

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
Civil File No. 26-cv-02909 (ECT/SGE)

Steven Fernando VITE ZUNIGA,

Petitioner,

v.

Todd BLANCHE, in his official capacity as
Acting Attorney General of the United States;

Markwayne MULLIN, in his official capacity
as Secretary of the Department of Homeland
Security;

**PETITIONER'S REPLY IN
SUPPORT OF PETITION FOR
HABEAS CORPUS**

David J. VENTURELLA, in his official
capacity as Acting Director of United States
Immigration and Customs Enforcement;

David EASTERWOOD, in his official
capacity as Acting Director, St. Paul Field
Office, U.S. Immigration and Customs
Enforcement;

Joel BROTT, in his official capacity as Sheriff
of Sherburne County;

Respondents.

INTRODUCTION

This case seeks the immediate release of 18-year-old Steven Fernando Vite Zuniga (“Petitioner” or “Steven”) from unlawful immigration re-detention and enforcement of his rights as a member of the Pending Petition and Deferred Action Classes certified in the nationwide class action, *Immigration Ctr. for Women and Children v. Noem*, No. 2:25-CV-09848-AB-AS, 2026 WL 1455004 (C.D. Cal. May 20, 2026) (“*ICWC*”).

ARGUMENT

A. THE DISTRICT COURT'S DECISION IN *ICWC v. NOEM* REMAINS GOOD LAW, AND THE *ICWC* PRELIMINARY INJUNCTION REMAINS IN EFFECT AND APPLIES TO PETITIONER.

1. The *ICWC v. Noem* nationwide injunction remains in effect.

Petitioner has a pending application for a U visa. Docherty Affidavit (ECF No. 4), Exh. 4. On May 20, 2026, as discussed in Petitioner's original Petition (see ECF No. 1 at ¶¶ 42-74), a federal district court certified a class of individuals with pending U-visa applications (among others) and issued a preliminary injunction staying DHS's 2025 guidance, which rescinded DHS's prior policy of not pursuing removal against persons with pending U visa petitions, and reinstated ICE Directive 11005.3,¹ prohibiting detention of U-Visa applicants absent "exceptional circumstances." *Immigration Ctr. for Women & Children v. Noem*, No. 2:25-CV-09848-AB-AS, 2026 WL 1455004 (C.D. Cal. May 20, 2026) (*ICWC*), *appeal filed*, No. 26-3961 (9th Cir. June 22, 2026). The *ICWC* court also ordered DHS to stay its De Facto Revocation Policy, "under which ICE does not honor grants of deferred action conferred by USCIS to individuals with pending petitions for U or T visas." *ICWC* at *47.

The *ICWC* preliminary injunction applies nationwide. *Id.* at *46 ("The Court notes that the classes are not geographically limited: they encompass all persons who match the parameters regardless of their location. Therefore, in order to grant complete relief to the classes, because the classes are nationwide, the stays should also be nationwide"); *cited*

¹ ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Dec. 2, 2021) ("2021 Directive").

with approval in *Osorio v. Blanche*, No. 2:26-CV-00588-GMN-MDC, 2026 WL 1481555, at *1 (D. Nev. May 27, 2026) (“This [*ICWC*] stay of DHS’s 2025 guidance applies to all class members regardless of geographic location”).

As of this writing, *ICWC* has not been vacated, stayed, or reversed on appeal. Notwithstanding Respondent’s criticism of the decision, it remains good law and the nationwide preliminary injunction remains in effect. Respondent’s detention of Steven constitutes final agency action under the APA, 5 U.S.C. §§ 551(c)(10) & (13), 704; *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). Respondents’ detention of Steven it is not in accordance with law, as it directly contravenes the relief issued in the *ICWC* Preliminary Injunction, and therefore must be set aside by this court. *See* 5 U.S.C. § 706(2)(A) (courts “shall . . . hold unlawful and set aside agency action . . . found to be . . . not in accordance with law”).

