

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

F.J.V.R.	)	
	)	
Petitioner,	)	
	)	Case No. 1:26-cv-12525
v.	)	
	)	
Ralph MATTIVELLO,	)	
Superintendent of Plymouth County	)	
Correctional Facility; DAVID WESLING,	)	PETITION FOR WRIT OF
Acting Field Office Director, U.S.	)	HABEAS CORPUS
Immigration and Customs Enforcement;	)	
DAVID VENTURELLA, Acting Director, U.S.	)	
Immigration and Customs Enforcement;	)	
MARKWAYNE MULLIN, U.S. Secretary	)	
of Homeland Security,	)	
	)	
Respondents.	)	

INTRODUCTION

1. This Petition seeks Petitioner's immediate release because Petitioner is unlawfully detained by the Department of Homeland Security ("DHS") at the the Plymouth County Correctional Facility in Plymouth, MA. He was taken into custody by Immigration and Customs Enforcement ("ICE") on June 3, 2026.
2. Petitioner is a young Honduran man who graduated high school in Massachusetts, attends church, and works for a company building fences to support himself and his family.
3. Petitioner entered the United States on December 2, 2021 as an unaccompanied minor. He was given a Notice to Appear in Immigration Court. On May 16, 2023, the Immigration Judge terminated his Immigration Court case without prejudice.
4. On April 30, 2018, Petitioner's mother applied for a U nonimmigrant visa, listing Petitioner as a qualifying family member on that petition. On October 17, 2023, USCIS made a bona fide determination ("BFD") and granted Petitioner deferred action for four (4)

years—until October 17, 2027.

5. In granting Petitioner deferred action, DHS was required to determine that Petitioner “does not pose a risk to public safety or national security and merits a favorable exercise of discretion.” ICE Directive No. 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* at 3 (Aug. 10, 2021).
6. After entering the United States, Petitioner moved to Framingham, Massachusetts and attended school, graduating high school in 2024. He has employment authorization and works for [REDACTED] building fences. He attends a Christian church and participates in the services. He previously played saxophone as part of the church service.
7. Petitioner also helps his mother support his two U.S. citizen sisters, ages seventeen (17) and eleven (11) physically, emotionally and financially. His seventeen (17) year old sister will be starting college in the fall. Petitioner picks up his eleven (11) year-old sister from school, helps support her financial needs, and encourages her in her studies. He plans to continue supporting his sister through college. Petitioner has obtained a Massachusetts driver’s license and has not been convicted of any crime.
8. On May 22, 2026, Petitioner was arrested by undercover Framingham Police officers who were driving an unmarked vehicle while he was riding a motorcycle. He was taken into custody and has been accused of marked lane violation, unregistered and uninsured motor vehicle, failure to stop for police, and resisting arrest. On May 26, 2026, Petitioner attended his arraignment hearing in this case at Framingham District Court in Framingham, Massachusetts. This case is ongoing, and he has not been convicted.
9. On May 20, 2026, U.S. District Court Judge Andre Birotte Junior of the Central District of California issued an order in *ICWC v. Noem*, No. 2:25-cv-09848 (C.D. Cal. filed Oct. 14, 2025)(herein “*ICWC v. Noem*”) certifying nationwide classes and blocking ICE from

detaining class members. The deferred action class includes “[a]ll individuals to whom USCIS has granted deferred action based on a pending U or T visa petition and who, during the authorized period of deferred action, ICE detains, seeks to detain, or removed without providing notice and an opportunity to be heard regarding potential revocation of their deferred action status.”

10. On the morning of June 3, 2026, Petitioner was arrested in Framingham, Massachusetts by U.S. Immigration and Customs Enforcement (“ICE”). His truck window was smashed, and he was pulled out of his truck. At some point over the next few hours, he was told that he was detained due to the motorcycle incident. Petitioner was later transferred to the Plymouth County Correctional Facility in Plymouth, Massachusetts, where he is currently detained.
11. Immigration detention only has a legal basis when it is done to ensure the noncitizen will present themselves for removal. 8 U.S.C. § 1226(a) (“On a warrant issued by the Attorney General, a[noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States”). Because immigration detention is civil detention, it is thus only permissible for two reasons: to ensure a noncitizen’s appearance at immigration hearings and to prevent danger to the community. Neither of these reasons apply here.
12. Petitioner reasonably and lawfully relied on his grant of deferred action to live and work in the United States. Because of his deferred action, Petitioner expected to be able to continue to pursue U nonimmigrant status without being at risk for detention and deportation.
13. Petitioner’s expectation that he could pursue his U nonimmigrant status with his mother and without being incarcerated was cut dramatically and illegally short. He was simply hauled into custody despite being a deferred action class member and in violation of the

U.S. District Court of the Central District of California's *ICWC v. Noem* order. Neither the INA nor the Constitution permits this detention.

