." 8 C.F.R. § 287.3(d) (emphasis added). The use of the word "and" in § 287.3(d) confirms that the warrant, NTA, and an individual determination regarding continued confinement are discrete requirements that each must be satisfied to comply with § 287.3(d).

47. The use of the words "release on bond or recognizance," and the reference to 8 C.F.R. § 236 also confirm that Respondents are required to make specific findings about whether "the alien is likely to appear for any future proceedings." 8 C.F.R. § 236.1(c)(8).

CLAIMS FOR RELIEF

COUNT ONE

Fifth Amendment Procedural Due Process

Respondents are Detaining Petitioner Without Due Process

48. Petitioner realleges and incorporates by reference the allegations contained above.

49. Based on past pattern and practice of Respondents, the government will produce in their response to this habeas petition an I-200 warrant issued under 8 U.S.C. § 1226 that they will claim to have served on Mr. Flores after his arrest, presumably at the Bishop Henry Federal Whipple Building when Mr. Flores was processed, but

Respondents will retroactively through counsel claim to be detaining Mr. Flores pursuant to 8 U.S.C. § 1225(b)(2).

50. It is a due process violation to arrest Mr. Flores pursuant to a retroactive warrant issued and served pursuant to Section 236 of the Immigration and Nationality Act [8 U.S.C. § 1226], then to retroactively through counsel invoke 8 U.S.C. § 1225(b)(2) as the basis for detention.

51. By doing so, Respondents' counsel are engaging in impermissible "post hoc rationalizations for agency action." *Souleimane C. v. Blanche*, No. 26-CV-2215 (LMP/JFD), 2026 WL 1180075, at *3 (D. Minn. Apr. 30, 2026) (citing *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983)).

52. In *Souleimane*, the Court found that Respondents *could* have invoked 8 U.S.C. § 1225(b)(2) to detain Souleimane when they encountered him as he crossed the southern border, but by choosing to release him into the United States on conditional parole pursuant to 8 U.S.C. § 1226(a), and then attempting to detain him pursuant to an I-200 warrant issued pursuant to 8 U.S.C. § 1226, they could not later claim that he was detained pursuant to 8 U.S.C. § 1225(b)(2). *Id.* at 3 ("Put simply, the Government is not allowed to change horses midstream.").

53. Courts often use the three-factor *Mathews* test to evaluate due process claims when noncitizens are detained: 1) the private interest affected by the official action; 2) the risk of erroneous deprivation of that interest coupled with the probable value of alternate procedural safeguards; and 3) the government's interest, including any potential burden from the alternate procedure. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

54. First, Mr. Flores has a significant private interest at stake because he is detained and kept apart from his family–including two teenage boys in his care. A person's interest in freedom from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Parham v. J.R.*, 442 U.S. 584, 600 (1979).

55. Second, Mr. Flores will continue to be deprived of this interest if the current procedure—*en masse* detentions for the sake of detentions—is followed. Where, as here, thousands of individuals are being detained across the country "[w]ithout an individual assessment, the risk of erroneous deprivation is high." *Pedro A.D.L.O.O. v. Bondi*, No. 26-CV-01959, 2026 WL 948970, at *3 (D. Minn. April 8, 2026).

56. Third, the government has no legitimate interest in detaining people arbitrarily and then waiting to see if the person they have detained will be able to pull together the legal resources to seek accountability in court. The government's interest in detaining a noncitizen is weak where the government has not established that the noncitizen is unlikely to appear nor that the noncitizen poses a threat to the community. *Id.* Put simply, "the federal government has very little interest in incarcerating individuals en masse who pose little or no risk of flight or danger to the community." *Yonatan P. v. Blanche*, No. 26-CV-02949, 2026 WL 1842652, at *4 n.5 (D. Minn. June 26, 2026). Considering alternative procedures, asking the government to refrain from detaining people unless and until they have conduct a particularized, fair, and meaningful inquiry as to the necessity of detention is reasonable to protect civilians' rights and preserve government resources, as opposed to a policy of detaining first irrespective of the

detainee's particular circumstances and then forcing the person they have detained to summon legal resources to seek accountability in federal court. Immigration-related habeas corpus petitions have consumed a large part of the court and U.S. Attorney's Office's dockets. *See Jefferson Y.M. v. Blanche*, No. 26-CV-03038, 2026 WL 1848510, at *1 (D. Minn. June 26, 2026).

