UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Kevin Jose RAMIREZ MANCIA *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. **David J. VENTURELLA**, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; **David EASTERWOOD**, in his official capacity as Acting Director, St. Paul Field Office, U.S. Immigration and Customs Enforcement; **Eric TOLLEFSON**, in his official capacity as Sheriff of Kandiyohi County; *Respondents*.	Court File No.: **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1. This case seeks the immediate release of 20-year-old Kevin Jose Ramirez Manica ("Petitioner" or "Kevin") from unlawful immigration re-detention and enforcement of his rights as a member of the Pending Petition and Deferred Action Classes certified in *Immigration Center for Women and Children* v. *Noem (ICWC v.*

NOEM"), a nationwide class action. *Immigr. Ctr. for Women & Child, v. Noem,* No. 2:25-CV-09848- AB-AS, 2026 WL 1455004 (C D. Cal. May 20, 2026).

2. Kevin is 20 years old and spent most of his childhood and all of his young adulthood in the United States. He came to the U.S. from Honduras as a child at the age of 13 in May of 2019.

3. After his arrival in 2019, Kevin was detained for 3 days with his father. He was then released on recognizance.

4. From the age of 13, Kevin grew up in Minnesota. He attended school, fostered connections with his community, and formed friendships.

5. On November 12, 2021, Kevin was the victim of 2nd degree assault with a knife and threats of violence while at school. As the direct victim, Kevin cooperated with the police and provided an account of the attack, which lead to the arrest of the perpetrator.

6. Based on the assault and threats he suffered at school, on March 27, 2023, Kevin applied for a U-Visa and an employment authorization. On May 14, 2024, Kevin received notice from USCIS that his application received Bona Fide Determination (BFD).

7. After receiving BFD on his U-Visa application, Kevin was issued a Class C14 Employment Authorization Document (EAD) valid until October 10, 2028. Based on his BFD for his U-visa application and his EAD, USCIS granted Kevin deferred action, protecting him from removal from the United States. Since 2024, Kevin has been

living under the assurance that his deferred action protects him from immigration detention and removal.

8. After receiving his EAD and graduating from [redacted], Kevin began lawfully working at a turkey egg farm in Litchfield on the night-shift cleaning crew.

9. Kevin has strong family ties to the Willmar community. Prior to his detention, Kevin lived in an apartment with his father in Willmar. A cousin of his also lives in Willmar. Kevin also has a U.S. Citizen girlfriend, who is currently pregnant.

10. Kevin has no felony convictions or violent crimes on his record. Kevin's prior criminal record consists of misdemeanor and petty misdemeanor convictions related only to traffic violations and cannabis.

11. On April 4, 2026, Kevin was pulled over by a Montevideo police officer and placed under arrest for allegedly driving under the influence of cannabis and possessing a pistol without a permit. He was charged with 3 misdemeanor offenses arising out of the same incident. Subsequently, he was held in police custody at the Kandiyohi County Jail.

12. After DHS became aware that Kevin was in police custody, Kevin was taken into DHS custody on or about April 7, 2026. Therefore, notwithstanding his previous detention in 2019 and his grant of deferred action, Kevin was re-detained by Respondents and has been held in immigration detention, deprived of his liberty, and separated from his family for months. When searched for in the ICE Detainee Locator, Kevin does not appear as of June 26, 2026 at 6:32 pm.

13. Kevin is in removal proceedings, but his order for removal is currently being appealed to the BIA.

14. Because ICE has detained Kevin and is actively seeking Kevin's removal, which are clearly actions to proceed against Kevin, it is ignoring USCIS's grant of deferred action. Accordingly, ICE's efforts to detain and deport Petitioner amounts to a de facto revocation of such status.

15. To date, USCIS has not issued Petitioner any Notice of Intent to Deny or Revoke its grant of deferred action. As described below, deferred action issued by USCIS based on a pending U visa petition can only be revoked by USCIS. Neither Respondents nor USCIS have provided Kevin any hearing at which they allege that USCIS's grant of deferred action should be revoked, nor have they provided Kevin any opportunity to be heard on the issue of a potential revocation of deferred action.