2. Steven does not fall within the “exceptional circumstance” of “pos[ing] an articulable risk of . . . physical harm to any person,” in ICE Directive 11005.3, because the state court’s Release Order and No Contact Order provide sufficient protections to the public.

Respondent does not dispute that Petitioner is a class member in *ICWC*. Respondent argues, however, that the *ICWC* injunction does not entitle Petitioner to any relief. The *ICWC* injunction reinstituted ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Dec. 2, 2021),² prohibiting detention of U-Visa applicants absent “exceptional circumstances.” *Id.* at 1-2, ¶¶ 2, 2.1. Respondent argues that Petitioner

² Reply Affidavit of Michael R. Docherty, Exh. 1

falls within the Directive's "exceptional circumstance" of "pos[ing] an articulable risk ... of physical harm to any person," *Id.* at 3, ¶ 3.4, and is therefore still subject to detention.

In support of this argument, Respondent cites Steven's recent state charge of misdemeanor assault, and the resulting No Contact Order, as evidence Steven is "a threat to public safety." Resp. brief (ECF 7) at 6 n.6. In fact, the No Contact Order, issued by the state court judge on May 14, 2026, when Steven was released from custody, is compelling evidence that Steven *can* be released without posing a danger to the public.

The No Contact Order prohibits Steven from

- Having any contact, "directly, indirectly or through others, in person, by telephone, in writing, electronically or by any other means" with the alleged victim;
- Harassing, stalking, or threatening the alleged victim;
- Engaging in any physically threatening conduct to the alleged victim;
- Any use or attempted or threatened use of physical force that would reasonably be expected to cause bodily injury;
- Going to the family residence in Columbia Heights (where he lived before he was detained), or wherever the alleged victim resides.

See Criminal Domestic Abuse No Contact Order (Anoka County Dist. Ct. May 14, 2026) (Ganzhorn Declaration, Attachment e, ECF 8.e, at 1-2) (redacted). Any violation of the No Contact Order may cause Petitioner's release status to be revoked, and cause Petitioner to be arrested and face additional criminal charges. *Id.* at 2.

Similarly, the state court's Release Order of the same date lists the following conditions of release, violation of any one of which can result in Steven's rearrest and re-detention:

- Post bail or bond in the amount of \$10,000.00;
- Participation in an Intensive Supervision Program (ISP) with ETG testing³ to detect even minimal alcohol or drug use;
- No assaultive, disorderly, or threatening behavior;
- Remain law-abiding and of good behavior;
- Make all future court appearances;
- No mood-altering chemicals (unless prescribed by a doctor);
- No alcohol use; and
- DANCO (Domestic Assault No Contact Order) issued and signed.

See Release Order (Anoka County Dist. Ct. May 14, 2026) (Docherty Affidavit (ECF No. 4), Exh. 9).

The terms of the No Contact Order and the conditions of the Release Order provide sufficient protection to the alleged victim – sufficient enough that the state court concluded that, with those terms and conditions in place, Steven could be released without endangering the public.⁴ The state court is the only neutral arbiter that has reviewed Steven's risks of flight or dangerousness, and the fact that the state court granted him

³ Anoka County Corrections Department's ETG Color Wheel alcohol and drug testing program. See <https://www.anokacountymn.gov/2210/UA-Collection-Lab---Color-Wheel> (last checked June 19, 2026)

⁴ At the risk of stating the obvious, it is also worth pointing out that Steven has only been *charged* with misdemeanor domestic assault; the charges have not been proven.

conditional release highlights the injustice of ICE re-detaining Steven without the required pre-deprivation hearing to evaluate flight risk and dangerousness.⁵ See *Inland Empire-Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 PSG (SHKx), 2018 WL 4998230, at *19 (C.D. Cal. Apr. 19, 2018) (“[T]he practice of automatic termination” of deferred action “creates an unacceptably high risk of erroneous deprivation.”); see also *Inland Empire-Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 PSG (SHKx), 2018 WL 1061408, at *1 (C.D. Cal. Feb. 26, 2018) (granting class wide injunction for nationwide class in same case); cf. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017) (where a release decision was made by a DHS officer, not an IJ, DHS must show changed circumstances *before* re-arrest).

