UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

J.R.R. *Petitioner,* v. KENNETH GENALO, in his official capacity as Field Office Director of New York, Immigration and Customs Enforcement; Todd LYONS, in his official capacity as Acting Director U.S. Immigrations and Customs Enforcement; Kristi NOEM in her official capacity as Secretary of Homeland Security; Pam BONDI, in her official capacity as Attorney General, *Respondents.*	Case No. 26-cv-1245 **EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS**

1. Petitioner J.R.R.[1] ("Petitioner" or "Mr. R") is a 24-year-old asylum seeker from El Salvador with approved special immigrant juvenile status ("SIJS") and deferred action since 2023. (*See* Exhibit A – SIJS and deferred action approval). He has lived in the United States continuously since he entered the country in April 2019 as an unaccompanied minor ("UAC"). When he arrived in the United States, he was detained by the Department of Homeland Security ("DHS"), placed in removal proceedings, and transferred to the custody of the Office of Refugee Resettlement ("ORR") due to his UAC status. In June 2019, he was released from ORR custody into the care of his family member pursuant to a Sponsor Care Agreement.

2. Since 2019, he has lived in Long Island, New York. He lives with his partner and they have a U.S. citizen child who is 20 months old – he is the primary supporter of his family.

[1] Petitioner will file a motion for leave to proceed under a pseudonym concurrently with this Petition.

3. Mr. R.'s Form I-589 Application for Asylum was received by United States Citizenship and Immigration Services ("USCIS") on September 15, 2020, and remains pending. (*See* Ex. B – Form I-589 Receipt.) Mr. R is eligible for relief under the settlement agreement in *J.O.P. v. DHS*, which allows for the termination of removal proceedings and establishes critical procedural protections for people who are designated as unaccompanied minors (UAC) at the time such proceedings are commenced. *J.O.P. v. U.S. Dep't of Homeland Sec.*, No. 8:19-cv-1944 (SAG), ECF No. 199-2 (D. Md.) ("*J.O.P.* Settlement") (attached hereto as Exhibit C). Specifically, as a *J.O.P.* class member he cannot be removed from the United States while his asylum application remains pending.

4. Additionally, his SIJ status provides a pathway to filing an application for lawful permanent residence and he is waiting for his priority date to be current to apply. His SIJS deferred action means he cannot be removed from the United States until his application to be a lawful permanent resident is adjudicated. *See Estuardo Xol-Maas v. Francis*, No. 26-CV-00025 (JAV), 2026 WL 457005, at *8 (S.D.N.Y. Feb. 18, 2026).

5. In August 2025, an immigration judge terminated his removal proceedings on the basis of his SIJ status, *J.O.P.* class member status, and his asylum application pending with USCIS. DHS did not oppose termination. (*See* Exhibit C – IJ Termination Order at 2).

6. U.S. Immigration and Customs Enforcement ("ICE") arrested Mr. R. on March 3, 2026 and is detaining him in Central Islip, New York.

7. Mr. R.'s detention violates the Due Process Clause of the Fifth Amendment of the Constitution. Petitioner was re-detained despite: (1) his approval for SIJS in 2023 and pathway to apply for lawful permanent residence; (2) his grant of deferred action in 2023, which has not been terminated; (3) the dismissal of his removal proceedings in 2025; and (4) his membership in the

J.O.P. class action settlement that prevents his removal while his asylum application remains pending.

8. Petitioner respectfully asks this Court to order his immediate release.

JURISDICTION AND VENUE

9. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

10. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (habeas); 28 U.S.C. § 1331 (federal question); and Article I, § 9, cl. 2 of the United States Constitution. This Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 2202. The Court has additional remedial authority under the All-Writs Act, 28 U.S.C. § 1651 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

11. Venue is proper in this District under 28 U.S.C. § 2241(d); 28 U.S.C. § 1391(b); and 28 U.S.C. § 1391(e)(1). Venue is proper in this District because Petitioner is presently detained within this District in Central Islip, New York.

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

13. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the

writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

14. Petitioner Mr. R. is a 24-year-old asylum seeker from El Salvador who has continuously lived in New York since 2019. He has been in immigration detention since March 3, 2026.

15. Respondent Kenneth Genalo is named in his official capacity as the Field Office Director of the New York Field Office for ICE within DHS. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Genalo's address is New York ICE Field Office Director, 26 Federal Plaza, 9th Floor, Suite 9-10, New York, New York 10278.

16. Respondent Todd Lyons is sued in his official capacity as Acting Director of U.S. Immigrations and Customs Enforcement. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

17. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the DHS, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

18. Respondent Pam Bondi is sued in her official capacity as Attorney General of the United States. As head of the U.S. Department of Justice, the agency that oversees the Executive Office for Immigration Review ("EOIR"), Attorney General Bondi is responsible for administration of the immigration laws as exercised by EOIR, pursuant to 8 U.S.C. § 1103(g). She is legally responsible for the pursuit of Petitioner's detention and removal.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his immigration detention. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010); *Abdi v. Nielsen*, 287 F. Supp. 3d 327, 341 (W.D.N.Y. 2018). No exhaustion requirement applies to the claims raised in this petition because the Immigration Court and Board of Immigration Appeals ("BIA") lack jurisdiction to entertain constitutional challenges. *See Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994); *Matter of Valdovinos*, 18 I&N Dec. 343, 345-46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute).

20. Nor is further action with the agency necessary when pursuing administrative remedies would be futile or the agency has predetermined a dispositive issue. *See, e.g., Araujo-Cortes*, 35 F. Supp. 3d at 538-39; *Monestime v. Reilly*, 704 F. Supp. 2d 453, 456-7 (S.D.N.Y. 2010); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009); *see also Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873, 2025 WL 2670875, at *8 (C.D. Cal. July 28, 2025) (finding the exhaustion of remedies for then prospective class of petitioners who alleged unlawful detention pursuant to § 1225 would be futile and thus not required); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873, ECF No. 87 at 3, Pets.' Ex Parte Application for Reconsideration and Clarification (asserting the Government and IJs are disregarding the district court's "declaratory judgment requiring bond hearings for the class").