16. Similarly, Respondents have not provided any hearing regarding revocation of Kevin's release on recognizance to demonstrate material change in circumstances.

17. Kevin's detention is unlawful for at least six reasons.

18. First, Kevin is a member of the Deferred Action Class certified in *ICWC v. Noem*. The court in *ICWC v. Noem* certified a national class and issued a preliminary injunction ("*ICWC* PI Order") staying ICE's policy of refusing to "honor grants of deferred action conferred by USCIS to individuals with pending petitions for U or T visas." *Id.* at *57. As the court held, "a person with deferred action should neither be removed nor detained for immigration enforcement (removal) purposes." *ICWC* PI Order at *40. Kevin's re-detention during his period of deferred action is a violation of the

ICWC PI Order, and therefore his detention violates the Administrative Procedure Act ("APA") because it constitutes agency action "not in accordance with law." 5 U.S.C. § 706(2)(A).

19. Second, procedural due process requires that the government show, in a pre-deprivation hearing, materially changed circumstances before re-detaining Kevin. When ICE released Kevin from its custody in 2019, it necessarily determined that he was neither a flight risk nor a danger to the community. Due process requires that prior to re-detaining him, ICE must demonstrate before a neutral arbiter that conditions have materially changed, justifying his re-detention. *See Singh v. Warden of Golden State Annex Det. Facility*, No. 1:26-CV-1284 DJC CSK, 2026 WL 731053, at *5–6 (E.D. Cal. Mar. 16, 2026), *report and recommendation adopted sub nom. Singh v. Warden of the Golden State Annex Det. Facility*, No. 1:26-CV- 1284 DJC CSK, 2026 WL 802319 (E.D. Cal. Mar. 23, 2026) (ordering immediate release where petitioner was re-detained without notice or a hearing after previously being released on his own recognizance). Kevin's re-detention without any pre-deprivation process violates his procedural due process rights and this alone warrants his immediate release.

20. Moreover, his grant of deferred action created a protectable interest in his continued liberty requiring pre-deprivation process before any detention. Because his detention constitutes a de facto revocation of this deferred action, it is a violation of his procedural due process rights.

21. Third, Kevin's re-detention without pre-deprivation process is arbitrary, capricious, and not in accordance with the law or Constitution, in violation of the

Administrative Procedure Act ("APA"). *See* 5 U.S.C. §§ 706(2)(A)-(B) (Courts "shall … hold unlawful and set aside agency action" that is "arbitrary [and] capricious, … or otherwise not in accordance with law" or "contrary to constitutional right.").

22. Fourth, government officials not authorized by law under 8 C.F.R. § 236.1(c)(9) revoked a prior custody determination to release Kevin on recognizance, violating the *Accardi* doctrine's requirement that agencies comply with their own policies and regulations. *See U.S. ex. Rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). *See also 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" is unlawful).

23. Fifth, the government has no legitimate interest in detaining Kevin when he is neither a flight risk nor a danger—the only two constitutionally permissible reasons for immigration detention. Accordingly, his detention violates his substantive due process rights, requiring his immediate release. The lack of legitimate detention interests is particularly accurate here, where Kevin cannot be removed because of his valid deferred action grant, eliminating any flight risk concerns.

24. Sixth, Kevin's warrantless arrest violates his Fourth Amendment rights, as well as statute and regulation, similarly mandating his release.

25. For these reasons, Petitioner respectfully asks this Court to declare that his detention is unlawful, order his immediate release, and enjoin Respondents from re-

detaining him without meaningful pre-detention process, and otherwise violating his rights in the future.

