**Warrantless Arrest - for immigrants detained in Texas, Louisiana, or Mississippi**

A noncitizen's case is distinguishable from the Fifth Circuit's en banc decision in *Sosnava Rodriguez v. Vergara*, No. 26-50183, 2026 WL 3181188 (5th Cir. Oct. 23, 2026), if the petitioner was subject to an unlawful warrantless arrest.

Immigration officers may arrest an individual without a warrant in limited circumstances. *See Arizona v. United States*, 567 U.S. 387, 407-08 (2012) (noting strong Congressional preference, as expressed in INA, for immigration arrests to be based on warrants). The INA permits warrantless arrest if an immigration officer has reason to believe that a noncitizen (1) is in the United States in violation of the immigration laws and (2) "is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2); *accord* 8 C.F.R. § 287.8(c)(2)G)-(i). An officer "has reason to believe" when they have the equivalent of "the constitutional requirement of probable cause." *Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. 25-3417 (BAH), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (quoting *Au Yi Lau v. U.S. Immigr. & Naturalization Serv.*, 445 F.2d 217, 222–23 (D.C. Cir. 1971)); *see also Tejeda-Mata v. Immigr. & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir. 1980) ("The phrase 'has reason to believe' [in § 1357] has been equated with the constitutional requirement of probable cause."); *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir. 1975) ("The words [in § 1357] of the statute 'reason to believe' are properly taken to signify probable cause."); *United States v. Santos‑Portillo*, 997 F.3d 159, 162–63 (4th Cir. 2021) (holding that §1357(a) permits warrantless arrests only with "probable cause" and a "likelihood of ... escaping"). The statutory authority therefore does not create an unlimited power to arrest noncitizens without a warrant; it imposes specific conditions on the exercise of that authority.

Regulations impose additional safeguards following a warrantless arrest. At the time of arrest, and "as soon as it is practical and safe to do so," immigration officers must identify themselves as immigration officers authorized to make arrests, inform the person that they are under arrest, and state the reason for the arrest. 8 C.F.R. § 287.8(c)(2)(iii). The noncitizen must then "be taken without unnecessary delay for examination before an officer of the Service having authority to examine [noncitizens] as to their right to enter or remain in the United States." 8 U.S.C. § 1357(a)(2). In determining whether the statutory requirement of likely escape is satisfied, courts consider the facts known to immigration officers at the time of the arrest, including the individual's ability to be identified, any prior escapes or evasions, attempts to flee, and ties to the community, including family, home, and employment. *See Castanon Nava v. Dep't of Homeland Sec.*, 806 F. Supp. 3d 823, 854 (N.D. Ill. 2025), *aff'd in part sub nom. Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 175 F.4th 828 (7th Cir. 2026). Additionally, where a warrantless arrest has occurred—even lawfully—the INA and accompanying regulations require immigration officials to make an individualized custody decision within 48 hours of a warrantless arrest to justify continued detention. 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.3(d); *see also Salazar v. Dedos*, 830 F. Supp. 3d 1110, 1118 (D.N.M. 2026) (granting on Fourth Amendment grounds and explaining that "[a]bsent obtaining a warrant, the government was required to secure a prompt judicial probable cause determination to justify Salazar's continued detention")(citing *County of*

*Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991); *Gerstein v. Pugh*, 420 U.S. 103, 107–08 (1975)).

District courts across the country have recognized that where immigration officials unlawfully make a warrantless arrest in violation of 8 U.S.C. § 1357(a)(2) and its implementing regulations, immediate release is an appropriate remedy. *See, e.g.*, *Santos Gomez v. Guadian*, Civ. No. GLR-26-3078, 2026 WL 2546049, at *4 (D. Md. Aug. 28, 2026) (collecting cases granting immediate release based on "noncompliance with 8 U.S.C. § 1357(a)(2) and its implementing regulations"); *Salazar*, 830 F. Supp. 3d at 1117-18 (similar).

If a court does not grant a petitioner release on this ground, the court may hold an appropriate case in abeyance pending the Supreme Court's decision in *Rhoney v. Barbosa da Cunha* (No. 26-104), which will impact the Fifth Circuit's precedent in both *Buenrostro* and *Sosnava Rodriguez*.