UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BRAYAN JOSUE LOPEZ SARMIENTO; JHONATAN ALEX RODRIGUEZ ARGUETA; JOSUE ANTONIO RODRIGUEZ ARGUETA; WILSON EMANUEL ZELAYA CHAVARRIA, *on behalf of themselves and all others similarly situated,*

Petitioners-Plaintiffs,

v.

JEFFREY CRAWFORD, *in his official capacity as Warden of the Farmville Detention Center*; PAUL PERRY, *in his official capacity as Warden of the Caroline Detention Facility*; JOSEPH SIMON, *in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Washington Field Office*; KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security*; PAMELA BONDI *in her official capacity as Attorney General of the United States*,

Respondents-Defendants.

AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND CLASS ACTION COMPLAINT FOR DECLARATORY RELIEF

Case No. 1:25-cv-01644

INTRODUCTION

1. In furtherance of its explicit goal to deport as many noncitizens as possible, the Department of Homeland Security ("DHS") recently announced an unlawful policy to detain, without the opportunity to seek bond, any immigrant who is alleged to have entered the country without inspection--including those who came to the United States as unaccompanied minors and have since been granted Special Immigrant Juvenile status ("SIJS"). Under this policy, young

people who would eventually be eligible for permanent resident status are being arrested, detained, and refused bond simply based on the allegation that they crossed the border illegally years ago. Petitioners-Plaintiffs ("Petitioners") are such individuals.

2. Each Petitioner has lived in the United States for years, was initially apprehended by immigration officials within the country, was designated as an unaccompanied minor, was placed in the custody of the Office of Refugee Resettlement, and was released to a sponsor in the United States.

3. Each Petitioner applied for SIJS, and Petitioners Jhonatan Rodriguez Argueta ("Jhonatan'), Wilson Zelaya Chavarria ("Wilson"), and Brayan Lopez Sarmiento ("Brayan") were granted such status. Petitioner Josue Rodriguez Argueta's ("Josue") application is still pending. SIJS provides unaccompanied minors with a pathway to lawful permanent residence status and eventual U.S. citizenship. While they are waiting for their lawful permanent residence status, SIJS recipients typically receive "deferred action," which is a promise by the government not to attempt to remove them absent some new justification. Petitioners Jhonatan, Wilson, and Brayan each received deferred action after their SIJS applications were approved.

4. DHS is now seeking to remove Petitioners based on the allegation that they entered the United States without inspection. *See* 8 U.S.C. §1182(a)(6)(A)(i).

5. Based only on this allegation in Plaintiffs' removal proceedings, DHS denied each Plaintiff release from immigration custody, despite an immigration judge's initial bond determination ordering Petitioners Jhonatan, Josue, and Brayan to be released on bond. Those denials were consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement ("ICE") employees to consider anyone alleged to be inadmissible under

§1182(a)(6)(A)(i)–i.e., those who entered without inspection–to be subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A) and therefore ineligible for release on bond.

6. Respondents have effectively rewritten the laws and regulations governing civil immigration detention in a manner that has no basis in the text of those enactments or the precedent interpreting them and have imposed a system of punitive immigration detention that violates Petitioners' due process rights. Accordingly, Respondents' detention of the Petitioners violates the plain language of the Immigration and Nationality Act ("INA"), the Trafficking Victims Protection Reauthorization Act of 2009, the implementing regulations of those laws, and the United States Constitution.

JURISDICTION & VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

8. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

9. Federal district courts also have federal question jurisdiction through the Administrative Procedures Act ("APA"), to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas petitions. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or

habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702. Respondents' detention of Petitioners without a bond hearing has adversely and severely affected Petitioners' liberty and freedom.

10. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioners are detained within this district at Farmville Detention Center and Caroline Detention Facility. Furthermore, a substantial part of the events or omissions giving rise to this action occurred and continues to occur within this division at ICE's Washington Field Office in Chantilly, Virginia.

11. Petitioners are properly joined in this action because they jointly assert a right to release from custody and raise *at least* one "question of law or fact common to all plaintiffs," namely, whether detention without bond is lawful and whether the Department of Justice and Homeland Security have complied with the INA and implementing regulations in continuing their detention. Fed. R. Civ. P. 20(a)(1).

PARTIES

12. Petitioner-Plaintiff Jhonatan Alex Rodriguez Argueta is a native and citizen of El Salvador who was designated as an unaccompanied minor in June 2022 and obtained SIJS with deferred action in January 2024. He is currently detained in Farmville Detention Center.