FACTUAL AND PROCEDURAL BACKGROUND

21. Mr. R arrived in the United States after fleeing his native El Salvador on or about April 28, 2019, when he was 17 years old. He encountered immigration officials at the U.S.-

Mexico border, near Rio Grande, Texas. He arrived in the U.S. alone and was designated a UAC. He expressed fear of returning to El Salvador.

22. On May 1, 2019, DHS issued him a Notice to Appear alleging entry to the United States without admission or parole, and he was placed in removal proceedings. After spending time in ORR custody, on June 10, 2019, he was released into the care of his family member who served as his ORR sponsor pursuant to a sponsor care agreement.

23. Mr. R's Form I-589 Application for Asylum was received by USCIS on September 15, 2020, and it remains pending. (*See* Ex. B; *see also* Ex. C at 2.)

24. On June 9, 2022, an immigration judge administratively closed Mr. R's immigration court case. (*See* Ex. C at 2.) This was done upon joint request by both Mr. R and DHS, as a matter of prosecutorial discretion.

25. Mr. R has an approved petition for SIJS, based on abandonment by his father. His Form I-360 application was received by USCIS on August 31, 2022, and was approved on March 28, 2023. He was simultaneously granted deferred action. (*See* Ex. A.) He is waiting for his priority date to become current so he can apply for awful permanent resident status.[2]

26. In 2025, DHS moved to Recalendar Mr. R's immigration court case. On August 13, 2025, Mr. R filed a Motion to Recalendar and Terminate based on his SIJS status (*i.e.*, approved Form I-360) and his pending asylum application governed by the *J.O.P.* settlement, *see* Ex. D. The immigration judge granted Mr. R's motion and terminated his removal proceedings without

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[2] The priority date establishes the person's "place in line" for being able to apply for a green card based on the availability of visas within their specific immigration category and country of nationality. Once the priority date becomes available, or is "current," the applicant can apply for adjustment of status and obtain lawful permanent resident status, if otherwise eligible.

prejudice on August 26, 2025, citing his approved Form I-360, *J.O.P.* asylum application pending with USCIS, and the fact that DHS did not oppose termination. (Ex. C.)

27. Petitioner lives with his partner and they have a 20-month-old U.S. citizen son. His young son has medical issues and he is responsible for taking his son to his medical appointments. He is also the primary financial supporter for his family.

28. Mr. R was arrested for an incident that took place on February 6, 2026. He was charged with one count of NYPL 245.00(a), a B misdemeanor, and scheduled for arraignment on March 2, 2026 in Glen Cove City Court in New York. Upon information and belief, at his arraignment, he was told to go to the Glen Cove City Police Department on March 3, 2026, to have his fingerprints taken. When he did so, he was arrested and detained by ICE officers.

29. Upon information and belief, ICE is detaining Mr. R in Central Islip, New York.

LEGAL FRAMEWORK

I. Special Immigration Juvenile Status and Deferred Action

30. In 1990, Congress created SIJS to protect vulnerable immigrant children and provide them a pathway to citizenship. Immigration Act of 1990, Pub. L. No. 101-649, § 153, 104 Stat. 4978 (amending various sections of the INA); Special Immigrant Status, 58 Fed. Reg. 42843, 43844 (Aug. 12, 1993) ("This rule alleviates hardships experienced by some dependents of United States juvenile courts by providing qualified [noncitizens] with the opportunity to apply for special immigrant classification and lawful permanent resident status, with [the] possibility of becoming citizens of the United States in the future."). Since 1990, Congress has amended the INA multiple times to expand the protections of SIJS, most recently in 2008, through the Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235(d), 122 Stat. 5044 ("TVPRA").

31. To be granted SIJS, noncitizen youth must first "satisfy[] a set of rigorous, congressionally defined eligibility criteria." *Osorio-Martinez v. U.S. Att'y Gen.*, 893 F.3d 153, 163 (3d Cir. 2018). Specifically, the INA provides that those eligible for SIJS designation, as relevant here, are noncitizen youth who are present in the United States; who have been declared dependent on a state juvenile court; who cannot be reunified with one or more parents because of abuse, neglect, or abandonment; and for whom it has been determined that it is not in their best interest to return to their country of origin. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(b).

32. Crucially, a noncitizen youth is eligible for SIJS only if he or she is "present in the United States." 8 U.S.C. § 1101(a)(27)(J). This requirement makes perfect sense in light of the purpose of the SIJS statute. SIJS is predicated on a state court finding that the youth cannot be safely reunited with parent(s), nor safely sent back to their country of origin. The design of this program, then, "show[s] a congressional intent to assist a limited group of abused children to remain safely in the country with a means to apply for [lawful permanent resident ("LPR")] status." *Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011) (abrogated on other grounds).

33. Youth can apply for SIJS upon receipt of a state court order finding they cannot be safely reunited with parent(s) nor safely sent back to their country of origin. The application process includes submitting a Form I-360 SIJS Petition to USCIS, along with the predicate state court order and other supporting evidence. *See* 8 C.F.R. § 204.11(b). USCIS then considers the application and supporting documentation to determine whether to exercise its statutory consent function to approve the petition. *See* 8 U.S.C. § 1101(a)(27)(J)(iii). By exercising its statutory consent function to grant SIJS, the agency recognizes the state court's determinations, including that the child's return to their country of origin would be contrary to their best interests. *Id.* § 1101(a)(27)(J)(ii).

34. SIJS may be revoked only for what the Secretary of Homeland Security deems "good and sufficient cause." *Id.* § 1155; 8 C.F.R. § 205.2. According to USCIS regulations, such revocation must be made upon notice to the youth in question, who must be permitted the opportunity to submit evidence in opposition to the revocation and to appeal an adverse decision. *See* 8 C.F.R. § 205.2(b). If status is ultimately revoked, the youth is entitled to notice and the opportunity to appeal the decision. *See id.* § 205.2(c)–(d). Revocation of a SIJS petition may only be performed by a USCIS officer authorized to approve such petition in the first instance. *See id.* § 205.2(a).

35. The main benefit of SIJS—and indeed, its core purpose—is that it confers on vulnerable young people the right to seek lawful permanent resident status while remaining in the United States, through a process called adjustment of status. *See* 8 U.S.C. § 1255(h).