57. Here, Respondents made no individualized inquiry and had no rational basis to believe that detention is necessary to ensure Mr. Flores's appearance in immigration court. He has lived in this area for about two decades, is raising two U.S. Citizen children who both attend public school here and for whom he is the primary caregiver.

58. Mr. Flores poses no safety threats to the community and is not likely to abscond. He has no criminal record aside from petty traffic related offenses. Releasing Petitioner would in fact *save* the government the resources and expense of continued imprisonment. *See Black v. Decker*, 103 F.4th 133, 154-55 (2d Cir. 2024) (noting that not only the incarcerated individual, but society bears the direct and indirect costs of incarceration, and evaluating the high financial costs per day of incarcerating immigrants).

59. Therefore, the placement of Mr. Flores in detention pending the resolution of ongoing immigration proceedings without reason violates Mr. Flores's constitutional rights to due process guaranteed in the Fifth Amendment.

COUNT TWO

Violation of the Fourth Amendment to the U.S. Constitution, 8 U.S.C. § 1357(a)(2), and 8 C.F.R. § 287.3(a), (c), (d)

60. Petitioner re-alleges and incorporates by reference the paragraphs above.

61. Respondents did not have a warrant to arrest Mr. Flores.

62. Absent a valid warrant, Respondents exceeded their authority to make a warrantless arrest of Mr. Flores under 8 U.S.C. § 1357(a)(2) because, at the time of Mr. Flores's warrantless arrest, the arresting ICE agents lacked probable cause, or "reason to believe," that petitioner was both "in the United States in violation of any such law or regulation" regulating the admission, exclusion, expulsion, or removal of noncitizens **and** "likely to escape before a warrant can be obtained for his arrest."

63. Respondents have made, and continue to make, an unreasonable seizure of Mr. Flores under the Fourth Amendment. Mr. Flores's ongoing detention is unlawful.

REMEDY

64. "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). "Indeed, in 1670, the Chief Justice of the Common Pleas [in England] was able to say, in ordering the immediate discharge of a juror who had been jailed by a trial judge for bringing in a verdict of not guilty, that '[t]he writ of habeas corpus is now the most usual remedy by which a man is restored again to his liberty, if he have been against law deprived of it.'" *Id.* at 484-85 (*quoting Bushell's Case*, Vaughan 135, 136, 124 Eng. Rep. 1006, 1007). Thus, when a habeas petitioner's detention is without legal basis, the typical and appropriate remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the "typical remedy" for "unlawful executive detention"); *Wilson L.L. v. Blanche*, No. 26-CV-02475, 2026 WL 1283186, at *2-3 (D. Minn. May 11, 2026)

(because "Petitioner's detention is unlawful . . . as in other similar cases, the Court concludes that the appropriate remedy is release from custody"); *Emily Andreina N.V. v. Blanche*, No. 0:26-cv-02570, 2026 WL 2209844, at *4-5 (D. Minn. July 31, 2026) (ordering release; distinguishing "[s]eeking release from custody in an immigration habeas case" from "a noncitizen's effort to prohibit the government from pursuing removal proceedings"); *see also Pedro Eduardo R. P. v Bondi,* No. 26-CV-01323, 2026 WL 473140 (D. Minn. Feb. 17, 2026) (recommending immediate release after the government failed to contest petitioner's Fourth and Fifth Amendment arguments), *report and recommendation adopted*, 2026 WL 478607 (Feb. 19, 2026); *Jefferson Y.M.*, 2026 WL 1848510 (granting immediate release when government responded in an untimely manner and thereby waived any challenge to Fifth Amendment arguments). Courts across the country have accordingly ordered release when granting immigration habeas petitions. *See, e.g. Jose L.R.O. v. Bondi*, No. 5:26-CA-850, Doc. No. 11 at 25 (W.D. Tex. Mar. 23, 2026); *Sanchez v. Sec'y of Homeland Sec.*, No. 3:26-cv-00695, 2026 WL 1238601, at *2 (M.D. Fla. May 6, 2026); *Amandeep S. v. Mullin*, No. 6:26-cv-03341 (W.D. Mo. June 25, 2026), Doc. No. 11.

65. Release is an appropriate remedy for individuals with various immigration histories. *See, e.g., Dylan M. v. Blanche*, No. 26-CV-02802 (D. Minn. June 8, 2026), Doc 12 at p. 10 (granting the habeas corpus petition of a teenager who arrived on a tourist visa as a child, which visa subsequently expired, and who was found to have been detained unlawfully) and *Makitio G. A., v. Blanche*, No. 26-CV-2200, 2026 WL 1584457, at *6 (D. Minn. May 22, 2026) (recommending release for someone who was unconstitutionally

and unlawfully detained after Respondent's revoked petitioner's order of supervision), *report and recommendation adopted*, 2026 WL 1591270 (June 3, 2026).