26. In light of the information and belief that ICE has rapidly moved individuals in its custody out of the District of Minnesota, this petition also requests that the Court's Order to Show Cause ("OSC") immediately enjoin Respondents from moving Kevin outside of the District of Minnesota. Ordering that relief in the OSC is now a nearly universal practice in this District. In addition, this Court's entry of injunctive relief in the OSC would avoid the repetitive briefing and strain on the Court's resources presented by the motion for a temporary restraining order that would otherwise become necessary.

FACTUAL ALLEGATIONS

27. Kevin is a resident of Minnesota and a citizen of Honduras. He has resided in the United States since May of 2019.

28. Kevin entered the country with his father on or about May 2, 2019 at the age of 13. A notice to appear was served on Kevin on May 5, 2019, and he was subsequently detained for 3 days.[1]

29. ICE released Kevin and his father from detention on recognizance, which necessarily involved a determination that Kevin was neither a flight risk of a danger to the community.

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[1]Exhibits will be submitted to the court following the filing of this petition due to expedited filing.

30. On March 27, 2023, Kevin applied for a derivative U-Visa through his father, and for an employment authorization. He was issued an Employment Authorization Document (EAD) valid until October 10, 2028. Based on his EAD and his bona fide application for a U-visa, Kevin was granted deferred action, protecting him from removal from the United States.

31. Kevin has strong educational, family, and community ties in Minnesota.

32. On April 4, Kevin was arrested by local police. On or about April 7, Kevin was taken into immigration detention.

JURISDICTION & VENUE

33. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 (habeas corpus), and art. I, § 9, cl. 2 of the U.S. Constitution ("Suspension Clause").

34. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, the Suspension Clause, and the Court's inherent equitable powers.

35. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) ("[T]he primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases."). Because Kevin seeks to challenge his custody as a violation of the U.S. Constitution, laws, or treaties of the United States, jurisdiction is proper in this Court.

36. Venue lies in this District because it is the judicial district in which Petitioner is currently detained. Venue is also proper in this Court under 28 U.S.C. § 1391(b)(2), (e)(1)(A)-(B) because Respondents are employees, officers, and agencies of the United States, because a defendant resides in this District, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

37. Petitioner was detained in Minnesota. Petitioner's counsel has searched the ICE Detainee Locator using Petitioner's A number and country of origin multiple times, most recently on June 26, 2026. The locator returns "0" results. Respondents initially detained Petitioner at a facility in the state, and, on information and belief, it is presumed that he remains within the District of Minnesota. Thus, venue is proper in Minnesota as the district of confinement.

38. Even if Petitioner has been moved out of the District of Minnesota, the unknown custodian rule grants this Court jurisdiction over this case. *See Henry A. V. P. v. Bondi*, No. 26-01121 (MJD/JFD), 2026 WL 482183, at *1 (D. Minn. Feb. 20, 2026); *Rumsfeld v. Padilla*, 542 U.S. 426, 450 n.18 (2004) ("When ... a prisoner is held in an undisclosed location by an unknown custodian, it is impossible to apply the immediate custodian and district of confinement rules."). Further, "in their concurrence in *Padilla*, Justices Kennedy and O'Connor reasoned that 'if there is an indication that the Government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the Government was not forthcoming with respect to the identity of the custodian and the place of detention ... habeas jurisdiction would be in the district court from whose territory the petitioner

had been removed.'" *Henry A.V.P.*, 2026 WL 482183, at *1 (quoting 542 U.S. at 454, 124 S.Ct. 2711 (Kennedy, J. concurring)). Although the Supreme Court has not formally adopted this exception, it has been applied nationwide. *See Aleksander B. v. Trump*, No. 26-CV-170 (KMM/DJF), 2026 WL 172435, at *2 (D. Minn. Jan. 22, 2026) (gathering cases).