13. Petitioner-Plaintiff Josue Antonio Rodriguez Argueta is a native and citizen of El Salvador who was designated as an unaccompanied minor in June 2022 and has a pending application for SIJS. He is currently detained at Farmville Detention Center.

14. Petitioner-Plaintiff Wilson Emanuel Zelaya Chavarria is a native and citizen of Honduras who was designated as an unaccompanied minor in November 2017 and obtained SIJS

in 2018 with a pending application for lawful permanent residency. He is currently detained at Farmville Detention Center.

15. Petitioner-Plaintiff Brayan Josue Lopez Sarmiento is a native and citizen of Honduras who was designated as an unaccompanied minor in March 2023 and obtained SIJS in August 2024. He is currently detained in Caroline Detention Facility.

16. Respondent Jeffrey Crawford is the Director of the Farmville Detention Center ("Farmville"), which is owned and operated by CoreCivic and contracts with ICE to detain non-citizens. Mr. Crawford is the immediate custodian of Petitioners Jhonatan, Josue, and Wilson. He is sued in his official capacity.

17. Respondent Paul Perry is the Superintendent of Caroline Detention Facility ("Caroline"), a county jail that contracts with ICE to detain non-citizens. He is responsible for overseeing Caroline's administration and management. Mr. Perry is the immediate custodian of Petitioner Brayan. He is sued in his official capacity.

18. Respondent Joseph Simon is the Field Office Director of the ICE Enforcement and Removal Operations (ERO) Washington Field Office ("WAS ICE") and is the federal agent charged with overseeing all ICE detention centers in Virginia, including Caroline and Farmville. Mr. Simon is the legal custodian of Petitioners. He is sued in his official capacity.

19. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. DHS oversees ICE, which is responsible for administering and enforcing immigration laws. Secretary Noem is the ultimate legal custodian of Petitioners. She is sued in her official capacity.

20. Respondent Pamela Bondi is the Attorney General of the United States. She oversees the immigration court system, housed within the Executive Office for Immigration

Review ("EOIR"), and includes all immigration judges and the Board of Immigration Appeals ("BIA"). She is sued in her official capacity.

FACTS

I. Legal Framework

A. *Protections for Unaccompanied Minors*

21. Minors who arrive in the U.S. without a parent or other legal guardian are considered "unaccompanied minors" and receive special treatment under the immigration laws because of their vulnerable status. This includes their treatment in detention and numerous legal protections that guarantee that they are not removed without due process and are able to pursue forms of relief from deportation for which they may be eligible.

22. Before 2002, the care and placement of unaccompanied minors in the United States was the responsibility of the Office of Juvenile Affairs in the former Immigration and Naturalization Service ("INS"). *See F.L. v. Thompson*, 293 F. Supp.2d 86, 96 (D.D.C. 2003). In 2002, Congress passed the Homeland Security Act ("HSA"), which created DHS and its components, including U.S. Citizenship and Immigration Service ("USCIS"), Customs and Border Patrol ("CBP"), and ICE. *See* Department of Homeland Security Reorganization Plan Modification of January 30, 2003, H.R. Doc. No. 108-32 (2003) (also set forth as a note to 6 U.S.C. § 542).

23. Congress transferred to the Office of Refugee Resettlement ("ORR"), within the Department of Health and Human Services ("HHS"), the responsibility for the care of unaccompanied minors "who are in Federal custody by reason of their immigration status." 6 U.S.C. § 279(a), (b)(1)(A). The HSA defined an unaccompanied minor as a child who: (A) has no

lawful immigration status in the United States;[1] (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody. *Id.* § 279(g)(2). Congress also transferred to ORR the responsibility for making all placement decisions for unaccompanied minors and required ORR to coordinate those placement decisions with DHS and ensure that unaccompanied minors are released to the care of a suitable adult or other placement for their safety. *See id.* § 279(b)(1)(C), (D), (b)(2).

24. In 2008, the Trafficking Victims and Protection Reauthorization Act ("TVPRA") was enacted, requiring that "the care and custody of all unaccompanied [noncitizen] children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services," under whose purview the ORR operates. 8 U.S.C. § 1232(b)(1). The TVPRA also requires any other federal agency to transfer the custody of an unaccompanied minor to HHS within 72 hours, except in exceptional circumstances. *Id.* §1232(b)(3).