Release Based on Unlawful Arrest

66. Judges in this district have repeatedly found that when Respondents arrest a noncitizen unlawfully, the remedy should be release rather than a bond hearing. *Cutberto R.P.*, No. 26-CV-01934 (MJD-DTS), Doc. 11, slip. op. at 10-13 (D. Minn. April 10, 2026); *Jefferson G.H.L.*, No. 26-CV-2344 (JRT-ECW), 2026 WL 1229623, at *3; *Hector J.A.S. v. Shea*, No. CV 26-2242 (JRT-DLM), 2026 WL 1243500, at *3 (D. Minn. May 6, 2026); *Martha C.G.P. v. Blanche*, No. CV 26-2308 (DWF-JFD), 2026 WL 1329577, at *3 (D. Minn. May 13, 2026); *Jesus F.D.*, No. 26-CV-02486 (PJS-DTS), 2026 U.S. Dist. LEXIS 137045, at *5; *Walther Ademir A.S.*, No. 26-CV-02804 (LMP-SGE), 2026 WL 1734906, at *2-5; *Pedro D.C.*, No. 26-cv-02450 (KMM-DLM), 2026 WL 1759444; *Yonatan P.*, No. 26-CV-02949 (JMB-EMB), 2026 WL 1842652, at *4 (D. Minn. June 26, 2026); *Jose V.P.R. v. Sheriff of Freeborn Cnty.*, No. 26-CV-03047 (NEB-DLM), 2026 WL 2546265, at *1-3 (D. Minn. Aug. 28, 2026); *Sorelys C.R.O. v. Blanche*, No. 26-CV-3859 (ECT-LIB), 2026 WL 2665657, at *2 (D. Minn. Sept. 10, 2026); *Carlos F.P.P.*, No. 26-CV-03123 (JWB-JFD), Doc. 14, slip op. at 10-16 (D. Minn. Sep 21, 2026).

Release Based on Absence of Due Process

67. There is no indication here that Petitioner's detention was based on any facts that might indicate Petitioner should be in custody and deprived of his liberty. Due Process requires that Petitioner be able to continue engaging in his substantive civil immigration proceedings while released from custody rather than from a jail cell.

68. As a habeas remedy for a constitutional Due Process violation, "a bond hearing would subvert 'the purpose of a pre-detention hearing: if Petitioner is detained, [s]he will already have suffered the injury [s]he is now seeking to avoid.'" *Ismahan M. v. Bondi*, No. 26-cv-01418, Doc. 10, slip op. at 6 (D. Minn. Feb. 20, 2026) (*quoting Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021)). As a court in the Western District of Texas has explained, "bond hearings are no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Jose L.R.O.*, No. 5:26-CA-00850, Doc. No. 11 at 26.

69. When the Government's obvious goal is to interfere with a noncitizen's liberty interests in a manner that the Constitution prohibits, it would be a grave error to let the Government proceed even one step further with unlawful detention. As aptly stated in the District of Vermont, when a habeas petition establishes that immigration detention violates the Fifth Amendment, "[a] habeas remedy that allows unconstitutional government conduct to achieve its aim is not an effective one." *Patin v. Trump*, 824 F. Supp. 3d 484, 493 (D. Vt. 2026) (ordering immediate release for Due Process violation).

70. In the context of preventative civil detention, the Supreme Court has permitted narrow categorical rationales for such detention in only limited circumstances when applicable exclusively to "small segments" of people and even then only when subject to "strong" and "strict" procedural safeguards. *Zadvydas*, 533 U.S. at 690-91; *see also, e.g., Sanchez v. Noem*, No. 25-CV-00403, 2026 WL 596133, at *10 (W.D. Tex. March 2, 2026) (collecting cases); and *Rincon v. Hyde*, 810 F.Supp.3d 101, 114 (D. Mass. 2025)

(categorical presumptions do not hold "where the only rationale for mandatory detention appears to be Respondents' asserted authority to withhold generally available due-process protections based on Petitioner's immigration status."). It stands to reason that "[i]f the Constitution imposes limits on detention after a final order of removal," as *Zadvydas* held, "it necessarily imposes at least comparable limits, and requires meaningful procedural safeguards, before one is entered." *Zheng v. Rokosky*, No. 26-CV-01689, 2026 WL 800203, at *8 (D.N.J. Mar. 23, 2026).