36. To facilitate this process, Congress removed numerous barriers to adjustment of status for SIJS beneficiaries through amendments to the SIJS provisions in 1991 and again in 2008. For example, SIJS youth are "deemed . . . to have been paroled into the United States" for the purposes of adjustment of status. *Id.* § 1255(h)(1). Further, Congress exempted SIJS youth from many common inadmissibility grounds and created a generous waiver of many of the non-exempted inadmissibility grounds. *Id.* § 1255(h)(2). And Congress explicitly provided that certain grounds for removal "shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title [the SIJS statute] based upon circumstances that existed before the date the [noncitizen] was provided such special immigrant status." *Id.* § 1227(c).

37. Although SIJS renders youth eligible to apply for adjustment, they can only do so when a visa is immediately available to them. *Id.* § 1255(h). However, there is an annual limit on visas available to SIJS beneficiaries. *Id.* § 1153(b)(4). And since 2016, the number of SIJS

beneficiaries has surpassed the supply of available visas for most countries, leaving what has been estimated to be more than 100,000 young people in a backlog, waiting to apply for a green card.

38. Despite the immediate unavailability of visas, waitlisted SIJS beneficiaries are the same vulnerable young people that the SIJS statute was designed to protect. The fact that no visa is currently available because a numerical limit has been reached changes nothing about their eligibility determination by USCIS, or Congress's intent that they be afforded a pathway to lawful permanent resident status and, eventually, citizenship. These are the same individuals who state courts have determined cannot safely be reunited with their parent(s) or returned to their home country.

39. Taken together, the structure of the SIJS program—including the requirement that recipients remain in the United States to move forward in the process, the grant of parole for the purpose of adjustment, and the waiver of grounds of inadmissibility and removability—evinces Congress' intent that SIJS recipients remain safely in the United States until they can adjust to become lawful permanent residents.

40. In March 2022, to address the SIJS visa backlog, USCIS announced that all young people granted SIJS would also be considered for a discretionary grant of deferred action, meaning that they would be protected from deportation while waiting for a visa to become available. In enacting this policy, USCIS itself acknowledged that "Congress likely did not envision that SIJ petitioners would have to wait years before a visa became available." USCIS Policy Alert, PA-2022-10, Special Immigrant Juvenile Classification and Deferred Action, at 1 (Mar. 7, 2022)

("2022 Policy Alert").[3] Persons granted deferred action are shielded from deportation and are eligible to apply for employment authorization under 8 C.F.R. § 274a.12(c)(14).

41. When deciding whether to exercise its discretion to grant deferred action, USCIS completes "robust background checks" and reviews the SIJS youth's "criminal history." USCIS, Memorandum, Special Immigrant Juvenile (SIJ) Deferred Action, at 2 (June 26, 2023).[4]

42. Importantly, "USCIS has the sole authority to grant and terminate deferred action for noncitizens with SIJ classification." *Id.* And, generally, USCIS may only terminate deferred action "if the SIJ-classified individual was not eligible at the time of the initial grant of deferred action, the SIJ Form I-360 is revoked, or if they are no longer eligible based on new information." *Id.*

43. In June 2025, USCIS rescinded the SIJS deferred action policy, deciding to no longer consider granting deferred action to SIJS youth waiting to apply for a green card. *See* USCIS Policy Alert, PA-2025-07, Special Immigrant Juvenile Classification and Deferred Action, at 1 (June 6, 2025).[5] However, this policy change has no impact on SIJS beneficiaries who already received deferred action. *See id.* at 2 (stating that noncitizens "with current deferred action based on their SIJ classification will generally retain this deferred action . . . until the current validity periods expire").

44. "Deferred action" is described as an "exercise in administrative discretion" where "no action will thereafter be taken to proceed against an apparently deportable [noncitizen], even

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[3] *Available at*: https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf.

[4] *Available at*: https://www.ilrc.org/sites/default/files/2025-09/FOIA%20Results%20on%20SIJS%20Deferred%20Action%20Policy.pdf at 131–32.

[5] *Available at*: https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf.

on grounds normally regarded as aggravated." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) (quoting 6 C. Gordon, S. Mailman, & S. Yale-Loehr, Immigration Law and Procedure § 72.03[2][h] (1998)). Deferred action also comes with other benefits, including that noncitizens with deferred action are considered "'lawfully present' for purposes of, and therefore eligible to receive, Social Security and Medicare benefits." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 10 (2020) (citing 8 C.F.R. § 1.3(a)(4)(vi); 42 C.F.R. § 417.422(h) (2012)).

45. In the case of SIJS recipients awaiting visas, USCIS granted deferred action for a period of four years. *See* 2022 Policy Alert at 2.

46. Deferred action does not confer lawful status and does not prevent an immigration judge from issuing a removal order. However, unless and until terminated, a grant of deferred action prevents immigration authorities from removing a noncitizen from the United States. *See Sepulveda Ayala v. Bondi*, No. 25-cv-1063, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025) ("[The petitioner's] deferred action status prevents removal.")

47. Once deferred action is granted, fundamental procedural due process protections attach to the recipient, such as the right to notice and an opportunity to contest the revocation of deferred action. *See Maldonado v. Noem*, No. 4:25-cv-2541, 2025 WL 1593133, at *2 (S.D. Tex. June 5, 2025) (finding that Petitioner was "likely to succeed on his Due Process claim" because he was denied "notice, a hearing, or any opportunity to contest the revocation of his deferred action").

48. "In sum, SIJ designees have been granted by statute a clear set of rights, including eligibility to apply for adjustment to LPR status and protection against having their SIJ status revoked without a prescribed process. Minimum due process rights automatically attach to these statutory and regulatory rights. 'Yet each of these rights and protections would be summarily

stripped from Petitioner upon execution of the order of removal.'" *Xol-Maas*, 2026 WL 457005, at *8 (quoting *Osorio-Martinez*, 893 F.3d at 179 (cleaned up)) (ordering immediate release of petitioner with SIJS deferred action, and enjoining ICE from removing petitioner from the United States until he has been provided the opportunity to apply for adjustment of status and that application is fully adjudicated.).

II. Immigration Protections for Unaccompanied Minors and *J.O.P.* Settlement

49. Immigration law, as amended by the TVPRA, provides special protections for noncitizens who enter the United States as unaccompanied minors. An unaccompanied alien child ("UAC"), or unaccompanied minor, is a child who: "(A) has no lawful immigration status in the United States; (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." 6 U.S.C. § 279(g)(2).