14. Petitioner's previous Notice to Appear charges him as a noncitizen who was "present in the United States who has not been admitted or paroled" and his initial detention at the border was under 8 U.S.C. § 1226(a) parole.
15. By this Petition, Petitioner requests that the Court order his immediate release from detention.
16. If he is not released outright, Petitioner requests a bond hearing.

JURISDICTION & VENUE

17. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), the Suspension Clause of the Constitution, and 28 U.S.C. § 1331 (federal question).
18. The U.S. District Court for the District of Massachusetts is the proper venue to hear this petition because Petitioner is currently detained at the ICE Burlington Field Office within the Commonwealth of Massachusetts.

PARTIES

19. F.J.V.R. is a noncitizen who is currently detained at the Plymouth County Correctional Facility in Plymouth, Massachusetts, at the direction of DHS. Prior to his detention, he was living in Framingham, MA with his mother.
20. Respondent Ralph Mattivelo is the Superintendent of Plymouth County Correctional Facility in Plymouth, Massachusetts.
21. Respondent David Wesling is the New England Field Office Director for U.S. Immigration and Customs Enforcement, and thus has day-to-day control over the ICE Field Office in Burlington, Massachusetts.
22. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs

Enforcement.

23. Respondent Markwayne Mullin is the U.S. Secretary of Homeland Security.
24. All respondents are named in their official capacities. One or more of the respondents is Petitioner's immediate custodian.

FACTS

Petitioner's Pending U Visa, Bona Fide Determination, and Deferred Action

25. Petitioner was born on [REDACTED] in Honduras. He is a citizen of that country.
26. Petitioner entered the United States on December 2, 2021, as a 16-year-old unaccompanied minor.
27. Petitioner was previously given a Notice to Appear in Immigration Court. On May 16, 2023, the Immigration Judge terminated his Immigration Court case without prejudice. A true and correct copy of the Notice to Appear served on Petitioner is attached hereto as Exhibit 1.
28. Petitioner's mother had filed a U nonimmigrant visa application for him as a qualifying family member on her petition on April 30, 2018. A true and correct copy of Petitioner's Bona Fide Determination/Deferred Action Notice is attached herein as Exhibit 2.
29. The USCIS Policy Manual, Vol. 3, Part C, Ch. 5. States that "when USCIS receives a new U visa petition from an individual living in the United States, USCIS first considers whether the petition is 'bona fide,' meaning that the application has been 'made in good faith; without fraud or deceit.'" *Id.* (quoting U.S. Citizenship & Immigr. Servs., Policy Manual Vol. 3, Part C, Ch. 5.). If USCIS determines the petition is bona fide, "USCIS then 'determines whether the petitioner poses a risk to national security or public safety, and otherwise merits a favorable exercise of discretion.'" *Id.* (quoting U.S. Citizenship & Immigr. Servs., Policy Manual Vol. 3, Part C, Ch. 5.). The USCIS manual also gives

examples of public safety concerns which would cause USCIS not to issue a bona fide determination, none of which are relevant to Petitioner. *Id.* Only then is the applicant granted an employment authorization document and deferred action. *B.D.A.A. v. Bostock*, 2025 WL 3484912, at *5 (D. Or. Dec. 4, 2025)

30. On October 17, 2023, USCIS issued a bona fide determination and granted deferred action to Petitioner for four (4) years—until October 17, 2027, meaning he still has deferred action today. See Exhibit 2.
31. On May 20, 2026, U.S. District Court Judge Andre Birotte Junior of the Central District of California issued an order in *ICWC v. Noem*, No. 2:25-cv-09848 (C.D. Cal. filed Oct. 14, 2025) certifying nationwide classes and blocking ICE from detaining class members. The deferred action class includes “[a]ll individuals to whom USCIS has granted deferred action based on a pending U or T visa petition and who, during the authorized period of deferred action, ICE detains, seeks to detain, or removed without providing notice and an opportunity to be heard regarding potential revocation of their deferred action status.”
32. Petitioner is gainfully employed by  and builds fences. A true and correct copy of his employment authorization document is attached hereto as Exhibit 3. Petitioner has paid his 2025 state and federal taxes.
33. On May 22, 2026, Petitioner was arrested by undercover Framingham Police officers who were driving an unmarked vehicle while he was riding a motorcycle. He was taken into custody and has been accused of marked lane violation, unregistered and uninsured motor vehicle, failure to stop for police, and resisting arrest.
34. On May 26, 2026, Petitioner attended his first hearing at Framingham District Court in that case. The case is ongoing, and he has not been convicted.