71. The Government's recent policy of mass detentions under 8 U.S.C. § 1225(b)(2) is not being applied to a narrow class of persons for a special nonpunitive purpose in a way that provides a "special justification" that outweighs the individual's constitutionally protected interest in avoiding physical restraint. Section 1225(b)(2) is merely a catchall provision. *Jennings*, 583 U.S. at 287. There is nothing to suggest that detainees subject to § 1225(b)(2) share a categorical characteristic that supersedes their individual interests in physical freedom sufficient to satisfy Due Process by proxy. *See Sanchez*, 2026 WL 596133, at *7-10; *see also Rincon*, 810 F. Supp. 3d at 113. Civil detention is punitive if it "become[s] a 'mechanism for retribution or general deterrence.'" *Kansas v. Crane*, 534 U.S. 407, 412 (2002) (*quoting Kansas v. Hendricks*, 521 U.S. 346, 372 (1997) (Kennedy, J., concurring)). Because detention is being applied for general deterrence or retribution, rather than narrowly for a special nonpunitive purpose, any application of § 1225(b)(2) to Petitioner is unconstitutional.

Futility and/or Inadequacy of a Bond Hearing

72. Immediate release is particularly appropriate in view of Respondents' oft-stated position following *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), that administrative immigration courts have no jurisdiction to conduct bond hearings for noncitizens detained under 8 U.S.C. § 1225(b)(2). Ordering a bond hearing in that context would require an administrative immigration judge to do that which he or she believes he or she lacks authority to do as an "inferior officer"[1] of the executive branch. Indeed, the Government regularly asserts that immigration judges lack authority to conduct bond hearings. *E.g.,* Respondents' Response, *Ignacio R.M. v. Blanche*, No. 26-CV-03182, Doc. No. 6, at 9 (D. Minn. July 8, 2026) ("Even if this Court were to order a bond hearing to occur before an immigration judge, the immigration judge would not be able to hear the merits under binding precedent."). As explained by another district court in this circuit, petitioners in such circumstances have "no forum, administrative or judicial, through which [they] may seek release based on [their] circumstances. This is not minimal process. It is zero process. Respondents' position, that no such process is required, cannot be reconciled with the Fifth Amendment." *Stepan H. v. Arnott*, No. 6:26-CV-03220, 2026 WL 1103450, at *4 (W.D. Mo. April 23, 2026). And, when a bond hearing is ordered, Respondents have made only an "illusory" and "hypothetical" reference to release on bond. *David J.C.P. v. Blanche*, No. 26-CV-02181, slip op. at 2-3 (D. Minn. May 14, 2026) Doc. no. 19 (IJ determined she lacked jurisdiction to grant bond

[1] *Jackler v. Dept. of Justice*, 2026 MSPB 3, 2 (2026); *United States v. Arthrex, Inc.*, 594 U.S. 1, ___, 141 S.Ct. 1970, 1984 (2021) (dicta); *see also* 8 U.S.C. § 1101(b)(4).

following court order for bond hearing, and IJ's "alternative finding . . . setting a hypothetical bond does not suffice" and is "ultimately immaterial in light of the immigration judge's decision that she lacked jurisdiction. Petitioner has no option to pay that bond and be released. The bond is illusory."). And release has been ordered in this district where bond hearings were inadequate or "a bond hearing in name only" because they failed to provide constitutionally adequate process with a "meaningful opportunity to test the justification for continued detention . . . ." *Juan C.M.C. v. Blanche*, No. 26-CV-02402, Doc. 34, slip op. at 2 (D. Minn. Aug. 13, 2026); *Petra R.H. v. Schilling*, No. 26-cv-03077, Doc. 16, slip op. at 1-2 (D. Minn. Aug. 18, 2026) ("constitutional due process requires . . . an opportunity to contest whether concerns about flight risk or public safety justify . . . detention"; ordering release because "IJ failed to conduct an individualized assessment").

73. In terms of constitutionally-sufficient procedural Due Process safeguards, an impartial decisionmaker is essential. *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) (stressing importance of decisionmaker's conclusion being grounded in the evidence presented and accompanied by a statement indicating the reasons for the decision and the evidence relied upon). Sham bond hearings do not provide Due Process. Current circumstances surrounding immigration bond hearings "raise substantial concerns as to whether any non-citizen can receive the impartial hearing that due process requires." *Zheng*, 2026 WL 800203, at *3,7 (questioning "whether the constitutional guarantee of an impartial decisionmaker is being honored in any case brought before an IJ [immigration judge]" today after hundreds of IJs were terminated and the Government

seeks to fill vacancies created by those firings by openly advertising for "deportation judge" roles).