50. The TVRPA requires UACs to be treated differently than other noncitizens entering the United States without lawful status. For example, "the statute provides that any federal agency that apprehends or discovers a UAC must notify [the Department of Health and Human Services ("HHS")] within 48 hours and must transfer custody of the child to HHS within 72 hours." *J.O.P. v. U.S. Dep't of Homeland Sec.*, 338 F.R.D. 33, 42 (D. Md. 2020) (citing TVPRA § 235(b), codified at 8 U.S.C. § 1232(b)(2), (3)). Further, the statute requires that a UAC "in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). Here, for Petitioner, that "least restrictive setting" was determined to be in the community with his family member under a Sponsor Care Agreement.

51. Additionally, "the TVPRA also provides that USCIS asylum officers 'shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child.'" *J.O.P.*, 338 F.R.D. at 42 (quoting TVRPA § 235(d)(7)(B), codified at 8 U.S.C. § 1158(b)(3)(C)). "Therefore, whether an applicant is considered a UAC can have a significant impact on his or her progression through the asylum process—this status determines whether the asylum application is adjudicated by USCIS after a non-adversarial interview or by an [immigration judge] in adversarial removal proceedings." *Id.* at 43.

52. "The statute also exempts UACs from the requirement that a potential asylee file an application within a year of arriving in the United States." *Id.* (citing 8 U.S.C. § 1158(a)(2)(B), (E)).

53. In *J.O.P. v. U.S. Department of Homeland Security*, a class of noncitizens who "entered this country as unaccompanied minors and later sought asylum sued the government . . . to enforce its members' rights to have their asylum applications adjudicated on the merits by USCIS while they remained physically present in the United States." 779 F. Supp. 3d 570, 575 (D. Md. 2025). The parties reached a settlement agreement in 2024. *Id.* at 576; *see also J.O.P. v. U.S. Dep't of Homeland Sec.*, No. 8:19-cv-1944 (SAG), ECF No. 199-2 (D. Md.) ("*J.O.P.* Settlement").

54. The settlement:

> defines the certified Class as "all individuals nationwide who prior to [February 24, 2025]: (1) were determined to be a UAC; and (2) who filed an asylum application that was pending with USCIS; and (3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical custody; and (4) for whom USCIS has not adjudicated the individual's asylum application on the merits."

J.O.P., 779 F. Supp. 3d at 576 (footnote omitted) (quoting *J.O.P.* Settlement at 5, Sec. II.E).

55. Mr. R is a class member because he entered the United States as an unaccompanied minor in 2019; he filed an asylum application with USCIS in September 2020 when he was over 18 years old; and his application has not yet been adjudicated on the merits by USCIS.

56. The settlement agreement "provides that 'USCIS will exercise Initial Jurisdiction over Class Members' asylum applications in accordance with the terms of this Settlement Agreement and adjudicate them on the merits.'" *Id.* (quoting *J.O.P.* Settlement at 9, Sec. III.B). The settlement agreement also provides that: "[w]ith respect to any Class Member with a final removal order, ICE will refrain from executing the Class Member's final removal order until USCIS issues a Final Determination on one properly filed asylum application under the terms of this Agreement." *Id.* (quoting *J.O.P.* Settlement at 8, Sec. III.I).

57. For class members in removal proceedings, the settlement agreement also requires DHS to:

> join or non-oppose Class Members' motion(s) for a continuance, administrative closure unless unavailable under controlling law in a particular jurisdiction, and, where available, assignment of cases to the EOIR status docket, that have been filed or made orally on the record in immigration proceedings in order to await USCIS exercise of Initial Jurisdiction over their asylum application. . . . DHS will generally join or non-oppose Class Members' motion(s) to dismiss or terminate filed or otherwise made in order to await USCIS exercise of Initial Jurisdiction over their asylum application.

J.O.P. Settlement Sec. III.H.

58. Therefore, under the settlement agreement, Mr. R cannot be removed while his asylum application before USCIS remains pending.

III. Immigration Detention Framework

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

60. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. Section 1226(a) and the implementing regulations require an individualized determination as to the noncitizen's risk of flight and danger to the community. *See* 8 C.F.R. § 1236.1(c)(8); *id.* § 236.1(c)(8); *Velesaca v. Decker*, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020). Noncitizens discretionarily detained pursuant to § 1226(a) are also generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. § 1003.19(a); *id.* § 1236.1(d). Whereas noncitizens who have been arrested, charged with, or convicted of certain crimes or fall under certain terrorism-related grounds of removability are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

61. 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).

62. Third, the INA provides for detention of noncitizens who have been ordered removed. *See* 8 U.S.C. § 1231(a)–(b).

63. Various statutes in the INA provide a basis for immigration authorities to detain noncitizens pending removal from the United States. *See* 8 U.S.C. §§ 1225, 1226. For noncitizens who are applicants for admission and seeking admission to the United States, the statute authorizes their detention under 8 U.S.C. § 1225(b)(2) during the pendency of their removal proceedings.[6] Detention under 8 U.S.C. § 1225(b)(2) is at times called "mandatory" detention as it does not provide for a statutory right to a bond hearing.

[6] 8 U.S.C. § 1225(b)(1) contains additional statutes authorizing detention of individuals in certain circumstances who are in expedited removal proceedings not relevant to this Petition.

64. However, DHS may release noncitizens subject to detention under 8 U.S.C. § 1225(b)(2) on parole following an individualized determination, "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5).

65. Federal regulations specify that DHS may only release such noncitizens if they "present neither a security risk nor a risk of absconding." 8 C.F.R. § 212.5(b). These requirements—flight risk and danger—reflect constitutional constraints, since only individuals who pose a flight risk or danger may be civilly detained. *See Zadvydas*, 533 U.S. at 690.

66. The applicable regulations further contemplate parole for specific groups of noncitizens including those "who have serious medical conditions in which continued detention would not be appropriate" and those "whose continued detention is not in the public interest." 8 C.F.R. § 212.5(d)(b)(1), (5).

