

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

JOSE H.S.,

Case No. 26-CV-1253 (NEB/DTS)

Petitioner,

v.

ORDER ON  
PETITION FOR  
WRIT OF HABEAS CORPUS

PAMELA BONDI, Attorney General,  
KRISTI NOEM, Secretary, U.S.  
Department of Homeland Security;  
TODD M. LYONS, Acting Director of  
Immigration and Customs Enforcement;  
and DAVID EASTERWOOD, Acting  
Director, St. Paul Field Office Immigration  
and Customs Enforcement,

Respondents.

---

This matter is before the Court on Petitioner Jose H.S.'s Petition for a Writ of Habeas Corpus. (ECF No. 1 ("Pet.")) Jose H.S. is a citizen of Mexico who has lived in the United States for approximately four years. (*Id.* ¶ 12.) He has no criminal convictions. (*Id.* ¶¶ 13–14.)

On February 9, 2026, Immigration and Customs Enforcement ("ICE") surrounded Jose H.S. and his partner in front of their home and took Jose H.S. into custody. (*Id.* ¶ 15.) Jose H.S. alleges that "based on their questions it appeared the ICE agents were looking for someone else," and asserts that they did not have a warrant. (*Id.* ¶¶ 16, 59–60.) Jose H.S. complied during the arrest, including when ICE demanded that he produce

identifying documentation. (*Id.* ¶ 15.) Afterwards, Jose H.S. filed this habeas action challenging his detention under 28 U.S.C. § 2241. The Petition alleges, upon information and belief, that he was brought to a detention facility within the District of Minnesota after his arrest; at the time the Petition was filed his location was unknown. (*Id.* ¶ 17.)

Jose H.S. is one of hundreds of petitioners in the District who have challenged their custody without an individualized bond determination. Like those petitioners, Jose H.S. argues he has been misclassified as a detainee under 8 U.S.C. Section 1225(b)(2) of the Immigration and Nationality Act (“INA”) rather than Section 1226(a). Detention is mandatory under Section 1225(b)(2), but discretionary under Section 1226(a); and Section 1226(a), unlike Section 1225, provides for a bond hearing. 8 U.S.C. §§ 1225, 1226; *see also Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 961–62 (D. Minn. 2025) (describing the legal framework of Sections 1225 and 1226).

Because he has been living in the United States for approximately four years, Jose H.S. asserts that Section 1226, rather than Section 1225, applies. He therefore argues that his detention under Section 1225(b)(2) violates the Fifth Amendment, the INA, and the Administrative Procedure Act.

The Court has already concluded that petitioners similarly situated to Jose H.S. are governed by Section 1226 rather than Section 1225. *Andres R.E. v. Bondi*, No. 25-CV-3946 (NEB/DLM), 2025 WL 3146312 (D. Minn. Nov. 4, 2025). Section 1225(b)(2) applies to

applicants “seeking admission,” but the government did not detain Jose H.S. while he was entering the United States. Instead, he was detained while “already in the country.” *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (construing 8 U.S.C. Sections 1226(a) and (c)). So, Section 1226 applies.

The Court is not alone in its decision; rather, the majority of courts to rule on the matter came to the same conclusion as *R.E.* *See, e.g., Castañon-Nava v. U.S. Dep’t of Homeland Sec.*, 161 F.4th 1048, 1060–62 (7th Cir. 2025); *Francisco T. v. Bondi*, 797 F. Supp. 3d 970, 974–76 (D. Minn. 2025); *Belsai D.S. v. Bondi*, --- F. Supp. 3d ---, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947, at \*6–7 (D. Minn. Oct. 1, 2025); *Eliseo A.A. v. Olson*, --- F. Supp. 3d ---, No. 25-CV-3381 (JWB/DJF), 2025 WL 2886729, at \*2–4 (D. Minn. Oct. 8, 2025); *Avila v. Bondi*, No. 25-CV-3741 (JRT/SGE), 2025 WL 2976539, at \*5–7 (D. Minn. Oct. 21, 2025), *appeal filed*, No. 25-3248 (8th Cir. Nov. 10, 2025); *E.M. v. Noem*, 25-CV-3975 (SRN/DTS), --- F. Supp. 3d ---, 2025 WL 3157839, at \*4–8 (D. Minn. Nov. 12, 2025); *Santos M.C. v. Olson*, No. 25-CV-4264 (PJS/DJF), 2025 WL 3281787, at \*2–3 (D. Minn. Nov. 25, 2025).