Petitioner's Detention

35. On the morning of June 3, 2026, Petitioner was arrested in by U.S. Immigration and Customs Enforcement (“ICE”) in Framingham, Massachusetts. His truck window was smashed, leaving glass fragments inside his truck, and he was pulled out of the truck. Officers shackled him and drove him to the ICE Field Office in Burlington, Massachusetts. A photo of his smashed truck window is attached herein as Exhibit 4.
36. At some point over the next few hours, he was told that he was detained due to the motorcycle incident.
37. On the afternoon of June 3, 2026, Petitioner’s immigration attorney, Aviva J. Schaffer, emailed the ICE Field Office in Burlington to notify them that Petitioner is a class member in the *ICWC v. Noem* case and ask that he be released immediately. The court order certifying the class in *ICWC v. Noem* is attached herein as Exhibit 5.
38. Petitioner was bewildered by his arrest and detention, given his grant of deferred action, record of attending *all* court proceedings, securing of a driver’s license, employment authorization document and pending U nonimmigrant status, and lack of any criminal convictions whatsoever.
39. At some point on June 3, 2026, Petitioner was later transferred to the Plymouth County Correctional Facility in Plymouth, Massachusetts, where he is currently detained at the direction of DHS.

LEGAL FRAMEWORK

Requirements of 28 U.S.C. § 2243

40. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to the respondent “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require the respondent to file a return “within three days unless for good cause additional time, not exceeding

twenty days, is allowed.” *Id.* (emphasis added).

41. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. “[I]ts history is inextricably intertwined with the growth of fundamental rights of personal liberty. For its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints.” *Fay v. Noia*, 372 U.S. 391, 401-402 (1963) (emphasis added).

Precedents in the Context of Deferred Action Strongly Favor Release

42. Deferred action acts as a protection from removal, and by extension, detention. “Approval of deferred action status means that, for ... humanitarian reasons[,] ... no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated.” *Reno v. Am.-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 484, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (Scalia, J.) (quoting 6 C. Gordon, S. Mailman, & S. Yale-Loehr, *Immigration Law & Procedure* § 72.03[2][h] (1998)).
43. Even prior to the court order in *ICWC v. Noem*, the U.S. District Court for the District of Massachusetts has ordered outright release where a petitioner was detained despite having deferred action through their pending U visa petition. *See Patel v. Hyde*, No. 25-12518, 2025 WL 3169875 (D. Mass. Nov. 12, 2025) (government has no legal authority to detain a person with a U bona fide determination and deferred action status). Similarly, U.S. District Court for the District of Massachusetts has granted bond hearings to two noncitizens with special immigrant juvenile status (SIJS) who have deferred action through that status. *Inlago Tocagon v. Moniz*, 802 F.Supp.3d 93 (2025)(ordering a bond hearing in immigration court for a noncitizen who had deferred action through SIJS); *Primero v. Mattivelo*, No. 1:25-CV-11442-IT, 2025 WL 1899115 (D. Mass. July 9, 2025) (ordering a

bail hearing in immigration court for a noncitizen who had deferred action through SIJS).