39. Thus, "an exception to this rule applies when a habeas petitioner is initially arrested and detained in this District, ICE moves him without notice, the government has not been forthcoming about his location, and his whereabouts are unknown despite counsel's diligent attempts to locate him." *Henry A.V.P.*, 2026 WL 482183, at *2 (quoting Manuel N.M., 2026 WL 242318, at *2); *see also Aleksander B.*, 2026 WL 172435, at *5-8); *Marcia R.Q., v. Bondi, et al.,* No. 26-CV-881 (KMM/EMB), 2026 WL 296502, at *2 (D. Minn. Feb. 4, 2026) (recognizing an exception to the rule when "the petitioner's location is unknown at the time of filing—such as when the petitioner is in transit—or where immigration authorities have not disclosed where the petitioner is being detained or by whom, and circumstances have prevented or precluded contact with counsel"); *Norma V.A. v. Bondi*, No. CV 26-618 (JRT/DJF), 2026 WL 252506, at *1, n.1 (D. Minn. Jan. 30, 2026) ("[T]he Supreme Court has recognized that when 'a prisoner is held in an undisclosed location by an unknown custodian, it is impossible to apply' the typical rules for determining the proper forum for a habeas petition.'") (quoting *Padilla*, 542 U.S. at 450 n.18)).

PARTIES

40. Petitioner Kevin Jose Ramirez Manica has lived in the United States for over 7 years, since May of 2019. Prior to his detention on or about April 7, 2026, he was residing in Minnesota. Kevin is currently detained and is in the direct control of Respondents.

41. Respondent Todd Blanche is sued in his official capacity as the Acting U.S. Attorney General. As Acting Attorney General, he has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

42. Respondent Markwayne Mullin is sued in his official capacity as Secretary of Homeland Security. As head of the U.S. Department of Homeland Security, the federal agency tasked with enforcing immigration laws, Secretary Mullin is Petitioner's ultimate legal custodian.

43. Respondent David J. Venturella is sued in his official capacity as Acting Director of ICE. As ICE's Acting Director, Respondent Venturella is a legal custodian of Petitioner.

44. Respondent David Easterwood is sued in his official capacity as Field Office Director of the St. Paul Field Office, Enforcement and Removal Operations, ICE. In that capacity, Field Office Director Easterwood has supervisory authority over the ICE agents responsible for detaining Petitioner, in his official capacity, Respondent Easterwood is a legal custodian of Petitioner.

45. Respondent Eric Tollefson is sued in his official capacity as Sheriff of Kandiyohi County. As Sheriff of Kandiyohi County oversees the Kandiyohi County Jail, where Kevin is presently detained, and is therefore one of his legal custodians.

REQUIREMENTS OF 28 U.S.C. § 2243

46. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless 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.*

47. 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) (citation omitted). "The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time." *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978).

48. Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

EXHAUSTION OF LEGAL REMEDIES

49. Detained immigrants petitioning under 28 U.S.C. § 2241 *et seq.* face no statutory exhaustion requirements. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025). Nor is a judicially imposed prudential exhaustion requirement appropriate where, as here, time is of the essence, facts are largely undisputed, and the parties'

disagreement is based on a legal conclusion. *Id.* at 967-68; *see also Giron Reyes v. Lyons*, 801 F. Supp. 3d 797, 803 (N.D. Iowa 2025). Further administrative exhaustion is unnecessary in this case as it would be futile. *See, e.g.*, *Eliseo A.A. v. Olson*, No. 25-3381 (JWB/DJF), 2025 WL 2886729, at *7 (D. Minn. Oct. 8, 2025).

50. It would be futile for Kevin to seek a custody redetermination hearing before an Immigration Judge ("IJ") because of the Board of Immigration Appeals ("BIA")'s decision holding that anyone who has entered the United States without inspection is now considered an "application for admission" who is "seeking admission" and therefore subject to the INA's mandatory detention provision under 8 U.S.C. § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025); *see also Eliseo A.A.*, 2025 WL 2886729, at *7 ("[F]urther administrative review would be futile in light of the BIA's recent decision in *Matter of Yajure Hurtado*. . . . Where the agency has already adopted a definitive position, exhaustion serves no purpose." (citation omitted).