Respondents concede that the Court’s decision in *R.E.* controls Jose H.S.’s Petition but ask the Court to reconsider its position in light of decisions from the minority viewpoint, including the Fifth Circuit decision in *Buenrostro-Mendez v. Bondi*, --- F.4th ---, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). Respondents then refer the Court to

their arguments in *Avila v. Bondi*, No. 25-3248 (8th Cir. Docketed Nov. 10, 2025). The Court recognizes, but is not persuaded by, the minority viewpoint; it has already considered and rejected that viewpoint.<sup>1</sup>

The Court therefore grants the Petition for Writ of Habeas Corpus, but the issue of remedy remains. Jose H.S. requests immediate release. Several courts in this District have concluded that petitioners detained by ICE without an administrative warrant, which is required by Section 1226(a), should be immediately released. *E.g.*, *Ahmed M. v. Bondi*, No. 25-CV-4711 (ECT/SGE), 2026 WL 25627, at \*7 (D. Minn. Jan. 5, 2026); *Juan S.R. v. Bondi*, No. 26-CV-5 (PJS/LIB) (Jan. 12, 2026), ECF No. 8 at 3–4<sup>2</sup>; *see also* 8 U.S.C. § 1226(a) (“On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.”). Without a valid administrative warrant, ICE’s detention of petitioners lacks a lawful predicate. *Vedat C. v. Bondi*, No. 25-CV-4642 (JWB/DTS) (D. Minn. Dec. 19, 2025), ECF No. 9 at 6; *Chogllo Chafla v. Scott*, 804 F. Supp. 3d 247, 264 (D. Me. 2025), *appeal filed* (Nov. 6, 2025).

In their response, Respondents attach an administrative warrant (Form I-200), dated February 9, 2026, and argue that a bond hearing would be the proper remedy. (ECF

---

<sup>1</sup> The Court notes that Respondents’ arguments to the contrary are preserved for appeal.

<sup>2</sup> All page citations to the record or other dockets reference ECF pagination.

Nos. 6, 6-1.) But Respondents do not provide any affidavit explaining the document's authenticity, who signed it, who served it on Jose H.S., or when and where it was issued and served. And Respondents do not allege that the warrant was served on Jose H.S. prior to arrest—they simply state that the I-200 was issued on February 9, 2026. (ECF No. 6 at 1.) Finally, the I-200 states that it was served on Jose H.S. at Whipple (located at 1 Federal Drive, Fort Snelling, Minnesota). (ECF No. 6-1.) But Respondents do not dispute that Jose H.S. was arrested in front of his home. (Pet. ¶¶ 15–16.)

In its Order to Show Cause, this Court directed Respondents to include, in their answer, “[s]uch affidavits and exhibits as are needed to establish the lawfulness and correct duration of Petitioner’s detention in light of the issues raised in the habeas petition” and “[w]hether the absence of a warrant preceding Petitioner’s arrest necessitates Petitioner’s immediate release.” (ECF No. 4.) Jose H.S. alleged in his Petition that the arrest was warrantless. (Pet. ¶¶ 16, 59–60.)

Respondents’ I-200 attachment, with no accompanying affidavit from anyone with personal knowledge and because it appears to have been served after the arrest, is insufficient to establish the lawfulness of Jose H.S.’s detention. Respondents were on

notice that they needed to provide support to establish the lawfulness of Jose H.S.'s detention. They have not. The Court therefore orders the immediate release of Jose H.S.<sup>3</sup>

### CONCLUSION

Based on the foregoing and on all the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. The Petition for Writ of Habeas Corpus (ECF No. 1) is GRANTED. The Court:
  - a. DECLARES that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and is instead subject to detention, if at all, pursuant to the discretionary authority of 8 U.S.C. § 1226;
  - b. ORDERS that Respondents immediately transfer Petitioner to Minnesota and release Petitioner from custody in Minnesota as soon as practicable, and at a safe time and place, with coordination or at least two hours' advance notice to counsel, but not later than **24 hours** after entry of this Order;

---

<sup>3</sup> The Court retains jurisdiction over this matter to decide any future motion for attorneys' fees under the Equal Access to Justice Act. Jose H.S. may move separately for such relief within 30 days of final judgment in this action. 28 U.S.C. § 2412(d)(1)(B).

- c. ORDERS that Respondents release Petitioner in Minnesota with all Petitioner's personal effects in Respondents' possession, including all personal property seized during Petitioner's arrest such as, but not limited to, Petitioner's driver's license and identification, passport, immigration papers, cell phone, cash, and keys;
- d. ORDERS that Respondents not impose any condition of release, including but not limited to ankle monitors, body-worn GPS, telephonic tracking, or use of the SmartLINK Mobile Application; and
- e. ORDERS that, within **four days** of release, the Respondents shall file notice on the docket confirming that release within Minnesota has occurred.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: February 14, 2026  
Time: 2:35 p.m.

BY THE COURT:  
s/Nancy E. Brasel  
Nancy E. Brasel  
United States District Judge