67. For noncitizens who are already within the United States and who are placed in removal proceedings under 8 U.S.C. § 1229a, detention is generally governed by 8 U.S.C. § 1226, which permits a noncitizen to be "arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a); *see Jennings v. Rodriguez*, 583 U.S. 281, 288-89, (2018). Section 1226(a) provides for what is termed "discretionary" detention, as noncitizens detained under that section are permitted to ask an immigration judge to review their custody at a bond hearing. *Id.*[7]

68. Under 8 U.S.C. § 1226(a), ICE first makes an initial custody determination pursuant to 8 C.F.R. § 1236.1(c)(8), which requires that noncitizens be released from custody "if they demonstrate to the satisfaction of the officer that such release would not pose a danger to property

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[7] Some noncitizens may be ineligible for bond, *i.e.*, held in "mandatory" detention, due to specific criminal arrests and convictions not relevant to this Petition. *See* 8 U.S.C. § 1226(c).

or persons, and that the alien is likely to appear for any future proceeding." *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"); *see also Lopez Benitez*, 2025 WL 2371588, at *10.

IV. Due Process Constraints on Immigration Detention

69. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore*, 538 U.S. at 523 (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

70. Although civil immigration detention is authorized by statute, to comply with Due Process detention can serve only two legitimate purposes: mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020).

71. A person's liberty cannot be infringed upon without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690-91. The Second Circuit has held that the *Matthews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *Velasco Lopez*, 978 F.3d at 851 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)); *see also Black v. Decker*, 103 F.4th 133, 150-51 (2d Cir. 2024). The *Mathews* factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the

function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

72. This test requires a process sufficient to mitigate the risk of erroneous deprivation of Petitioner's liberty interest. Revocation of release from confinement, even civil immigration confinement, infringes on a protected liberty interest. The liberty interest in even conditional release is well-established in the context of parole, probation, and freedom from civil immigration confinement. *See Valdez v. Joyce*, No. 25-cv-4627 (GBD), 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (finding immigration petitioner's "liberty interest is clearly established"); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying case law from the probation and parole contexts to conclude that the non-citizen petitioner had a "liberty interest in remaining out of [immigration] custody").

73. Due process requires, at a minimum, notice and an opportunity to respond prior to the deprivation of liberty at a hearing before a neutral adjudicator. *See, e.g., Torres-Jurado v. Biden*, No. 19-cv-3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023) (explaining that, in parole revocation, "due process, at a minimum" requires the government to afford meaningful notice and an opportunity to be heard and that the opportunity must be meaningful) (*citing to Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 403 (S.D.N.Y. 2004)); *Valdez*, 2025 WL 1707737, at *4; *Lopez v. Sessions*, No. 18-cv-4189 (RWS), 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) ("Petitioner's re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.").

74. Where ICE detains individuals without conducting any individualized assessment as to their immigration status, let alone their flight risk, those individuals merit immediate release

from custody. *See Quintero Campos v. Deleon*, No. 25-CV-10099 (LJL), 2025 WL 3514120, at *2 (S.D.N.Y. Dec. 8, 2025) (ordering immediate release of individual ICE detained without "any individualized assessment or flight risk assessment" but could not identify any basis under § 1226(a) for his continued detention).

V. Petitioner's Detention under § 1225(b)(2)(A) Violates the INA

75. 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(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

76. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection and who were not admitted were not considered detained under § 1225 and were instead detained under § 1226(a). *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) ("1997 Regulation").

77. In the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible for bond pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *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)).

A. ICE's Unlawful Expansion of Mandatory Detention Under § 1225(b)(2)(A)

78. On July 8, 2025, ICE, "in coordination with" the Department of Justice ("DOJ"), announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice.

79. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[8] claims that all persons who present in the United States without having been admitted shall now be subject to mandatory detention provision under § 1225(b)(2)(A).[9] The policy applies regardless of when or where a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

80. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who are present in the United States without admission are subject to detention under § 1225(b)(2)(A) and are ineligible for bond hearings. 29 I&N Dec. at 229.

B. Petitioner's Detention Under § 1225(b)(2)(A) Violates The INA

81. Since the Government adopted its new policy and the BIA issued *Matter of Yajure Hurtado*, hundreds of federal courts, including several in this District, have rejected the Government's new interpretation of the INA's detention authorities and *Matter of Yajure Hurtado*. *See, e.g.*, *Covelli-Chaparro v. Bondi*, No. 2:26-CV-118 (NJC), 2026 WL 118842 (E.D.N.Y. Jan.

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[8] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

[9] On December 18, 2025, the U.S. District Court for the Central District of California in *Maldonado Bautista v. Salazar* vacated the July 8, 2025, ICE memo as not in accordance with law under the Administrative Procedure Act. *See Maldonado Bautista v. Salazar*, No. 25-cv-1873 (SSS), 2025 WL 3713987, at *22 (C.D. Cal. Dec. 18, 2025); *Maldonado Bautista v. Salazar*, No. 25-cv-1873 (SSS), 2025 WL 3678485, at *1 (C.D. Cal. Dec. 18, 2025) (entering final judgment under Federal Rule of Civil Procedure 54(b)).

15, 2026) (granting petition and ordering immediate release from ICE custody); *Crespo Tacuri v. Genalo*, No. 25-CV-06896 (NCM), 2026 WL 35569 (E.D.N.Y. Jan. 6, 2026) (same); *Ulloa Montoya v. Bondi*, No. 25-CV-06363 (JMA), 2025 WL 3718694 (E.D.N.Y. Dec. 23, 2025) (same); *Padilla Molina v. DeLeon*, No. 25-CV-06526 (JMA), 2025 WL 3718728 (E.D.N.Y. Dec. 23, 2025) (same); *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC), 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025) (same); *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025) (same); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (same); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); (same); *see also Sarmiento Guerrero v. Noem*, No. 25-CV-5881 (EK), 2025 WL 3214787, at *6 (E.D.N.Y. Nov. 18, 2025) (granting preliminary injunction, in part, as petitioner was likely to succeed on the merits of his argument he was improperly detained under Section 1225(b)). Only one decision in this District, agrees with the Government's interpretation of § 1225, *Saamishvili v. Flanagan*, No. 25-CV-6178 (BMC), 2026 WL 377574, at *4 (E.D.N.Y. Feb. 11, 2026). Since *Saamishvili*, judges in this District have responded and declined to follow it. *See, e.g,, Peralta Acuapan v. Bondi*, No. 26-CV-00384 (OEM), 2026 WL 507889, at *4 (E.D.N.Y. Feb. 24, 2026) ("The Court also respectfully disagrees with *Saamishvili*, which is, to the Court's knowledge, the only decision in this District that has adopted Respondents' position on the scope of § 1225."); *Mejia-Pina v. Bondi*, No. 2:26-CV-986 (NJC), 2026 WL 482635, at *3 n.4 (E.D.N.Y. Feb. 20, 2026) (same). This Court should do the same.