B. PETITIONER’S DETENTION VIOLATES PROCEDURAL DUE PROCESS

- 1. Petitioner was detained under 8 U.S.C. § 1226(a), under which detention is discretionary, not under the mandatory detention provision of § 1225(b)(2).**

⁵ Furthermore, Respondents’ longstanding policy is that only USCIS—not ICE—has the exclusive authority to revoke deferred action conferred by USCIS in connection with a U visa petition, and that such revocation must be based on specific criteria. 8 C.F.R. § 214.14(d)(3) (U-visa waiting list “deferred action or parole may be terminated at the discretion of USCIS”) (emphasis added). Here, Petitioner received deferred action through the U visa waiting list. Thus, any revocation of this deferred action must take place in accordance with 8 C.F.R. § 214.14. Rather than following these procedures, Respondent ICE took matters into its own hands by stripping deferred action through detaining Petitioner. As the court in *ICWC* held, “by permitting ICE to de facto revoke deferred action instead of following USCIS procedure, and without applying any of the applicable criteria from the USCIS Policy Manual,” Respondents “are not complying with their own policies for revoking deferred action” and are violating the Accardi Doctrine. *ICWC* PI Order at *40.

Respondents argue that Steven has received all the process that is due under 8 U.S.C. § 1225(b)(2), because detention under § 1225(b)(2) is mandatory in all circumstances and satisfies substantive and procedural due process requirements as a matter of law, and any consideration of flight risk or danger to the public is irrelevant under that statute.

Respondents' argument that § 1225(b)(2) precludes any constitutional review of Steven's detention is completely meritless, because Steven was not detained under that statute. He was detained under 8 U.S.C. § 1226(a), under which detention is discretionary, not mandatory. Section 1226(a) provides that when a noncitizen is arrested and detained pending removal proceedings, the government *may* continue to detain the person, or *may* release the person on bond or conditional parole. *Id.*

The I-200 warrant that Respondents have entered into the record⁶ was directed to: "Any immigration officer authorized pursuant to sections 236 [8 U.S.C. § 1226] and 287 [8 U.S.C. § 1357] of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations." *Id.* Courts in this District have repeatedly held the government to those representations in the I-200 administrative warrant and evaluated the detention at issue in those cases under the discretionary detention framework set forth in § 1226, regardless of any subsequent assertion that the detention was pursuant to § 1225(b)(2). *See, e.g., Hector J.A.S. v. Shea*, No. 26-cv-2242 (D. Minn. May 06, 2026); *Jefferson G.H.L. v. Blanche*, No. 26-cv-2344, 2026 WL 1229623, at *2 (D. Minn. May 5, 2026); *Souleimane C. v. Blanche*, No. 26-cv-

⁶ Ganzhorn Declaration, Attachment d, ECF 8.d.

2215, 2026 WL 1180075, at *4 (D. Minn. Apr. 30, 2026); *Jose JOE. v. Bondi*, 797 F. Supp. 3d 957, 970 (D. Minn. 2025). *See also Anibal G.A.P v. Bondi*, No. 26-cv-1879, 2026 WL 788815, at *3 (D. Minn. Mar. 20, 2026) ("Allowing Respondents to toggle between detention regimes in this way would collapse the statutory structure Congress enacted and render § 1226 largely superfluous").⁷

2. Even if Steven were subject to mandatory detention under 1225(b), procedural due process requires pre-deprivation process BEFORE re-detention.

The warrant for Steven's arrest indicates that he was detained pursuant to the discretionary detention provisions of § 1226(a). But whether he was re-detained pursuant to § 1226(a) or § 1225(b), he was entitled to a notice and an opportunity to be heard *before* he was re-detained.