44. Other circuits and district courts have found detention unlawful where the noncitizen is not removable due to having a bona fide determination (“BFD”) and deferred action. *See, e.g., Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025) (“the Court finds that Sepulveda Ayala's deferred action status prevents removal. As a result, the Court concludes that the Government has no legal basis to detain Sepulveda Ayala and that Sepulveda Ayala has met his burden on his habeas petition.”); *Aguilar Gama v. Bondi*, 25-01925, 2025 WL 3559942 *3 (W.D. Wash. Dec. 12, 2025) (U derivative applicant who received BFD, deferred action, and employment authorization could not be removed and thus respondents had “no legal basis to detain Petitioner”); *Espinoza Cruz v. English*, No. 3:25-CV-919-CCB-SJF, 2025 WL 3676992, at *4 (N.D. Ind. Dec. 18, 2025) (same); *Nevarez Jurado v. Freden*, No. 25-CV-943-LJV, 2025 WL 3687264, at *8–9 (W.D.N.Y. Dec. 19, 2025) (same); *M.I.R.M. v. Mullin*, No. 2:26-CV-01543-DJC-AC, 2026 WL 1123536, at *2 (E.D. Cal. Apr. 24, 2026) (same); *Maldonado v. Noem*, No. 25-CV-2541, 2025 WL 1593133 (S.D. Tex. June 5, 2025) (government must first revoke DA through proper procedure before detaining or removing); *F.R.P. v. Wamsley*, No. 25-01917, 2025 WL 3037858 (D. Ore. Oct. 30, 2025) (same); *Cruz Zafra v. Noem*, No. 25-00541, 2025 WL 3239526 (W.D. Tex. Nov. 20, 2025) (same); *B.D.A.A. v. Bostock*, No. 6:25-CV-02062-AA, 2025 WL 3484912, at *7 (D. Or. Dec. 4, 2025) (same); *O.A.M.R. v. Wofford*, No. 1:25-CV-01955-TLN-JDP, 2025 WL 3702171, at *1 (E.D. Cal. Dec. 21, 2025) (same); *Ligario Hernandez v. Mullin, et al.*, No. 5:26-CV-00585-JAK (ADSX), 2026 WL 846037, at *8 (C.D. Cal. Mar. 24, 2026) (same).
45. The Ninth Circuit has found deferred action is “a form of prosecutorial discretion whereby the Department of Homeland Security declines to pursue the removal of a person unlawfully

present in the United States.” *Ariz. Dream Act Coal. v. Brewer*, 855 F.3d 957, 967 (9th Cir. 2017); see also *De Sousa v. Dir. of USCIS*, 755 F. Supp. 3d 1266, 1270 (N.D. Cal. 2024) (“‘Deferred action’ refers to an ‘exercise in administrative discretion’ under which ‘no action will thereafter be taken to proceed’ with the applicant’s removal from the United States.” (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999))). Ninth Circuit cases confirm “that deferred action prevents recipients’ removal from the United States.” *Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901, 912 (W.D. Wash. 2025) (collecting Ninth Circuit cases) (W.D. Wash. July 24, 2025); *Gama v. Bondi*, No. 2:25-cv-01925-TL, 2025 WL 3559942, at *3 (W.D. Wash. Dec. 12, 2025) (explaining that “[n]ot only has the Supreme Court provided guidance for the definition of deferred action, but opinions in the Ninth Circuit also have confirmed that a grant of deferred action prevents its recipient’s removal from the United States”).

46. The order in *ICWC v. Noem* prohibits ICE from subjecting class members, such as Petitioner, to de facto revocation of their deferred action.
47. In detaining Petitioner without consideration of his deferred action and without pre-deprivation process and in violation of a district court judge’s order in a nationwide class action, DHS has acted in violation of the court order in the nationwide class action *ICWC v. Noem*.
48. Because DHS’s arrest and continued detention of Petitioner is in violation of law, this Court is requested to order his immediate release, with a requirement that the government not re-detain him or revoke his deferred action absent a pre-deprivation process.

Procedural Due Process Requires that Petitioner be Afforded a Pre-Deprivation Process, Without Regard to Which Statute Applies

49. As a person residing in the United States, Petitioner enjoys the protections of the Fifth Amendment’s Due Process Clause: “the Due Process Clause applies to all ‘persons’ within

the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”).

50. It is well-settled that “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Due Process Clause specifically forbids the Government to “deprive[]” any “person . . . of . . . liberty . . . without due process of law.” U.S. CONST. Amend. V.
51. Of the liberties protected by the Fifth Amendment, none is greater than the right to be free: “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause. *Zadvydas*, 533 U.S. 678 at 690 (2001).
52. The Supreme Court has thus “repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 750-51 (upholding pretrial detention of individuals charged with a crime for a limited period, where the government—after first demonstrating probable cause—is required to convince a neutral decisionmaker, in a “full-blown adversary hearing” with numerous procedural safeguards, by clear and convincing evidence that no conditions of release can reasonably assure the safety of the community or any person, *i.e.*, that the “arrestee presents an identified and articulable threat to an individual or the community”); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness).
53. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), provides a balancing test to determine

whether someone has received procedural due process. The test weighs the following factors: (1) the private interest at issue; (2) the risk of erroneous deprivation given the procedures used, and the impact additional procedural safeguards would have; and (3) the government's interest, taking into account financial and administrative burdens that additional procedures would impose.