B. *Right to Removal Proceedings under 8 U.S.C. § 1229a*

25. Pursuant to the TVPRA, any unaccompanied minor sought to be removed from the United States by the DHS, except for certain unaccompanied minors from contiguous countries, shall be (i) placed in removal proceedings under 8 U.S.C. § 1229a; (ii) eligible for relief under 8 U.S.C. § 1229c at no cost to the child; and (iii) provided access to counsel in accordance with [8 U.S.C. § 1232(c)(5)]. 8 U.S.C. § 1232 (a)(5)(D).

[1] "The lack of lawful immigration status results from entering the country 'without inspection' (illegally), entering legally with fraudulent documents, or entering the country legally but overstaying the duration of admittance (i.e., a visa overstay)." Cong. Research Serv., *Unaccompanied Alien Children: An Overview*, n. 2 (Sept. 5, 2024), https://www.congress.gov/crs-product/R43599#ifn2.

26. Removal proceedings under § 1229a are adversarial proceedings that take place in immigration court and provide noncitizens the opportunity to contest the basis for removal, present evidence, and apply for relief from removal. Thus, the TVPRA prohibits unaccompanied minors from placement in expedited removal proceedings, where they can be removed without a hearing. 8 U.S.C. § 1225(b); 8 U.S.C. §§ 1232(a)(2)(B), (a)(3), (a)(5)(D).

27. In 2013, the TVPRA was amended as to minors who reach the age of 18 after entry into the United States. This amendment requires unaccompanied minors transferred from HHS to DHS custody after turning 18 to be placed in the least restrictive setting available, including alternatives to detention and placement with a sponsor. *See* Senate Bill 47, passed into law on Mar. 7. 2013. This requirement demonstrates congressional intent to exempt unaccompanied minors, even those who have reached the age of majority, from the mandatory detention provisions of 8 C.F.R. § 1003.19.

28. The TVPRA also included amendments strengthening protections for unaccompanied minors with SIJS, a status established in 1990, to "protect abused, neglected, or abandoned children who . . . illegally entered the United States." *Osorio Martinez v. Att'y Gen. United States of Am.*, 893 F. 3d 153, 163 (3d Cir. 2018) (citations omitted). To obtain SIJS, a noncitizen child must meet a set of rigorous, congressionally defined eligibility criteria, including that a juvenile court find it would not be in the child's best interest to return to his country of nationality and that he cannot be reunified with one or both of parents because of abuse, abandonment, neglect or similar basis under state law. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

29. In creating SIJS, Congress included in the INA certain protections against removal for this class of young immigrants. *See* 8 U.S.C. § 1227(c) (certain grounds for deportation "shall

not apply to a special immigrant described in section 101(a)(27)(J) based upon circumstances that existed before the date the alien was provided such special immigrant status."). Accordingly, although a juvenile with SIJS can be removed on certain grounds, such as having been convicted of a serious criminal offense, they cannot be removed for having entered the country illegally. *See id.*

30. Further, "Congress has granted SIJ designees various forms of support within the United States, such as access to federally funded educational programming and preferential status when seeking employment-based visas." *Joshua M. v. Barr*, 439 F. Supp. 3d 632, 659 (E.D. Va. 2020) (citing 8 U.S.C. §§ 1232(d)(4)(A), 1153(b)(4)). These benefits reflect Congress' intent "to assist a limited group of abused children to remain safely in the country ... as a ward of the United States with the approval of both state and federal authorities." *Osorio-Martinez*, 893 F.3d at 168 (*citing Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011)).

C. *Detention under the INA*

31. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

32. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Generally, noncitizens are entitled to a bond hearing at the outset of their detention. 8 U.S.C. § 1226(a); *see also* 8 C.F.R. §§ 1003.19(a), 1236.1(d). However, there are several categories of noncitizens who are subject to mandatory detention under the INA.

33. First, noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention until their removal proceedings are concluded, 8 U.S.C. § 1226(c).

34. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals "seeking admission" referred to under § 1225(b)(2).

35. Last, the INA also provides for detention of noncitizens who have received a final order of removal from the United States, including individuals in withholding-only proceedings, 8 U.S.C. § 1231(a)–(b).

36. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

37. Following IIRIRA's enactment, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and were instead detained under § 1226(a), making them eligible to be released on bond. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination").