Shortly after he entered the U.S. in 2023, Steven was arrested by ICE and transferred to the custody of the Office of Refugee Resettlement (ORR) as an unaccompanied alien child (UAC). The ORR is charged with making placement determinations for all UACs in federal immigration custody. 8 U.S.C. § 279(b)(1)(c). In making a placement determination, the ORR is required to ensure that the UAC is likely to appear for all immigration hearings and proceedings, i.e., is not a flight risk, and is placed in a setting in which they are not likely to pose a danger to themselves or others. 8 U.S.C. §

⁷ Respondents cite *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003) for the proposition that "Plaintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme." *Id.* at 9. Because Steven was not arrested pursuant to § 1225(b)(2), *Connecticut Dep't of Pub. Safety* has no bearing on his case.

279(b)(2)(A)(i, iii). When the ORR released Steven to the custody of his mother, they necessarily made such a determination.

Numerous courts have concluded that it is a violation of procedural due process to re-detain an individual without notice, evidentiary findings, or an opportunity to be heard *before* being re-detained. *See, e.g., Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017) (where a release decision was made by a DHS officer, not an IJ, DHS must show changed circumstances *before* re-arrest) (emphasis added); *Doh v. Blanche*, No. 0:26-cv-02413 (D. Minn. May 06, 2026) (ordering outright release for individual previously released on order of recognizance despite being subject to mandatory detention under Section 1226(c), as “*Mathews* requires DHS officials invoking section 236.1(c)(9) to make at least a showing of material changed circumstance *before* revoking release”) (emphasis added); *Singh Dhillon v. Mullin*, No. 8:26-CV-229, 2026 WL 1587371, at *3 (D. Neb. June 3, 2026) (ordering outright release on a subsequent habeas petition as “redetention of a person previously released, without formally revoking that order of release or following any procedures prior to making a decision that conflicts with an order of release, violates due process”); *Hernandez-Torres v. Mullin*, No. 8:26CV214, 2026 WL 1430705 (D. Neb. May 21, 2026) (ordering outright release based on prior release on order of recognizance); *Sandhu v. Mullin*, No. 7:26CV5009, 2026 WL 1146643, at *2 (D. Neb. Apr. 28, 2026) (same). *See also Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (“An essential principle of due process is that a deprivation of life, liberty, or property be *preceded* by notice and opportunity for hearing appropriate to the nature of the case.”) (internal quotation marks and citation omitted) (emphasis added); *see also Feisal*

O. v. Noem, No. 26-CV-81, 2026 WL 92857, at *3 (D. Minn. January 13, 2026) (“[T]he re-detention of a person previously ordered released under section 1226—without Respondents *first* formally revoking that order of release or following any procedures prior to making a decision that conflicts with an order of release—violates due process”) (emphasis added); *Singh v. Warden*, 2026 WL 731053, at *4, *report and recommendation adopted sub nom. Singh v. Warden*, 2026 WL 802319 (“Petitioner has a liberty interest in not being incarcerated after prior release without *pre-custodial* hearing or notice”) (emphasis added); *Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) (“Respondent violated the Fifth Amendment’s Due Process Clause by revoking her parole and subjecting her to detention without notice, evidentiary findings, or an opportunity to be heard.”); *see also Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (citing *Young*, 520 U.S. at 152) (holding that re-detention after pre-parole conditional supervision requires pre-deprivation hearing)).⁸

⁸ In the criminal context, the Supreme Court has repeatedly recognized that re-detention after some form of conditional release requires a pre-deprivation hearing. *See, e.g., Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973) (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“[A] person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated.” (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972))).

3. Steven's release as a UAC by ORR in 2023 was not conditioned on him remaining a child; UAC protections last for as long as the circumstances warranting the UAC's original release to a sponsor remain unchanged.