82. The plain text of § 1225(b)(2)(A) confirms that it cannot apply to Petitioner. Section 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a" removal proceeding under

§ 1229a. 8 U.S.C. § 1225(b)(2)(A). "[T]he language of [§ 1225(b)(2)(A)] makes clear that it applies *only* if three criteria are met. The noncitizen must be (i) an 'applicant for admission,' (ii) 'seeking admission,' and (iii) 'not clearly and beyond a doubt entitled to be admitted.'" *Barco Mercado*, 2025 WL 3295903, at *4; *Yao*, 2025 WL 3653433, at *5; *Lopez Benitez*, 795 F. Supp. 3d at 478-88.

83. While Petitioner is an "applicant for admission,"[10] he is not "seeking admission" under § 1225(b)(2)(A). "[T]he phrase 'seeking admission' 'necessarily implies some sort of present-tense action.'" *Barco Mercado*, 2025 WL 3295903, at *5 (quoting *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025)); *J.G.O.*, 2025 WL 3040142, at *3; *Campbell*, 2025 WL 3538351, at *6; *Lopez Benitez*, 795 F. Supp. 3d at 489; *cf. United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."). The INA "defines 'admission' as 'the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.'" *J.G.O.*, 2025 WL 3040142, at *3 (quoting 8 U.S.C. § 1101(a)(13)(A)). "The requirement that an 'applicant for admission' be 'seeking admission' therefore limits the scope of [§ 1225(b)] to those noncitizens actively seeking 'lawful entry . . . into the United States after inspection and authorization by an immigration officer.'" *Barco Mercado*, 2025 WL 3295903, at *5 (quoting 8 U.S.C. § 1101(a)(13)(A)). Put differently, "'seeking admission' requires an alien to *continue* to want to *go into* the country." *J.G.O.*, 2025 WL 3040142, at *3.

[10] An "applicant for admission" is defined as "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1).

84. The plain text of the statute is buttressed by its "implementing regulations—which were 'promulgated mere months after passage of the statute' and have remained consistent over time." *Lopez Benitez*, 795 F. Supp. 3d at 489 (quoting *Martinez*, 792 F. Supp. 3d at 219). "DHS's own regulations understand an 'applicant seeking admission' to be synonymous with an 'arriving alien.'" *Tumba*, 2025 WL 3079014, at *4. "And an 'arriving alien' is 'an applicant for admission coming or attempting to come into the United States at a port-of-entry.'" *Id.* (quoting 8 C.F.R. § 1001.1).

85. Accordingly, § 1225(b) does not apply to Petitioner because "when DHS agents detained [him] in [2026], he was no longer seeking to enter the country. He was already in — and had been for several years." *Campbell*, 2025 WL 3538351, at *6; *see also J.G.O.*, 2025 WL 3040142, at *3 (Petitioner is not "seeking admission" because "he's already here.").

86. By holding that § 1225(b)(2)(A) applies to all applicants for admission, *Matter of Yajure Hurtado* reads the "seeking admission" requirement out of the statute. *See Campbell*, 2025 WL 3538351, at *7. If, as the BIA has now concluded and the Government urges, "§ 1225(b)(2)(A) were intended to apply to all 'applicant[s] for admission,' there would be no need to include the phrase 'seeking admission' in the statute." *Lopez Benitez*, 795 F. Supp. 3d at 488. Tellingly, the BIA in *Yajure Hurtado* did not provide any definition of "seeking admission" that would resolve this redundancy. *See* 29 I&N Dec. at 221. This interpretation of § 1225(b)(2)(A) "clearly 'violates the rule against surplusage.'" *Lopez Benitez*, 795 F. Supp. 3d at 488 (quoting *Martinez*, 792 F. Supp. 3d at 218).

87. Looking beyond § 1225(b) to the larger statutory structure, *Matter of Yajure Hurtado*'s holding creates even more surplusage problems when compared with other detention provisions. First, if § 1225(b) "mandated detention for all noncitizens who enter the country

illegally, 'then it is not clear under what circumstances [§ 1226(a)'s] authorization of detention on a discretionary basis would ever apply.'" *Barco Mercado*, 2025 WL 3295903, at *6 (quoting *Lopez Benitez*, 795 F. Supp. 3d at 490); *see also Tumba*, 2025 WL 3079014, at *4 ("Respondents' reading of Section 1225 would also all but read Section 1226 off the books").

88. Second, "Respondents' reading of § 1225 would likewise render superfluous the mandatory detention provisions found in" § 1226(c). *Campbell*, 2025 WL 3538351, at *7. "Section 1226(c)(1)(A) mandates detention for 'any [noncitizen] who is inadmissible by reason of having committed an offense covered in section 1182(a)(2) of this title,' such as offenses related to controlled substances. '[T]his mandatory detention under § 1226(c) would be unnecessary if all persons who have not been admitted into the United States were already subject to § 1225(b)'s mandatory detention provisions.'" *Id.* (citations omitted) (quoting 8 U.S.C. § 1226(c)(1)(A); and *J.U. v. Maldonado*, No. 25-cv-04836 (OEM), 2025 WL 2772765, at *8 (E.D.N.Y. Sept. 29, 2025)).