51. Additionally, the IJ does not have jurisdiction to review Kevin's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies related to that claim. *See, e.g.*, *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (BIA 2020); *Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992). *Cf. Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) ("[E]xhaustion would be a futile exercise because the agency does not have jurisdiction to review [the] claim.").

LEGAL FRAMEWORK

A. VIOLATION OF THE PRELIMINARY INJUNCTION ORDER IN *ICWC v. NOEM*

i. Creation of the U visa

52. In 1994, Congress passed the Violence against Women Act ("VAWA") to address the widespread problem of noncitizens remaining in relationships with abusers who held the key to their eligibility for lawful immigration status in the United States. *See* Violent Crime Control and Law Enforcement Act of 1994, Title IV, Pub. L. 103-322, 108 Stat. 1796 (September 13, 1994). "[T]he goal of the bill is to 'permit[ ] battered immigrant women to leave their batterers without fearing deportation.'" Hernandez v. Ashcroft, 345 F.3d 824, 841 (9th Cir. 2003) (quoting H.R. Rep. No. 103–395, at 25).

53. In 2000, with overwhelming bipartisan support, Congress passed the Victims of Trafficking and Violence Protection Act of 2000 ("VTVPA"), which reauthorized VAWA through the Violence Against Women Act of 2000 ("VAWA 2000"). The VTVPA dramatically expanded protections for immigrant survivors.

54. In 2000, through the Battered Immigrant Women Protection Act of 2000 ("BIWPA") Congress created the U visa, providing a pathway to U.S. citizenship to noncitizen survivors of qualifying crimes who assist law enforcement in investigating or prosecuting those crimes. *See* BIWPA § 1513(a)(2)(B), (b); 8 U.S.C. § 1101(a)(15)(U).

55. A noncitizen is eligible for a U visa if (1) the petitioner "suffered substantial physical or mental abuse as a result of having been a victim of" certain explicitly identified types of crime; (2) the petitioner "possesses information concerning

[the] criminal activity"; (3) the petitioner "has been helpful, is being helpful or is likely to be helpful" to government officials regarding the criminal activity; and (4) the crime occurred in the United States or violated U.S. law. 8 U.S.C. § 1101(a)(15)(U)(i)(I-IV).

56. Among Congress's stated purposes in creating the U visa were (1) "to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes. . . committed against [noncitizens], while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States," and (2) to "facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused [noncitizens] who are not in lawful immigration status." BIWPA § 1513(a)(2).

57. As DHS has acknowledged, Congress—

> created the U [visa] program out of recognition that victims without legal status may otherwise be reluctant to help in the investigation or prosecution of criminal activity. Immigrants, especially women and children, can be particularly vulnerable to criminal activity like human trafficking, domestic violence, sexual assault, stalking, and other crimes due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding U.S. laws, fear of deportation, and cultural differences.[2]

58. Congress went further than simply creating the U visa. Congress additionally authorized DHS to waive virtually any ground of inadmissibility to U visa petitioners. *Id.* § 1513(e); 8 U.S.C. § 1182(d)(14).

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[2]DHS, *U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies*, at 4, available at https://niwaplibrary.wcl.american.edu/wp-content/uploads/DHS-U-and-T-Visa-Law-Enforcement-Resource-Guide-11.30.15.pdf (last checked June 8, 2026).

59. In 2008, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"). Pub. L. No. 110-457, 122 Stat. 5044. The TVPRA added § 237(d) to the Immigration and Nationality Act ("INA"), which authorizes DHS to issue a stay of any removal order against a U visa petitioner if the petition "sets forth a prima facie case for approval." 8 U.S.C. § 1227(d)(1). Any such stay remains in effect until the U visa is approved or denied, during which time the applicant "shall not be removed." 8 U.S.C. §§ 1227(d)(1)-(3).