Respondents argue that having turned 18, Steven is no longer a UAC and therefore not entitled to the protections afforded him at the time of his 2023 release. The case law does not support Respondents' position. In *Ixquiactap-Ajpacaja v. Mullin*, No. 4:26-CV-3143, 2026 WL 1295702 (D. Neb. May 12, 2026), the habeas petitioner was taken into ORR custody as a UAC and subsequently released to his father in Nebraska. After he became an adult, he was detained in a county jail on pending misdemeanor criminal charges and, like Steven, was detained by ICE after he posted bond for his misdemeanor case. The court held that, although he had aged out of his UAC status, the other circumstances that supported the ORR's decision to release him remained unchanged:

It's true that the petitioner is no longer a "UAC," and is not covered by the particular procedural protections that apply to that group of noncitizens. See 6 U.S.C. § 279(g)(2); 8 C.F.R. § 236.3(d)(2). *However, when ICE released the petitioner, that release was not conditioned on him remaining a child.* While the petitioner was not released "on his own recognizance," the circumstances are analogous, and the petitioner was effectively subject to conditional parole.

... [D]etaining an immigrant on conditional parole without providing a post-deprivation opportunity to challenge his detention offends the Fifth Amendment and due process.

Ixquiactap-Ajpacaja, 2026 WL 1295702 at *1 (emphasis added; citations omitted).

The court reached the same result on similar facts in *R.A.R.R. v. Almodovar*, No. 25-CV-6597 (PKC), 2026 WL 323040, at *7 (E.D.N.Y. Feb. 6, 2026). In that case, the habeas petitioner entered the U.S. and was taken into custody by Customs and Border Protection. He was determined to be a UAC and transferred to the custody of ORR. After

making a determination that he was neither a danger to the community or a flight risk, ORR released him to the custody of his mother's partner, whom petitioner considered a stepfather. He was re-detained by ICE when he was 19 years old.

The court granted the habeas petition. In doing so the court rejected the government's claim that the petitioner lost the protections afforded UACs when he turned 18. The court held that UAC protections last for as long as the circumstances warranting the UAC's original release to a sponsor remain unchanged, and that petitioner's re-detention by ICE without notice and an opportunity to be heard at a pre-deprivation custody hearing violated his procedural due process rights. *Id.* at *7.

4. Petitioner is entitled to relief under *Mathews v. Eldridge*.

As discussed at length in Steven's petition, the three-factor test of *Mathews v. Eldridge*, 424 U.S.319 (1976) strongly favors Steven's release. Respondents claim that Steven is not entitled to relief under *Mathews*, because the *Mathews* test should not be used to evaluate challenges to how a statute is applied in individual cases, but should be applied only to facial challenges to statutes. As with Respondents' arguments regarding the *ICWC* injunction, however, Respondents acknowledge that the case law supports the opposite conclusion, and that courts routinely apply the *Mathews* factors to as-applied due process challenges. *See, e.g., Maldonado v. Olson*, 795 F.Supp.3d 1134, 1148 (D. Minn. 2025) (Nelson, J.) (*Mathews* factors weighed in favor of finding that individual noncitizen was likely to succeed on merits of Fifth Amendment due process claim, so as to support preliminary injunction requiring release during pendency of habeas petition); *Selvin Adonay E.M. v. Noem*, No. 25-cv-3975, 2026 WL 3157839, at *8 (D. Minn. Nov. 12, 2025)

(all three *Mathews* factors supported detained noncitizen's due process claim; granting habeas petition); *Aleksei v. Warden*, No. 5:26-CV-05030-RAL, 2026 WL 1133615, at *1 (D.S.D. Apr. 27, 2026) (applying *Mathews* and ordering outright release on due process grounds); *A.B.J.C. v. Hermosillo*, No. 2:26-CV-00185-JNW, 2026 WL 497097, at *3 (W.D. Wash. Feb. 23, 2026) (Applying *Mathews*, granting habeas and ordering immediate release for noncitizen detained by ICE years after being processed and released as an unaccompanied child).