89. *Matter of Yajure Hurtado* also "render[s] Congress' recent amendment to § 1226(c) redundant." *Barco Mercado*, 2025 WL 3295903, at *7; *Lopez Benitez*, 795 F. Supp. 3d at 489-90; *Tumba*, 2025 WL 3079014, at *4. "When Congress adopts a new law against the backdrop of a 'longstanding administrative construction,' [courts] generally presume[] the new provision should be understood to work in harmony with what has come before." *Monsalvo v. Bondi*, 604 U.S. 712, 725 (2025) (quoting *Haig v. Agee*, 453 U.S. 280, 297-98 (1981)). Passed in January 2025, the Laken Riley Act "makes noncitizens subject to mandatory detention if (1) they are inadmissible under certain provisions of 8 U.S.C. § 1182 and (2) are charged with, arrested for, convicted of, or admit to having committed certain crimes." *Tumba*, 2025 WL 3079014, at *4 (quoting *Artiga v. Genalo*, No. 25-cv-5208 (OEM), 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025)); *see also* Laken Riley Act, 139 Stat. at 3, *codified at* 8 U.S.C. § 1226(c)(1)(E). "By [the Government's]

understanding, all noncitizens inadmissible under 8 U.S.C. § 1182(a)(6) (which states that those like Petitioner who are present without admission are inadmissible) are already subject to mandatory detention." *Tumba*, 2025 WL 3079014, at *4. Simply put, if *Matter of Yajure Hurtado* were correct, "the Laken Riley Act would have been largely unnecessary." *Barco Mercado*, 2025 WL 3295903, at *7; *Campbell*, 2025 WL 3538351, at *7: *Yao*, 2025 WL 3653433, at *7.

90. In addition to traditional statutory interpretation tools, agency "interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). Helpfully, "[s]hortly after Congress enacted IIRIRA, [DOJ] issued an interim rule explaining IIRIRA and how it amended the INA." *Barco Mercado*, 2025 WL 3295903, at *8. "There, the DOJ stated that '[d]espite being applicants for admission, noncitizens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.'" *Id.* (quoting 1997 Regulation). And the Government maintained this position for almost thirty years—until the July 2025 ICE Memo and *Matter of Yajure Hurtado*. Thus, "decades of practice" cuts against the BIA's novel position and supports Petitioner's interpretation and numerous district courts' rulings. *Lopez Benitez*, 795 F. Supp. 3d at 490.

91. Finally, *Matter of Yajure Hurtado* is inconsistent with precedent. In *Jennings v. Rodriguez*, the Supreme Court explained that § 1225 "applies to 'aliens seeking admission into the country,' whereas [§ 1226] applies to 'aliens already in the country pending the outcome of removal proceedings.'" *Barco Mercado*, 2025 WL 3295903, at *9 (quoting *Jennings v. Rodriguez*, 583 U.S. 28, 289 (2018)). "It went on in that same case to repeat that [§ 1226] 'applies to aliens already present in the United States,' like [Petitioner], and 'creates a default rule for those aliens

by permitting—*but not requiring*—the Attorney General to issue warrants for their arrest and detention pending removal proceedings.'" *Id.* (quoting *Jennings*, 583 U.S. at 303).

92. Therefore, as several districts courts have recently concluded, reading the plain text of § 1225(b)(2)(A), employing canons of statutory interpretation, consulting contemporaneous and longstanding agency interpretations of the statute, and applying precedent all lead to a single conclusion: noncitizens who present in the United States without having been admitted and were subsequently arrested inside the United States cannot be subject to mandatory detention under § 1225(b)(2)(A).

VI. The Remedy is Release

93. The proper remedy for the instant habeas petition is release. *See Rodriguez-Acurio*, 2025 WL 3314420, at *32 ("ICE caused Rodriguez-Acurio to be placed in custody in violation of her rights to procedural due process. The proper remedy for that unlawful detention is release."); *Covelli-Chaparro*, 2026 WL 118842, at *9 ("As addressed at length in *Rodriguez-Acurio*, upon finding a constitutional violation, a district court 'may' grant a writ of habeas corpus and 'dispose of the matter as law and justice require.' 28 U.S.C §§ 2241(a), 2243. Release from detention is the 'typical remedy' for 'unlawful executive detention'") (quoting *Munaf v. Green*, 553 U.S. 674, 693 (2008).

94. The equitable and flexible nature of habeas relief affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. The most appropriate remedy in a case like this, where Mr. R was previously released to the community, is a *J.O.P.* class member with a pending asylum application with USCIS, and remains protected by deferred action, is release on recognizance without the use of alternatives to detention or other conditions. *See, e.g., Estuardo Xol-Maas*, 2026 WL 457005, at *9 (ordering immediate release for unlawful detention of SIJS deferred action recipient); *Chipantiza-Sisalema v. Francis*, No. 25-

cv-5528, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (ordering release); *Mata Velasquez v. Kurzdorfer*, 794 F .Supp. 3d 128, 154 (W.D.N.Y. 2025) (ordering release and that petitioner could not be re-detained without a pre-deprivation hearing).

95. The alternative, a bond hearing, cannot rectify the injury the Government has already done, and is doing now, to Petitioner's Fifth Amendment rights. *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 497 ("[A bond hearing is] no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the decision to strip a person of the freedom that lies at the heart of the Due Process Clause."); *O.F.B. v. Maldonado*, No. 25-CV-6336 (HG), 2025 WL 3277677, at *8 (E.D.N.Y. Nov. 25, 2025) ("Here, the nature of the constitutional violation Petitioner sustained . . . renders any post-deprivation review by an immigration judge inadequate."); *Campbell v. Almodovar*, No. 1:25-cv-09509 (JLR), 2025 WL 3538351, at *13 (S.D.N.Y. Dec. 10, 2025) ("[B]oth DHS's failure to follow its own regulations and its failure to afford Campbell the minimal process due under the Fifth Amendment violated Campbell's due process rights. Because of those failures, Campbell is entitled to release.").

96. Irreparable injury has occurred and will continue to occur if Petitioner is not released. "[A]s a general matter, there is a presumption of irreparable harm when there is an alleged deprivation of constitutional rights." *Donohue v. Mangano*, 886 F. Supp. 2d 126, 150 (E.D.N.Y. 2012) (collecting cases).

97. In addition to the baseline harm of unlawful and arbitrary detention, Petitioner will be unable to care for his son and support his family. He will be detained in jail-like conditions and subject to transfer around the country.