60. Moreover, the TVPRA authorized employment for U visa petitioners who had "a pending, bona fide application" awaiting full adjudication. TVPRA § 201(c) (codified at 8 U.S.C. § 1184(p)(6)).

ii. U visa interim benefits: deferred action and work authorization pursuant to the bona fide determination and waiting list processes

61. In 2007, DHS promulgated regulations setting forth the process for adjudicating U visa petitions. *See* Interim Rule, 72 Fed. Reg. 53014 (Sept. 17, 2007). Because there is a statutory limit of 10,000 visas that may be conferred annually, 8 U.S.C. § 1184(p)(2), a significant, years-long backlog for U visa petitions exists. To address the backlogs, these DHS regulations created interim benefits for petitioners while they wait. The regulations require that crime victims who are not granted U visas "due solely to the cap . . . must be placed on a waiting list." 8 C.F.R. § 214.14(d)(2). USCIS must "grant deferred action" to individuals placed on the waiting list until a U visa becomes available. *Id.* Wait-listed individuals are also eligible for work authorization. *Id.*

62. In 2021, as a means to implement the provision of 8 U.S.C. § 1184(p)(6) authorizing employment for bona fide U visa petitioners, USCIS created a formal Bona Fide Determination ("BFD") process, which is reflected in the USCIS Policy Manual ("PM").[3]

63. In the BFD process, rather than the full adjudication required for the waiting-list process, USCIS conducts a streamlined initial review of the petition to determine whether it is "bona fide." PM, vol. 3, pt. C, ch. 4. The determination is "based on the petitioner's compliance with initial evidence requirements and successful completion of background checks," after which USCIS "considers any national security and public safety risks, as well as any other relevant considerations," in deciding whether to issue an EAD and deferred action. PM, vol. 3, pt. C, ch. 5. "If USCIS determines a principal petitioner and any other qualifying family members have a bona fide petition and warrant a favorable exercise of discretion, USCIS issues them BFD EADs and grants deferred action." PM, vol. 3, pt. C, ch. 5.C.

64. Petitioners granted a BFD EAD and deferred action are placed in the queue to wait for a U visa to become available as if they were on the U visa waiting list.

65. A BFD EAD and deferred action are valid for four years and renewable. PM vol. 3, pt. C, ch. 5.

[3]"The USCIS Policy Manual is the agency's centralized online repository for USCIS' immigration policies." PM, available at https://www.uscis.gov/policy-manual (last checked (last checked June 8, 2026).

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66. USCIS identifies four circumstances when early revocation of deferred action is appropriate: (1) "if USCIS determines a national security or public safety concern is present," (2) "if USCIS determines the BFD EAD and deferred action is no longer warranted," (3) if "the Form I-918 Supplement B law enforcement certification is withdrawn" by the certifying agency, or (4) "USCIS determines the prior BFD EAD was issued in error." *Id.*

67. For those deemed ineligible for a BFD EAD and deferred action, USCIS proceeds to a full adjudication of the petition and determines whether any applicable inadmissibility grounds are waivable. If the petition is approvable and a U visa is not available due solely to the annual cap, USCIS then places petitioners on the U visa waiting list and must confer deferred action until a U visa becomes available or a change in circumstances causes USCIS to remove the petitioner from the waiting list. PM, vol. 3, pt. C, ch. 4.

68. Because deferred action for those on the waiting list is mandatory by regulation, it can only be revoked due to a material change in eligibility for the U visa. *See* 8 C.F.R. § 214.14(d)(2)-(3).

69. Pursuant to USCIS policy, only USCIS may revoke deferred action conferred in connection with a U visa petition. PM vol. 3, pt. C, ch. 5.; 8 C.F.R. § 214.14(d)(2)-(3).