5. The *Mathews* factors all weigh in favor of Petitioner's release.

In arguing that the *Mathews* factors do not support Steven's release, the government makes the rather astounding claim that Steven's "private interest" in liberty is insubstantial. In fact, "[f]reedom from imprisonment ... lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Steven is 18 years old. He has now been imprisoned for over a month; he is separated from his family; and he missed his high school graduation. His interest in freedom from imprisonment is substantial and weighs in favor of his immediate release.

Numerous courts have held that people released from immigration detention have a protected liberty interest in their continued freedom from confinement. *See Abdirashid H.M. v. Noem*, No. 25-4779 (JRT/EMB), 2026 WL 127698, at *4 (D. Minn. Jan 9, 2026) ("The Court joins several district courts around the country in recognizing the self-evident idea that an individual who has been released from custody to live a productive life in the community obtains a protected interest in their 'continued liberty.'"); *Singh v. Mullin*, 2026 WL 1021846, at *4 ("[W]hen the Government decides to release an individual ... it creates

an implicit promise ... that their liberty ‘will be revoked only if they fail to live up to the conditions of release’) (internal citations omitted); *Yrysbaev*, 2026 WL 395897, at *3 (“When the government grants a [noncitizen] parole into the country, it creates a liberty interest intimately tied to freedom from imprisonment”); *Alegria Palma*, No. 25-cv-1942, ECF No.14 at *6 (finding that “continued freedom after release on own recognizance” was a “significant liberty interest”); *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 686 (W.D. Tex. 2025) (holding that an individual released on his own recognizance, who “spent nearly three years at liberty in the United States ... possess a cognizable interest in his freedom from detention”); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *9 (W.D. Tex. Oct. 21, 2025) (same); *Romero v. Ladwig*, --- F.Supp.3d ----, 2026 WL 321437, at *11 (M.D. La. Feb. 6, 2026) (“[T]his Court now joins the multitude of courts within the Fifth Circuit and across the country recognizing that non-citizens have an “overwhelming liberty interest” in their “continued release ... that may not be removed without due process.” (emphasis added)) (quoting *Gurung v. Warden. S. Texas ICE Processing Ctr.*, No. SA-25-CA-01614-XR, 2026 WL 93145, at *8 (W.D. Tex. Jan. 6, 2026)).

The second *Mathews* factor, risk of erroneous deprivation of his private interest in liberty, weighs strongly in Steven’s favor as well. The risk that ICE’s re-detention was erroneous is high. “The risk of an erroneous deprivation [of liberty] is high” when “[the petitioner] has not received any bond or custody redetermination hearing” before the deprivation of his liberty. See *A.E. v. Andrews*, No. 1:25-cv-00107-KES-SKO (HC), 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025). Again, civil immigration detention, which

is “nonpunitive in purpose and effect[,]” is typically justified under the Due Process Clause only when a noncitizen presents a risk of flight or danger to the community. *See Zadvydas*, 533 U.S. at 690; *Padilla*, 704 F. Supp. 3d at 1172. Here, of course, shortly before his arrest by ICE, Steven was conditionally released by the Anoka County District Court, which necessarily determined he was neither a flight risk nor a danger to the community. That decision by the state court highlights the likelihood that Steven’s re-detention by ICE, after his release by ORR in 2023, was an erroneous deprivation of his liberty.

Finally, the public interest also weighs strongly in favor of Steven’s release. Releasing him will save the government money and effort otherwise wasted on erroneous detention. Moreover, unlawful detention and violation of noncitizens’ constitutional rights disserve the public interest.