54. In *Rincon v. Hyde*, 2025 WL 3122784, *8-10 (D.Mass. 2025), this Court considered whether a non-citizen who had been detained under § 1225(b) had a constitutional right to an individualized detention hearing, even though the statute itself afforded no such opportunity. Applying the test articulated in *Mathews v. Eldridge*, the Court found that the petitioner's private interest (freedom from detention) was a compelling one, that the government's interest (avoiding the administrative burden of providing a hearing) was relatively minimal, and that the risk of erroneous deprivation in the absence of a hearing was high, such that detaining the petitioner without a bond hearing violated his due process rights under the Fifth Amendment:

the Court finds that the *Mathews* factors weigh definitely in favor of relief, that Petitioner's detention without a bond hearing violates his due-process rights, and that a bond hearing is an appropriate and minimally invasive additional procedure to ensure that right.

Id. at *10. See also *Tenemasa-Lema v. Hyde*, CV No. 25-13029-BEM, 2025 WL 3280555, at *10-11 (D.Mass. Nov. 25, 2025) (same). In *Inlago Tocagon v. Moniz*, 802 F.Supp.3d 93, 100-01 (D.Mass. 2025), the District Court found that petitioner had a strong "private interest in 'freedom from imprisonment,'" the first *Mathews* factor, because petitioner had an approved I-360 special immigrant juvenile application and deferred action. Mr. Inlago Tocagon had missed an ICE check-in. Despite this, for the second *Mathews* factor, because Mr. Inlago Tocagon had previously been released from detention, the Court found "[w]ithout a hearing on the basis for detention, there remains a risk that Mr. [Inlago Tocagon] is

detained even though the circumstances do not warrant it.” *Id.* at 101. For the third factor, the Court cited *Hernandez-Lara v. Lyons*, 10 F.4th 19 at 32-33 (1st Cir. 2021) to reiterate that “the public interest weighs against detention without a hearing” and “the only way to constitutionally determine whether a particular noncitizen presents a flight risk involves a hearing before an IJ with properly allocated burdens of proof.” The same conclusion—that a noncitizen who has resided in the country for some period before being detained is entitled as a matter of due process to a hearing to determine whether further detention is warranted and regardless of whether detention is imposed under Section 1226(a) or under Section 1225(b)—applies here with equal force.

55. For the first *Mathews* factor, Petitioner has an especially strong interest in being free from imprisonment because he received a bona fide determination and has deferred action.
56. To grant deferred action, USCIS had to determine that the “petition [is] bona fide and the petitioner does not pose a risk to public safety or national security and merits a favorable exercise of discretion.” ICE Directive No. 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* at 3 (Aug. 10, 2021). Petitioner continues to have deferred action, has strong community ties, and has attended all appointments and court hearings despite his charges in the Framingham District Court. Therefore, for the second *Mathews* factor, the risk of erroneous deprivation in his case is high.
57. For the third *Mathews* factor, the public interest is against detention without a hearing and the financial and administrative burden of releasing the Petitioner or giving him a bond hearing is relatively low.
58. Therefore, as a matter of procedural due process, Petitioner’s detention cannot lawfully continue and cannot occur again without a pre-deprivation process, or at the very least, a bond hearing.

**Substantive Due Process Requires that Petitioner be Released and Not Re-Detained
Absent a Pre-Deprivation Process, Without Regard to Which Statute Applies**

59. Beyond the procedural protections afforded by the Fifth Amendment, “[t]he Due Process Clause contains a substantive component that bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.” *Zinermon v. Burch*, 494 U.S. 113, 125 (1990) (internal quotation marks omitted).
60. “In the substantive due process analysis, it is the State’s affirmative act of restraining the individual’s freedom to act on his own behalf—through incarceration, institutionalization, or other similar restraint of personal liberty—which is the ‘deprivation of liberty’ triggering the protections of the Due Process Clause. . . .” *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 200 (1989). *See also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (freedom from bodily restraint “has always been at the core of the liberty interest protected by the Due Process Clause.”). And “[t]he institutionalization of an adult by the government triggers heightened, substantive due process scrutiny.” *Reno v. Flores*, 507 U.S. 292, 316 (1993) (O’Connor, J., concurring).
61. Because Petitioner is being denied a bond hearing, the government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a “reasonable relation” to its permissible purposes (*i.e.*, the prevention of flight and of danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690 (detention, if not ordered in a criminal proceeding, is permissible only where a special justification “outweighs the individual’s constitutionally protected interest in avoiding physical restraint,” and only where detention is “subject to strong procedural protections”) (recognizing prevention of flight and preventing danger to the community as special justifications); *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

62. Because Petitioner was not afforded any procedural mechanism (such as a pre-deprivation hearing or process, or even a post-deprivation bond hearing) for determining the need for confinement, Petitioner's detention is unlawful, regardless of what statute might apply to purportedly authorize such detention.