38. In the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an immigration judge, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice,

in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an immigration judge or other hearing officer. *See e.g., Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (discussing Section 1226(a) as the "default rule" for detaining noncitizens "already present in the United States"); *Miranda v. Garland*, 34 F.4th 338, 346 (4th Cir. 2022) (same); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025, at *9 (D. Md. Aug. 24, 2025) ("Since at least 1996, the INA has mandated the detention of arriving aliens and certain criminal non-citizens detained in the United States. The Board of Immigration Appeals has long held to this interpretation. For everyone else, 8 U.S.C. § 1226(a) provides DHS the discretion to detain noncitizens, subject to review during a custody hearing before an immigration judge."); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255, at *9 (E.D. Va. Sept. 19, 2025) ("Before July 8, 2025, 'DHS's long-standing interpretation has been that § 1226(a) applie[d] to those who have crossed the border between ports of entry and are shortly thereafter apprehended.'") (quoting Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022)). *See also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

39. In the past several months, Respondents have adopted an entirely new interpretation of the statute. On May 22, 2025, the BIA issued an unpublished decision holding that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are therefore ineligible for immigration judge bond hearings under 8 U.S.C. § 1225(b)(2)(A). *Matter of Q. LI*, 29 I&N Dec. 66 (BIA 2025).

40. On July 8, 2025, ICE, in coordination with the Department of Justice ("DOJ"), announced a corresponding policy that rejected the well-established understanding of the statutory and regulatory framework and reversed decades of practice. This policy applies nation-wide.

41. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be deemed subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

42. According to news reports, immigration officials within the Trump administration requested this new policy in response to Congress's recent appropriation of billions of dollars to expand the immigration system, given that ICE will soon have the capacity to detain more than twice as many people on any given day.[2]

43. The new policy is reportedly in furtherance of the administration's mass deportation strategy by seeking to coerce noncitizens to relinquish any relief from deportation they may be entitled to by consenting to their deportation.[3]

44. On September 5, 2025, the BIA issued a second decision seemingly reiterating its holding in *Matter of Q-LI*, that any noncitizen who is present in the United States without having been inspected or admitted is subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

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[2] *See* Michelle Hackman, *New ICE Policy Blocks Detained Migrants From Seeking Bond*, Wall Street Journal (July 15, 2025), https://www.wsj.com/politics/policy/new-ice-policy-blocks-detained migrantsfrom-seeking-bond-f557402a [https://perma.cc/K8NY-DAAZ].

[3] *See* Kyle Cheney, *Trump's new detention policy targets millions of immigrants. Judges keep saying it's illegal,* Politico (Sept. 20, 2025), https://www.politico.com/news/2025/09/20/ice-detention-immigration-policy-00573850; *see also* DHS, *New Milestone: Over 2 Million Illegal Aliens Out of the United States in Less Than 250 Days* (Sept 23, 2025), https://www.dhs.gov/news/2025/09/23/new-milestone-over-2-million-illegal-aliens-out-united-states-less-250-days ("All of these successes will make arresting, detaining, and deporting illegal aliens more efficient and streamlined than ever before – paving the way to continue the surge in deportations.").

45. As instructed by these decisions, the immigration judges sitting in the Annandale Immigration Court, where Petitioners' immigration cases are pending, are now holding that they lack jurisdiction to determine bond for any person who has entered the United States without inspection, even if that person was designated as an unaccompanied minor under the TVPRA, has obtained SIJS, or has resided in the U.S. for years. Instead, consistent with the BIA decisions and the new DHS policy, the immigration judges are concluding that such people are subject to mandatory detention under § 1225(b)(2)(A).

46. The mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioners, who have already entered, were designated as unaccompanied minors, applied for SIJS, and were residing in the United States at the time they were apprehended. Accordingly, they are entitled to relief that will entitle them to a bond hearing and release on bond, if appropriate.

II. Custody of Petitioners

A. *Jhonatan Rodriguez Argueta and Josue Rodriguez Argueta*

47. Petitioners Jhonatan and Josue Rodriguez Argueta are brothers who were apprehended by immigration officials after entering the United States as minors in 2022. They were both issued Form I-200, warrant for arrest, citing INA Section 236 (8 U.S.C. §1226(a)) as the authority for their detention and a Notice to Appear ("NTA") charging them as "[noncitizens] present in the United States who [have] not been admitted or paroled." Ex. A, Jonatan and Josue's immigration documents at 1-8.[4]

48. They were subsequently placed in the custody of the ORR and then released into the care and custody of their aunt in Newport News, Virginia. *Id.* at 9-10.

[4] These NTAs were not filed with the immigration court to initiate removal proceedings.

49. In September 2023, the Juvenile and Domestic Relations District Court in Newport News, Virginia, granted their aunt sole and legal physical custody of them and found that *inter alia*, reunification with their parents was not viable due to abandonment. This finding allowed them to submit an application to USCIS for SIJS.