Courts have applied the *Mathews* factors to hold that prior to re-detaining a noncitizen who was previously released, the government must (1) affirmatively demonstrate materially changed circumstances such that re-detention would be justified and (2) provide a pre-deprivation hearing for the noncitizen to respond. A post-deprivation hearing is not sufficient. *See E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025) (petitioner had a protected liberty interest in his continuing release from custody, and due process required that Petitioner receive a hearing before an immigration judge *before* he could be re-detained); *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (“Petitioner’s re-detention without any change in circumstances or procedure establishes a high risk of erroneous deprivation of his protected liberty interest”); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (enjoining

the government “from re-arresting Ortega unless and until a hearing, with adequate notice, is held in Immigration Court to determine whether his bond should be revoked or altered”).

5. Steven’s substantive due process claim is not barred by *Demore v. Kim* and other decisions which involved mandatory detention under different statutes than the discretionary detention statute under which Steven was arrested.

Respondents argue that Petitioner’s substantive due process claim is barred by *Demore v. Kim*, 538 U.S. 510 (2003) and *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024). *Demore* and *Banyee* are distinguishable from this case, however, because both involved the mandatory detention under 8 U.S.C. § 1226(c), which provides for mandatory detention of certain noncitizens who are removable because they have committed certain serious crimes – not including misdemeanor assault.

Respondents argue that “the *Banyee* and *Demore* holdings apply to detainees under 8 U.S.C. § 1225(b)(2) as much as they do to those under § 1226(c).” As discussed above, even if true, this is irrelevant: Steven was not detained under either of those statutes. Respondents’ own I-200 warrant unambiguously states that Steven’s arrest was based on § 1226, not § 1225(b)(2), and the only provision of § 1226 which could have provided authority to detain Steven was the discretionary detention provision of § 1226(a). The only other subsection of § 1226 that provides authority for detention is § 1226(c) which, as discussed above, applies to a limited class of deportable aliens which does not include Steven.

The *Demore* petitioner had been convicted of at least one aggravated felony “following the full procedural protections our criminal justice system offers.” *Id.* at 513.

He did not "dispute the validity of his prior convictions" or "the INS'[s] conclusion that he [was] subject to mandatory detention under § 1226(c)" and "conced[ed] that he was deportable." *Id.* at 513-14. *Banyee* involved a noncitizen convicted of armed robbery and detained pursuant to § 1226(c).

None of these facts is present in this case. Steven has not been charged as removable by virtue of a criminal conviction. In fact, he has not been convicted of any crime.⁹ And unlike the *Demore* petitioner, Steven is not deportable, due to his pending U-visa application and deferred action status, and his *ICWC* class membership. If a person cannot actually be removed, "preventing flight" is a "weak or nonexistent" justification for detention. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *cf. Phan v. Reno*, 56 F. Supp. 2d 1149, 1156 (W.D. Wash. 1999) ("Detention by the INS can be lawful only in aid of deportation."). Detention for community safety, in turn, is only permissible "when limited to specially dangerous individuals and subject to strong procedural safeguards." *Zadvydas*, 533 U.S. at 691.

Respondents cite *Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020) for the proposition that for "foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law, the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Id.* at 138. *Thuraissigiam* involved a noncitizen who was detained at the southern border while

⁹ See Minnesota Public Criminal History Search Results, (accessed 6/25/2026 at <https://chs.state.mn.us/Search/ChsSearch>), Docherty Reply Affidavit, Exh. 1.

seeking initial entry into the U.S. *Id.* at 108. He had never acquired any domicile or residence within the U.S. Steven, by contrast, has lived in Columbia Heights with his family since his release by ORR in 2023. He has acquired a “domicil or residence” here. The proposition for which Respondents cite the case has no application to Steven.

Jennings v. Rodriguez, 583 U.S. 281 (2018) is distinguishable because it involved a challenge to the *duration* of the petitioners’ detention, not its initial lawfulness.

Respondents have presented no evidence that Petitioner poses a flight risk. Their claim of danger to the public is based entirely on a single unproven charge of misdemeanor assault. To the extent any governmental entity has inquired into the risks of flight or dangerousness, the Anoka County District Court presiding over Steven’s misdemeanor assault charge had granted him conditional release mere hours before he was detained by ICE as he left the county jail. Because the government is not detaining Petitioner to serve legitimate interests in protecting against danger or flight risk, his detention violates his right to due process under the Fifth Amendment, and this Court should order his immediate release on that basis.