98. If this Court does not act, Petitioner's detention will continue for months or longer. Only release will remedy the constitutional harms that Mr. R has, and will continue to, suffer.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Detention Without Legitimate Government Justification in Violation of Substantive Due Process U.S. Const. amend. V

99. Petitioner realleges and incorporates by reference each and every allegation contained above.

100. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. Const. amend. V. Civil detention is only permissible under the Due Process Clause for "certain special and 'narrow' nonpunitive 'circumstances.'" *Zadvydas*, 533 U.S. at 690 (*quoting Foucha*, 504 U.S. at 80). The only legitimate purposes for immigration detention are to protect against a risk of flight or danger to the community. *See id.*

101. Here, Respondents have no lawful basis to detain Petitioner.

102. As a member of the *J.O.P.* class, Petitioner is protected from removal under the *J.O.P.* Settlement while his application for asylum remains pending with USCIS. Thus, Mr. R cannot be lawfully detained.

103. Mr. R cannot be lawfully detained for another independent reason: Mr. R was granted deferred action in 2023 tied to his SIJS approval in 2023 by USCIS. Mr. R's deferred action remains valid as USCIS has not undertaken any procedure to terminate it. Only USCIS, not ICE, has the authority to terminate Mr. R's deferred action. Mr. R is therefore protected from removal and cannot be placed in removal proceedings or detained. He is awaiting his priority date for filing his lawful permanent resident application. *See Estuardo Xol-Maas*, 2026 WL 457005, at *9.

104. Furthermore, Petitioner's removal proceedings were terminated just six months ago based on his pending *J.O.P.* asylum application with USCIS—which remains pending, and his SIJS deferred action—which has not been terminated. There has been no change in circumstances such that if DHS were to place Petitioner in removal proceedings again, those proceedings would not be terminated under the same justifications.

105. Moreover, Mr. R has a protected liberty interest to be free from detention under his 2019 release pursuant to a Sponsor Care Agreement and his deferred action. Due process forbids Respondents from re-detaining Mr. R unless there is a change of circumstances. Respondents have not made such a determination.

106. Petitioner is not a flight risk nor is he a danger to the community, especially due to the protections of the *J.O.P.* Settlement. Respondents therefore have no legitimate nonpunitive reason for detaining him. Accordingly, Petitioner's detention is unlawfully punitive, and he is being detained in violation of his constitutional right to Due Process under the Fifth Amendment.

107. Mr. R's detention is not narrowly tailored to serve any other compelling state interest.

108. Mr. R's detention therefore deprives him of his right to substantive due process, and he is entitled to immediate release subject to the conditions at which he was at liberty before he was detained.

SECOND CAUSE OF ACTION

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution — Procedural Due Process

109. Petitioner realleges and incorporates by reference each and every allegation contained above.

110. Respondents are unlawfully detaining Petitioner without a bond hearing under § 1225(b)(2), a statute that does not apply to him. The Due Process Clause of the Fifth Amendment requires Respondents to, at a minimum, make an individualized determination as to whether Petitioner should be detained. Respondents did not and have not done so.

111. The Government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690.

112. Respondents' failure to conduct an individualized determination constitutes a due process violation.

113. Petitioner has a fundamental interest in liberty and being free from official restraint.

114. DHS made the reasoned decision to exercise release from ORR custody pursuant to a Sponsor Care Agreement. DHS then granted him SIJS and deferred action. Nonetheless, ICE abruptly took him into custody while he appeared at a police station, absent any process.

115. Moreover, Respondents' detention of Petitioner after not opposing his dismissal of his removal proceedings in August 2025, six months ago, and without having made an individualized determination that such detention was warranted violates the procedural due process protections of the Fifth Amendment.

116. Respondent's arrest and detention of Petitioner does not comport with due process, which requires, at a minimum, notice and an opportunity to respond prior to the deprivation of liberty at a hearing before a neutral adjudicator.

117. At no time did DHS conduct an individualized assessment of the need for Petitioner's detention. ICE's failure to conduct an individualized review prior to detention violates due process and requires release.

118. ICE's failure to conduct an individualized review prior to detention violates due process and necessitates his immediate release.

THIRD CAUSE OF ACTION

Unlawful Detention Under the INA

119. Petitioner realleges and incorporates by reference each and every allegation contained above.

120. Respondents are unlawfully detaining Petitioner without a bond hearing under § 1225(b)(2), a statute that does not apply to him. Respondents did not and have not conducted an individualized determination as to whether Petitioner should be detained.

121. Therefore, Petitioner is being detained in violation of the INA. The proper remedy is Petitioner's immediate release subject to the conditions at which he was at liberty before he was detained or a bond hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
3. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner subject to the conditions at which he was at liberty before he was detained, or, in the alternative, ordering a constitutionally adequate, individualized hearing before an impartial adjudicator at which Respondents bear the burden of establishing that Petitioner's continued detention is justified by clear and convincing evidence, with ability to pay and alternatives to detention considered, or, in the alternative, an individualized bond hearing before an impartial adjudicator at which Petitioner bears the burden;

4. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment and the INA;

5. Enjoin Respondents from invoking an automatic stay under 8 C.F.R. § 1003.19(i)(2) in the event that an immigration judge grants Petitioner bond after a constitutionally adequate bond hearing, *see Rueda Torres v. Francis*, No. 25-cv-8408 (DEH), 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2023); *Obregon v. Francis*, No. 25-cv-9465 (KPF), 2025 WL 3465517, at *1 (S.D.N.Y. Dec. 2, 2025); *Quispe-Sulcaray*, No. 25-CV-9908 (VEC), 2025 WL 3501207, at *2 (S.D.N.Y. Dec. 7, 2025); *Perez Augustin v. Joyce*, No. 25-cv-10122 (AT), 2025 WL 3564494, at *4 (S.D.N.Y. Dec. 12, 2025);

6. Enjoin Respondents from re-detaining Petitioner absent notice and opportunity to be heard at a pre-deprivation, constitutionally adequate, individualized hearing before an impartial adjudicator at which Respondents bear the burden of establishing that Petitioner's re-detention is justified by clear and convincing evidence, with ability to pay and alternatives to detention considered;

7. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

8. Grant any other and further relief that this Court deems just and proper.

Dated: March 3, 2026
Brooklyn, New York

Respectfully submitted,

/s/ Lucas Marquez

Lucas S. Marquez
Brooklyn Defender Services
177 Livingston St, 7th Floor
Brooklyn, NY 11201
Tel: 718-254-0700
lmarquez@bds.org

Pro bono Attorneys for Petitioner