Petitioner's Immediate Release is Warranted

63. Petitioner's arrest and continued detention violate his statutory and constitutional rights and violate a court's order, rendering his detention unlawful. While some courts have ordered the holding of a bond hearing as a remedy for this illegal confinement (*see, e.g., Gomes v. Hyde*, 804 F.Supp.3d 265, 278 (D.Mass. 2025)), many others have determined that merely providing a prospective bond hearing would be inadequate to remedy the violation of a petitioner's fundamental liberty interests which has already occurred.

64. These courts have concluded instead that the most appropriate remedy is the detained individual's outright release. *See, e.g., Lopez Benitez v. Francis*, 795 F.Supp. 3d 475 (S.D.N.Y. 2025) (as petitioner was improperly detained under the purported authority of 8 U.S.C. § 1225(b), providing for mandatory detention, the government never exercised the discretion required under 8 U.S.C. § 1226(a) to determine, on an individualized basis, whether detention was warranted by flight risk or risk of harm to the community; accordingly, his initial detention was unlawful, and release is the appropriate remedy); *Yao v. Almodovar*, 2025 WL 3653433, *12 (S.D.N.Y. 2025) (same, collecting numerous cases); *Naula Munoz v. Wesling*, 1:26-cv-10959-BEM (D.Mass. Feb. 26, 2026) (petitioner ordered released where it was the government's position that detention was pursuant to Section 1225(b) but Section 1226(a) actually applied); *Davila Macas v. Moniz*, 1:26-cv-10953-BEM (D.Mass. Feb. 26, 2026) (same); *dos Santos v. Noem*, 2025 WL 2370988, at *8-9 (D.Mass. 2025) (ordering immediate release subject to preexisting bond order); *Diaz Diaz*

v. Mattivelo, 2025 WL 2457610 at *4 (D.Mass. 2025) (same); *Gabriel J. v. Bondi*, Case No. 26-cv-865-SRN-LIB at 9 (D. Minn. February 4, 2026) (collecting cases); *Padilla Molina v. DeLeon*, 2025 WL 3718728, *6 (E.D.N.Y. 2025) (“Release from detention is the ‘typical remedy’ for ‘unlawful executive detention,’ *Munaf v. Green*, 553 U.S. 674, 693 (2008). . . .”).

65. Other courts have ordered that an individual detained under 8 U.S.C. § 1226(a) and unlawfully denied the right to a bond hearing should be released, either with or without conditions, until a bond hearing is provided. *See, e.g., A.M. v. Nessinger*, Case No. 1:26-cv-00048-MSM-PAS, at 5 (D.R.I. 2026) (ordering the petitioner’s release pending a bond hearing, subject to minimal release conditions reasonably assuring his appearance); *Morales v. Hyde*, Case No. 1-26-cv-00093-JJM-PAS, at 5-6 (D.R.I. 2026) (ordering petitioner’s release pending a bond hearing, and denying the government’s request that he be subjected to another form of custody through the wearing of electronic monitoring equipment); *Chogllo Chafila v. Scott*, 804 F.Supp.3d 247, 264 (D.Me. 2025) (ordering petitioners’ release until they receive bond hearings).
66. Merely requiring Respondents to do now what they were obliged to do all along (provide Petitioner with a process and not subject Petitioner to de facto revocation of his deferred action) while Petitioner remains unjustly confined fails to account for the irreparable harm Petitioner already has suffered. As well, the government — having acted on the flawed assumption that Petitioner did not have deferred action — cannot show it followed proper procedures, required both by statute and the Constitution, to detain Petitioner in the first place. In these circumstances, the appropriate remedy is Petitioner’s immediate release.

**In Ordering Petitioner’s Release, the Court Should Require the Respondents to
Provide for Petitioner’s Safety and to Return the Petitioner’s Documents and
Property**

67. It would seem self-evident (and beyond the need for judicial reinforcement) that in releasing a wrongfully detained individual the government must do so in a safe manner, and that it must return to the individual any documents or property seized at the time of arrest. Experience, however, demonstrates that these fundamental obligations are not being fulfilled.