6. The appropriate remedy is immediate release.

If the Court grants Steven’s Petition, the appropriate remedy is immediate release, due to Respondents’ violation of Petitioner’s right to due process. *See Doh H. v. Blanche*, No. 26-cv-02413 (D. Minn. May 6, 2026) (ordering immediate release where petitioner was re-detained by ICE, without a pre-deprivation hearing or a showing of changed circumstances, after years of release on his own recognizance); *Mohamed A. v. Blanche*, No. 26-CV-2799 (JMB/DTS), ECF Dkt. No. 31 at 13, n. 7 (D. Minn. June 18, 2026)

(granting outright release based on “the analysis in *Barco Mercado* [S.D.N.Y.] [concluding] that re-detention absent a revocation [pursuant to 8 C.F.R. § 236.1] of the prior release order violates the Due Process Clause”); *Singh Dhillon v. Mullin*, No. 8:26-CV-229, 2026 WL 1587371, at *3 (D. Neb. June 3, 2026) (ordering outright release on a subsequent habeas petition as “redetention of a person previously released, without formally revoking that order of release or following any procedures prior to making a decision that conflicts with an order of release, violates due process”); *Hernandez-Torres v. Mullin*, No. 8:26CV214, 2026 WL 1430705 (D. Neb. May 21, 2026); (ordering outright release based on prior release on order of recognizance) *Dharamnir Singh v. Mullin*, No. C26-00053-LTS-KEM, 2026 WL 1078710, at *1 (N.D. Iowa Apr. 20, 2026) (same); *Abbas v. Schneider*, No. 4:26-CV-00132, 2026 WL 1079292, at *2 (S.D. Iowa Apr. 17, 2026) (same); *Ermekov v. Mullin*, No. C26-41-LTS-KEM, 2026 WL 1046766, at *3 (N.D. Iowa Apr. 17, 2026) (same); *Balwinder Singh v. Mullin*, No. C26-56-LTS-MAR, 2026 WL 1021846, at *4 (N.D. Iowa Apr. 15, 2026) (same); *Aleksei v. Warden*, No. 5:26-CV-05030-RAL, 2026 WL 1133615, at *1 (D.S.D. Apr. 27, 2026) (ordering outright release on due process grounds—*Mathews* framework—for individual previously granted humanitarian parole); *Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 319-20 (E.D.N.Y. 2025) (where there has been a due process violation, release is the proper remedy rather than a bond hearing because “a post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out.”); *Jefferson G.H.L. v. Blanche*, 2026 WL 1229623, at *3 (D. Minn. May 5, 2026) (release is proper

remedy where ICE "failed to comply with immigration law when arresting and detaining Petitioner"); *Darvin M v. Bondi*, No. 26-CV-0437, 2026 WL 184843 , at *6 (D. Minn. Jan. 24, 2026) ("Respondents' Constitutional violations, as well as their statutory violations, in detaining Petitioner support Petitioner's immediate release"); *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at * 13 -14 (W.D. Tex. Oct. 2, 2025) (finding that "immediate release appropriately remedies Respondents' violation of [Petitioner's] due process rights through her continued detention.").

In the event this Court does not grant Steven immediate release, he requests that this Court conduct its own custody hearing, to determine if Steven should be released on his own recognizance or on bond. This would be a more efficient and effective remedy than a bond hearing in immigration court, based on the arguments and authorities set forth on pages 45-46 of the Petition.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that his Petition for a Writ of Habeas Corpus be granted, and that he be immediately released from custody. In the alternative, Petitioner requests this court conduct its own custody hearing, and in the alternative to that, that this court order a bond hearing.

Respectfully submitted,

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