50. In 2023, both brothers applied for SIJS. On January 3, 2024, Jhonatan's application was approved; however, because Josue's previous immigration counsel failed to respond to a request for information from USCIS, his application was denied. Josue refiled his application in September 2025, and it remains pending. *Id.* at 11.

51. Jhonatan and Josue attended Menchville High School in Newport News, Virginia where they earned certificates of excellence from the English as a Second Language ("ESL") program. Moreover, Jhonatan and Josue are devoted and valued members of the [redacted], an Evangelical Christian church in [redacted]. Jhonatan and Josue regularly volunteer at the [redacted] and other surrounding ministries and play the bass guitar and drums, respectively, for the church services. Their commitment earned them an outpouring of support from the faith community. *Id.* at 12-26.

52. Neither Jhonatan nor Josue has been charged with any crime, and both have diligently complied with all their immigration requirements, taking all the necessary steps available to them to stabilize their immigration status.

53. Josue and Jhonatan were apprehended by ICE on August 21, 2025, in Newport News, Virginia. DHS filed a Notice to Appear in the immigration court for the first time, charging them under 8 U.S.C. § 1182(a)(6)(A)(i) as a "[noncitizen] present in the United States without being admitted or paroled." *Id.* at 27-30.

54. Josue and Jhonatan both sought and were given bond hearings at the Annadale Immigration Court. On September 11, 2025, the immigration judge initially granted Josue's release on bond for $3,000 and Jhonatan's release on bond for $2,000. *Id.* at 31-34.

55. DHS, however, appealed the bond decisions in their cases, which automatically stayed their release.

56. On September 18, 2025, DHS filed a motion for reconsideration of both brothers' bonds, and that same day, the immigration judge revoked their bonds without opportunity for counsel to file a response. *Id.* at 35-38. The immigration judge was then abruptly terminated from their position on September 24, 2025.

B. *Wilson Zelaya Chavarria*

57. Petitioner Wilson Emanuel Zelaya Chavarria entered the United States in November 2017, was apprehended by immigration officials, and issued Form I-200, warrant for arrest, citing INA Section 236 (8 U.S.C. § 1226(a)) as the authority for his detention and a Notice to Appear charging him as a "[noncitizen] present in the United States who has not been admitted or paroled." Ex. B, Wilson's immigration documents at 1-4.

58. He was subsequently designated as an unaccompanied minor, transferred to the custody of ORR, and released pursuant to 8 U.S.C. § 1232 to the care of his adult brother in Culpeper, Virginia. *Id.* at 5.

59. In August 2018, the Juvenile and Domestic Relations Court in Culpeper, Virginia, granted full physical and legal custody of Wilson to his adult brother, finding *inter alia*, that "reunification with Wilson's mother, Respondent[], is not viable due to neglect and abandonment under Virginia Code §16.1-228(1) and §16.1-228(3)."

60. Wilson applied for and was granted SIJS on February 25, 2019. Wilson has a pending application to adjust status to a legal permanent resident, with a current priority date of November 7, 2018. *Id.* at 6-7.

61. Since coming to the United States, Wilson has lived with his adult brother in Culpeper, Virginia. Several other members of Wilson's family also live in the Culpeper area, such as his two sisters, uncles, and cousins, with whom he is close. Wilson attended Eastern View High School and has developed many close friendships in the seven years that he has been a member of the Culpeper community. *See Id.* at 8-10. Wilson is also expecting his first child with his partner, who is due in November 2025.

62. Wilson was apprehended by ICE on or about August 22, 2025, in Stafford, Virginia.

63. After his arrest, DHS filed a Notice to Appear with the immigration court, charging him under 8 U.S.C. § 1182(a)(6)(A)(i) as a "[noncitizen] present in the United States without being admitted or paroled." *Id.* at 11-12.

64. On September 16, 2025, DHS amended Wilson's charges to include 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an applicant for admission without a valid entry document. *Id.* at 13-14.

65. On September 18, 2025, an immigration judge denied Wilson a bond hearing, finding that he lacked jurisdiction to consider bond because Wilson was detained pursuant to 8 U.S.C. § 1225(b). *Id.* at 15-16.

66. Although Wilson has various traffic-related charges and convictions, including a pending charge for failing to stop at the scene of an accident, he has never been charged or convicted of any crime that would render him statutorily ineligible to adjust his status to a legal permanent resident.