Immigrants are Released, and Left Stranded, Far from their Homes

68. The plight of immigrants who are released from detention in unfamiliar locations far from their homes and without prior notice to counsel or family members has been well-documented by the courts. *See, e.g., Rigoberto S.J. v. Bondi, et al.*, Case No. 26-cv-957-LMP-JFC at 7 (D. Minn. February 20, 2026) (“petitioners are unlawfully left stranded thousands of miles away from [their state of residence] without their property (that is, if the petitioner is even timely released)”). Tragically, but predictably, this practice has had fatal consequences. Ana Faguy, *Blind refugee found dead in New York after being released by immigration authorities*, BBC, February 27, 2026:

A nearly-blind, non-English-speaking refugee from Myanmar has been found dead in upstate New York after being released from federal immigration custody. Nurul Amin Shah Alam was found dead on Tuesday, days after US Customs and Border Protection (CBP) dropped him off at a coffee shop miles from his home in Buffalo, where temperatures have been below freezing.

Documents and Property are not Returned to Immigrants Upon Release

69. The government’s failure to return to wrongfully detained immigrants their documents and personal belongings upon release has required judicial intervention on numerous occasions. *See, e.g., J.B.C.O., et al. v. Bondi, et al.*, Case No. 0:26-cv-00639-JRT-DTS (D. Minn. March 6, 2026); *Luis P. v. Bondi, et al.*, Case No. 26-cv-1316-JMB-DLM (D. Minn. February 26, 2026); *Segundo A. v. Bondi, et al.*, Case No. 26-cv-1414-JMB/DLM, at 14-15 (D. Minn. February 26, 2026) (combining 27 cases; “in each case, the Court ordered

Respondents to return all personal belongings taken from Petitioners during their unlawful detention because Respondents have no lawful claim to such property”); *Rigoberto S.J. v. Bondi*, *supra* at 7.

70. The impact on immigrants like Petitioner of being deprived, even temporarily, of key documents and personal property was underscored recently by the United States District Court for the District of Minnesota:

Some petitioners, including J.B.C.O., are the principal breadwinners for their family and, as noted by their counsel, the loss of their work authorization documents has resulted in lost wages and hardships for their family. Other petitioners, including Rosmary N.A., have been left without any form of identification or their bank cards, preventing them from accessing their bank accounts, resulting in food insecurity. And many petitioners, including some in the above-captioned cases, have been released without their cell phones, resulting in their inability to access any documents stored on their phone, contact their friends and loved ones, or perform many other functions of daily life. Still others have lost jobs because of their detention and are hindered in their efforts to secure new ones by their lack of access to their identification documents and cell phones. Petitioners who have lost their driver’s licenses have lost the ability to move about freely—and for those who drove for a living (e.g., Uber and Lyft drivers), they have also lost a substantial means of generating income. Perhaps most troublingly, many petitioners, including Christian A.S.C., are terrified that the loss of their personal identification documents will subject them to additional arrests because they will not be able to prove who they are — or aren’t.

J.B.C.O., et al. v. Bondi, *supra* at 16-17 (footnotes omitted). And, unsurprisingly, the government’s failure to return key documents and possessions only exacerbates the risk of harm arising from the release of detained individuals in unfamiliar surroundings. *Rigoberto v. Bondi*, *supra*, at 8 (“Here, the Government dropped Rigoberto S.J. into a city unknown to him without the one thing he would generally need to secure lodging and travel home: his ID.”).

COUNT ONE
Unlawful Detention in Violation of Court Order in *ICWC v. Noem*

71. Petitioner incorporates the foregoing paragraphs as if fully restated below.
72. As Petitioner was not provided with any pre-deprivation process before the de facto revocation of his deferred action, Petitioner still has deferred action.
73. Petitioner may not be subjected to de facto revocation of his deferred action, pursuant to the order in *ICWC v. Noem*.
74. Immigration detention must serve the purpose of ensuring the noncitizen's presence for removal.
75. Petitioner's deferred action protects him from removal.
76. As Petitioner has deferred action, his detention cannot serve the purpose of removal.
77. Petitioner's continuing detention is therefore unlawful.