74. Moreover, courts have scrutinized the burden of proof applied in immigration bond hearings. If the Government permits a bond hearing at all, it places the burden of proof on detainees. *E.g., Matter of Adeniji*, 2 I&N Dec. 1102 (BIA 1999); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006); *Matter of A-L-S-*, 29 I&N Dec. 794 (BIA 2026). That does not provide constitutional Due Process and is a structural error that constitutes a *per se* prejudice. The Supreme Court has struck down civil detention schemes that placed the burden on the detainee to prove nondangerousness but has upheld civil detention processes where the government bore the burden of proof by clear and convincing evidence. *Zadvydas*, 533 U.S. at 691 (*citing Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) and *United States v. Salerno*, 481 U.S. 739, 747,750-52 (1987)); *see also Hernandez-Lara v. Lyons*, 10 F.4th 19, 40 (1st Cir. 2021) (under the second *Mathews* factor, the Government carries the burden of proof).

75. Immediate release is the appropriate remedy where "a new [bond] hearing would either be unnecessary, futile, or an inadequate remedy", and "would effectively allow the Government to transform an unlawful detention into a lawful one through *post-hoc* justifications." *Zheng*, 2026 WL 800203, at *10-11. Here, a bond hearing would be futile or inadequate. Immediate release is therefore the appropriate remedy. *See Stepan H.*, 2026 WL 1103450, at *4; *Briceno Solano v. Mason*, 818 F. Supp. 3d 802, 835-36 (S.D. W. Va. 2026) (ordering release where "a bond hearing would be futile").

REQUEST FOR ORDER TO SHOW CAUSE

76. Within three days, unless good cause for a delay is shown, "[a] court, justice or judge entering a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

77. Petitioner respectfully requests that the Court issue an Order to Show Cause directing Respondents to file a return within three days of the Court's order, showing cause, if any, why a writ of habeas corpus should not be granted. Petitioner asks the Court to order Respondents to release Petitioner without conditions if they choose to release him instead of responding.

78. Petitioner further respectfully requests that an Order to Show Cause direct Respondents, should they offer a warrant in this case, to provide sufficient details to establish the validity of the proffered warrant, and include an affidavit from someone with personal knowledge as to the time and place that warrant was issued and served, and the timing of the issuance of the Notice to Appear in relation to the service of the warrant.

PRAYER FOR RELIEF

WHEREFORE, Mr. Flores prays that this Court grant the following relief;

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring Petitioner out of the District of Minnesota pending the duration of these proceedings, or transport Petitioner back to Minnesota if moved out of state;

3. Order Respondents to show cause as to why Petitioner should not be released immediately, without conditions;

4. Require that Petitioner be released within the State of Minnesota, at a safe time and place communicated to counsel and with all of Petitioner's personal belongings and effects in Respondents' possession, such as Petitioner's driver's license, immigration papers, identification documents including any passport or employment authorization document, cell phone, and keys;

5. Enjoin Respondents from implementing any condition of release, including the "Alternatives to Detention" program involving ankle monitors, body-worn GPS, telephonic tracking, or use of the SmartLINK Mobile application;

6. Declare that Petitioner's arrest and detention exceeded Respondents' authority;

7. In the alternative, if immediate release is not ordered, order Respondents to afford Petitioner a bond hearing within seven days, with at least 48 hours advance notice, in which Respondents bear the burden of proof to demonstrate by clear and convincing evidence that Petitioner is a flight risk or a danger to the community that justifies his continued detention;

8. 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

9. Grant any other and further relief that this Court may deem just and proper.

Dated: Oct. 11, 2026

Respectfully submitted,

/s/ Kira A. Kelley

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Attorney for Petitioner

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

I am Petitioner's attorney and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, which knowledge comes from my conversation with my client, and my investigator's conversation with my client's children when preparing this filing, a review of Respondents' publicly available websites, and my own experience litigating similar petitions for habeas corpus relief by wrongfully detained immigrants since the beginning of Operation Metro Surge.

Dated: Oct. 11, 2026

Respectfully submitted,

/s/ Kira A. Kelley
Kira A. Kelley, Esq.

Attorney for Petitioner