C. *Bryan Lopez Sarmiento*

67. Petitioner Brayan Josue Lopez Sarmiento entered the United States in March 2023, was apprehended by immigration officials and issued Form I-200, warrant for arrest, citing INA Section 236 (8 U.S.C. § 1226(a)) as the authority for his detention and a Notice to Appear charging him as a "[noncitizen] present in the United States who has not been admitted or paroled." Ex. C, Brayan's immigration documents at 1-4.

68. He was subsequently designated as an unaccompanied minor, transferred to the custody of ORR, and released pursuant to 8 U.S.C. § 1232 to a sponsor in the United States. *Id.* at 5.

69. Brayan has lived with his sponsor in Washington, D.C. since his release from ORR custody and has developed close friendships and community ties. He attended Jackson Reed High School in Washington, D.C., and graduated in May 2025. At school, he developed strong, positive relationships with his peers, teachers, and school counselor. Prior to his detention, Brayan was planning to attend the [redacted] this Fall on a scholarship. *Id.* at 6-15.

70. Brayan has never been charged with any crime and has complied with all his immigration requirements. He has taken all the necessary steps available to him to become a lawful permanent resident.

71. On or about April 25, 2024, he filed his application for SIJS with USCIS, which was granted on August 5, 2024, along with Deferred Action. *Id.* at 16. Based on his Deferred Action, he was able to apply for work authorization, which was issued on November 1, 2024, with an expiration date of August 5, 2028.

72. On August 5, 2025, without notice or apparent cause, Brayan was arrested by immigration officials outside his home in D.C.

73. In a notice dated August 6, 2025, the day after his arrest, USCIS terminated his deferred action without explanation. USCIS sent another letter dated August 14, 2025, notifying him of the agency's intent to revoke his employment authorization on September 2, 2025, based on the termination of his deferred action. *Id.* at 17-20.

74. On September 9, 2025, an immigration judge at the Annandale Immigration Court ordered Brayan released on a $5,000 bond. *Id.* at 22-23. That same day, DHS filed a notice to appeal the immigration judge's order, which stayed his release.

75. On September 15, 2025, DHS filed a Motion to Reconsider, again arguing that Petitioner was being held under 8 U.S.C. § 1225(b)(2)(A). On September 18, 2025, Brayan, through counsel, filed a response, reiterating his initial position that, as an unaccompanied minor and SIJS beneficiary, he was detained under 8 U.S.C. § 1226, not 8 U.S.C. § 1225(b)(2)(A).

76. On September 19, 2025, DHS amended Brayan's charges to include 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an applicant for admission without a valid entry document. *Id.* at 24. That same day, the immigration judge revoked his previous decision, finding that he did not have jurisdiction to consider Brayan's release on bond because he was detained pursuant to 8 U.S.C. § 1225(b). *Id.* at 25-26.

CLASS-WIDE ALLEGATIONS

77. Petitioners bring this class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2), or alternatively as a representative habeas petition, on behalf of themselves and a class of similarly situated individuals pursuant to a procedure analogous to Rules 23(a) and 23(b)(2). *See Coreas v. Bounds*, No. CV TDC-20-0780, 2020 WL 5593338, at *7 (D. Md. Sept. 18, 2020) ("there is substantial precedent for pursuing habeas actions on a class basis"). *See also Geraghty v. U.S.*

Parole Commission, 429 F. Supp. 737, 740 (M.D. Pa. 1977) (noting that "procedures analogous to a class action have been fashioned in habeas corpus actions where necessary and appropriate").

78. There are numerous other individuals who are or will be detained in Virginia who, like Petitioners, were designated unaccompanied minors and have applied for or obtained SIJS and are being denied bond hearings based on the erroneous determination that they are subject to mandatory detention under 8 U.S.C.§ 1225(b)(2)(A). Each of these similarly situated individuals is or will be entitled to bring a complaint for declaratory relief and a petition for a writ of habeas corpus to obtain relief from unlawful detention.

79. Petitioners bring this class action for habeas and declaratory relief on behalf of themselves and others similarly situated for the purpose of asserting claims that are common to all members of the proposed class. They seek to represent a class defined as: all persons who are or will be held in civil immigration detention within the area of responsibility of WAS ICE who were designated as unaccompanied minors and applied for or obtained SIJS and are or will be denied consideration for release under 8 U.S.C. § 1226(a) based on Respondents' no-bond policy.

80. The proposed class satisfies the requirements of Fed. R. Civ. P. 23(a)(1) because its members are so numerous that joinder of all members is impracticable. *See Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984) (holding that there is no specific numerical requirement for maintaining a class action). *See also J.D. v. Azar*, 925 F.3d 1291, 1322 (D.C. Cir. 2019) (noting that "classes including future claimants generally meet the numerosity requirement").