COUNT TWO

Unlawful Detention in Violation of U.S. Constitution, Fifth Amendment (Procedural and Substantive Due Process)

78. Petitioner incorporates the preceding paragraphs as if fully restated below.
79. Petitioner has a strong liberty interest due to his bona fide determination and grant of deferred action.
80. Petitioner has been given no notice of deferred action revocation and continues to have strong community ties, rendering the risk of unlawful deprivation high.
81. There is no compelling and legitimate governmental interest for which DHS could detain Petitioner without process, as he has been determined to be neither a danger to national security nor safety and cannot be removed while he has deferred action.
82. Petitioner's continuing detention is therefore unlawful regardless of what statute might apply to purportedly authorize such detention.

COUNT THREE

Violation of Fifth Amendment Right to Due Process (Failure to Provide an Individualized Hearing for Domestic Civil Detention)

83. Petitioner incorporates by reference the preceding paragraphs as if fully restated below.
84. Petitioner was arrested inside the United States after an extended period of residence in this country and while he has deferred action.
85. Petitioner was subjected to de facto revocation of his deferred action with no process.
86. In these circumstances, the Fifth Amendment's Due Process Clause requires that Petitioner be granted the safeguard of a pre-deprivation hearing, or at the very least, an individualized bond hearing. At any such hearing, Petitioner would be entitled to strong procedural protections, including but not limited to the government's obligation to (1) justify any revocation of deferred action and consider Petitioner's evidence that his deferred action should continue (2) prove by clear and convincing evidence that Petitioner poses a danger to the community or (3) prove by a preponderance of the evidence that Petitioner poses a flight risk, and the obligation of the hearing officer to consider whether any identified risk of flight or danger may be reasonably mitigated through alternatives to detention, thereby rendering detention unnecessary. *See Hernandez-Lara*, 10 F.4th at 41; *Doe*, 11 F.4th at 2; *Brito*, 22 F.4th at 256-57.
87. Petitioner has not been, and absent intervention by this Court, will not be provided with an individualized detention hearing as required by law.

COUNT FOUR
Violation of Fifth Amendment Right to Due Process
(Substantive Due Process)

88. Petitioner incorporates by reference the preceding paragraphs as if fully restated below.
89. Because Petitioner has deferred action and has not been afforded any procedural mechanism (such as a pre-deprivation hearing), Petitioner's detention violates the Fifth Amendment's substantive Due Process protections and is unlawful, regardless of what statute might apply to purportedly authorize such detention.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Order that Petitioner shall not be transferred outside the District of Massachusetts;
3. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days and requiring Respondents to include with their response copies of any Warrants for Arrest or Notices of Custody Determination.
4. Order that Petitioner be released from detention during the pendency of his habeas proceedings under the Court's inherent Article III authority;
5. Declare that Petitioner's detention is unlawful under the stay in *ICWC v. Noem*; under the Due Process clause of the Fifth Amendment to the U.S Constitution; and under the Administrative Procedures Act, 5 U.S.C. § 706.
6. Issue a Writ of Habeas Corpus ordering Respondents:
 - a. to immediately release Petitioner from detention, or, if at the time of the habeas hearing the Court has already ordered Petitioner released under its inherent Article III authority, not to re-detain Petitioner, or
 - b. in the alternative, either:
 1. to provide Petitioner an individualized bond hearing under and subject to 8 U.S.C. § 1226(a) before an Immigration Judge within seven (7) days, such bond hearing to consider danger to the community and flight risk, applying the burdens of proof required under *Hernandez-Lara, supra*, and considering whether detention is necessary or whether any identified risk of flight or danger may be reasonably mitigated through alternatives to detention pursuant to

Brito, supra, and, if the Immigration Judge grants bond, to immediately accept payment of the bond and release Petitioner from detention; or

2. if Petitioner is not provided such a bond hearing within seven (7) days, to release Petitioner.

7. Require that, in releasing Petitioner from custody, Respondents shall release him:

- a. In Massachusetts;
- b. during normal business hours;
- c. in a well-populated area that is within a quarter mile of public transportation and not more than 30 miles from Petitioner's residence;
- d. with all personal documents (including without limitation Petitioner's driver's license, passport, work authorization and other immigration documents) and belongings (including without limitation Petitioner's clothing, cell phone, keys, and wallet);
- e. without conditions such as ankle monitors or tracking devices;
- f. with attire appropriate to the weather conditions; and
- g. after having given at least six hours' advance notice to Petitioner's counsel of the time and place of Petitioner's release; and

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

Respectfully submitted,

/s/ Kathrine Reynolds

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**Motion to Appear Pro Hac Vice
Forthcoming*

Dated: June 3, 2026