81. Petitioners are not aware of the exact number of putative class members, as Respondents are uniquely positioned to identify such persons. Upon information and belief, there are hundreds, if not thousands, of individuals who were designated unaccompanied minors and

have applied for or obtained SIJS in Virginia to whom Respondent's no-bond policy applies or will apply if they are apprehended. This can be presumed based on government data, showing that between 2021 and 2022, USCIS received a total of 54,632 SIJS applications and approved 34,605 of them, and in the 2022 fiscal year alone, ORR released 6,214 unaccompanied minors to sponsors in Virginia. Ex. D. Additionally, the class is likely to grow as Respondents continue to make arbitrary arrests throughout the D.C. and Northern Virginia area and continue to implement their no-bond policy for putative class members.

82. Joinder is also impracticable because putative class members are detained, making it difficult to identify them or communicate with them once identified. Many putative class members are unrepresented by counsel, do not speak English well, and are unable to bring individual litigation because they lack sufficient resources, financial or otherwise, to bring their own cases.

83. The proposed class meets the commonality requirement of Fed. R. Civ. P. 23(a)(2). All class members present at least one core common question, including whether § 1225(b)(2)'s mandatory detention provisions apply to them and prevent them from being considered for release on bond under § 1226(a) and its implementing regulations.

84. The named Petitioners' claims are typical of the class, as they face the same injury as the class and assert the same claims and rights of the class.

85. The proposed class meets the adequacy requirements of Fed. R. Civ. P. 23(a)(4). The named Petitioners have the requisite personal interest in the outcome of this action and have no interests adverse to the interests of the proposed class. They will fairly and adequately represent the interests of all proposed class members. The proposed class is represented by pro bono counsel from the American Civil Liberties Union Foundation of Virginia and experienced immigration

counsel of the named Petitioners. Counsel has extensive experience litigating class action lawsuits and other complex cases in federal court, including civil rights and habeas lawsuits on behalf of detained immigrants.

86. The proposed class meets the requirements of Fed. R. Civ. P. 23(b)(2). Respondents have acted on grounds generally applicable to the entire proposed class through their practice of preventing noncitizens who were designated unaccompanied minors and applied for or obtained SIJS from being considered for release on bond under § 1226(a). Therefore, declaratory relief is appropriate with respect to the proposed class as a whole.

CLAIMS FOR RELIEF

COUNT I
Violation of Immigration and Nationality Act, 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond on Behalf of All Petitioners and Similarly Situated Individuals

87. Petitioners incorporate by reference the allegations of fact set forth in the preceding paragraphs.

88. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to those who previously entered the country, were designated as unaccompanied minors, placed in the custody of ORR, released to sponsors, applied for or were granted SIJS prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

89. Individuals designated as unaccompanied minors are not "applicants for admission" as defined by 8 U.S.C. § 1225 because they must be placed in standard removal proceedings under 8 U.S.C. § 1229a, 8 U.S.C. § 1232(a)(5)(D), and cannot be paroled under 8 U.S.C. § 1182(d)(5)(A). The release of unaccompanied minors from ORR custody is authorized only by the Director of the Office of Refugee Resettlement pursuant to 6 U.S.C. § 279.

90. DHS and Virginia Immigration Courts have adopted a policy and practice of applying § 1225(b)(2) to Petitioners and the putative class members.

91. The unlawful application of § 1225(b)(2) to Petitioners and the putative class members unlawfully mandates their continued detention and violates the INA.

COUNT II
Violation of Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19
Unlawful Denial of Release on Bond on Behalf of All Petitioners and Similarly Situated Individuals

92. Petitioners incorporate by reference the allegations of fact set forth in the preceding paragraphs.

93. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D). Specifically, the APA requires agencies to follow public notice-and-comment rulemaking procedures before promulgating new regulations or amending existing regulations. *See* 5 U.S.C. § 553(b), (c).

94. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

95. 8 C.F.R. §§236.1, 1236.1, and 1003.19 have not been rescinded and remain in effect.

96. Nonetheless, DHS and the Annandale Immigration Court have adopted a policy and practice of applying § 1225(b)(2) to Petitioners.

97. Respondents failed to comply with the APA by adopting a policy that contradicts its regulations without engaging in rulemaking, nor providing any notice or meaningful opportunity to comment. Respondents failed to publish any new rule, despite its impact on the substantive rights of noncitizens, such as Petitioners under the INA, as required under 5 U.S.C. § 553(d).

98. The application of § 1225(b)(2) to Petitioners and putative class members unlawfully mandates their continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. Respondents' adoption of their no-bond policies, therefore, violates the public notice comment rulemaking procedures required under the APA.

COUNT III
Violation of the Administrative Procedures Act, 5 U.S.C. § 706(2)(A),
Arbitrary and Capricious Agency Action on Behalf of All Petitioners and Similarly Situated Individuals

99. Petitioners incorporate by reference the allegations of fact set forth in the preceding paragraphs.

100. Courts must "hold unlawful and set aside agency action" that is "arbitrary capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

101. Respondents' adoption of a new no-bond policy subjects Petitioners and putative class members to mandatory detention without the opportunity for release on bond, without regard to their unaccompanied minor designation or SIJS. This is arbitrary, capricious, and contrary to law, in violation of the APA.

COUNT IV
Violation of the Fifth Amendment of the U.S. Constitution
Unlawful Detention on Behalf of All Petitioners and Similarly Situated Individuals

102. Petitioners incorporate by reference the allegations of fact set forth in the preceding paragraphs.

103. The Fifth Amendment provides that "[n]o person" shall be "be deprived of life, liberty, or property, without due process of law."

104. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas,* 533 U.S. at 690.

105. Moreover, "[t]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

106. The government's new no-bond policy, subjecting Petitioners and putative class members to mandatory detention, is wholly unjustified. The government has not demonstrated that unaccompanied minors and special immigrant juveniles—whose custody, care, release, and pathway to permanent immigration protection is specifically articulated in the TVPRA, the INA, implementing regulations and decades of practice and policy—need to be detained without consideration for release on bond. *See Zadvaydas*, 533 U.S. at 690 (finding that immigration detention must further the twin goals of preventing danger to the community or flight prior to removal).

107. The mandatory detention of Petitioners and putative class members is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Id.* The sole basis of their detention— to facilitate their expansion of immigration detention— is unlawful. Here, there are

indications that Petitioners' and putative class members' "detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Denmore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring).

108. Because Respondents have no legitimate, non-punitive objective in denying Petitioners or putative class members bond hearings to consider their release, their detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

a. Assume jurisdiction over this matter;

b. Order that Petitioners shall not be transferred outside of the Eastern District of Virginia while this case is pending;

c. Issue a writ of habeas corpus within three days of the filing of this petition, requiring that Respondents show cause why the relief Petitioners seek should not be granted, and set a hearing on this matter within five days of Respondents' return on the order to show cause, pursuant to 28 U.S.C. § 2244;

d. Certify a class consisting of all persons who are or will be held in civil immigration detention within the area of responsibility of WAS ICE who were designated as unaccompanied minors and applied for or obtained SIJS and are or will be denied consideration for release under 8 U.S.C. § 1226(a) based on Respondents' no-bond policy;

e. Set aside Respondents' unlawful no-bond policy under the APA, 5 U.S.C. § 706(2), as contrary to law, arbitrary and capricious, and contrary to constitutional right;

f. Declare that Respondents' policy and practice of denying consideration for bond on the basis of § 1225(b)(2) to Petitioners and putative class members violates the INA, its

implementing regulations, and the Due Process Clause and order the immediate release of Petitioners;

g. Review Petitioners' custody under 8 C.F.R. §§ 236.1, 1236.1, and 1003.19 and order their release under that standard, if appropriate;

h. In the alternative, set aside the denial of bond hearing that Respondents issued to Petitioners, and order Respondents to provide a new bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days;

i. Award reasonable attorneys' fees and costs for this action; and

j. Grant any other and further relief that this Court deems just and appropriate, including individual injunctions when requested as necessary to secure the rights of similarly situated Petitioners.

Dated: October 2, 2025

Respectfully submitted,

/s/
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**Pro hac vice application forthcoming*

VERIFICATION BY SOMEONE ACTING ON PETITIONERS' BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioners because I am the attorney for Petitioners. I or my co-counsel have discussed with the Petitioners the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: October 2, 2025

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Amended Petition for Writ of Habeas Corpus and Complaint and all attachments using the CM/ECF system. Pursuant to the Court's October 1, 2025, order (Dkt 2), co-counsel, Tanishka Cruz, served Respondents with a copy of the original Petition and aforementioned order (Dkt 1-2) via email to the U.S. Attorney's Office for the Eastern District of Virginia on October 1, 2025.

/s/

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