70. Once a U visa finally becomes available to someone with a BFD EAD or someone on the waiting list, USCIS will conduct another background check to screen for any new material facts affecting eligibility, and if none, approve the visa. PM, vol. 3,

pt. C, ch. 7.A-B. The visa recipient is authorized to work incident to status and may apply for lawful permanent residence three years later. 8 C.F.R. § 274a.12(19)-(20); 8 C.F.R. § 245.24(b).

iii. Until 2025, decades of agency policy guidance presumptively protected U Visa petitioners from immigration enforcement

71. Consistent with Congress's intent to encourage noncitizen victims to report crime, for nearly two decades, DHS policies have generally required ICE to refrain from pursuing removal efforts against people with pending U visa petitions absent serious public safety concerns.[4] These include written policies issued in 2011 and 2021. *See* John Morton, ICE Policy Statement 10076.1, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (Jun. 17, 2011) ("2011 Policy"), available at

[4]*See* Memorandum from William J. Howard, Principal Legal Advisor, to All OPLA Chief Counsel, *Prosecutorial Discretion* (Oct. 24, 2005), available at https://www.aila.org/library/ice-prosecutorial-discretion-memo (last checked June 8, 2026); Memorandum from William Howard, Principal Legal Advisor, to All OPLA Chief Counsel, *VAWA 2005 Amendments to the Immigration and Nationality Act and 8 U.S.C. § 1367* (Feb. 1, 2007), available at https://www.ice.gov/doclib/foia/policy/memoVAWA_2005_INA_Amendments_02.01.20_07.pdf (last checked June 8, 2026); Memorandum of David J. Venturella, Acting Director, Detention and Removal Operations, to Field Office Directors, *Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant Status (U-visa) Applicants*, (Sept. 24, 2009), available at https://www.ice.gov/doclib/foia/dro_policy_memos/11005_1-hd-stay_requests_filed_by_u_visa_applicants.pdf (last checked June 8, 2026); Memorandum from Peter S. Vincent, Principal Legal Advisor, to OPLA Attorneys, *Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal* (Sept. 25, 2009), available at https://www.ice.gov/doclib/foia/dro_policy_memos/vincent_memo.pdf (last checked June 8, 2026); ICE Directive 11005.2, *Stay of Removal Requests and Removal Proceedings Involving U Nonimmigrant Status (U Visa) Petitioners*, (Aug. 2. 2019), available at https://www.ice.gov/doclib/foia/policy/11005.2_StayRemovalReqRemProcUVisaPetitioners.pdf; (last checked June 8, 2026).

https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf (last checked June 8, 2026), and ICE Directive 11005.3, Using a Victim-Centered Approach with Noncitizen Crime Victims (Dec. 2, 2021) ("2021 Directive"), available at https://www.ice.gov/doclib/foia/policy/11005.3_UsingVictimCenteredApproachNoncitizenVictims.pdf (last checked June 8, 2026).

72. As with prior DHS policy, the 2011 Policy reiterated that "[a]bsent special circumstances or aggravating factors," it is generally "against ICE policy to initiate removal proceedings against" known victims of crime. 2011 Policy at 1. Notably, the 2011 Policy explains "that a flag now exists in" DHS systems "to identify those victims of domestic violence, trafficking, or other crimes who already have filed for . . .victim-based immigration relief." 2011 Policy at 3.

73. The 2021 Directive continued ICE's longstanding policy to "refrain from taking civil enforcement action against" individuals "known to have a pending application" for "victim-based immigration benefits," "absent exceptional circumstances" such as national security or public safety concerns. 2021 Directive at 1-2, 9. If such an application was pending, ICE was to "defer" enforcement until USCIS adjudicates the petition or issues a negative interim adjudication. *Id.* at 2. Agents were to request expedited prima facie adjudications from USCIS for people in ICE custody, and eligibility "for victim-based immigration benefits . . . must be considered" a "positive discretionary factor." *Id.* at 2, 9.

74. On January 30, 2025, ICE issued a policy directive that, for the first time in the agency's history, authorized the routine detention and removal of noncitizen victims

of crime who had petitioned for victim-based immigration benefits, such as the U visa. *See* ICE Policy Number 11005.4, Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits (Jan. 30, 2025) ("2025 Guidance"), available at https://www.ice.gov/doclib/foia/policy/11005.4.pdf (last checked June 8, 2026).

75. The 2025 Guidance became "effective immediately and remains in effect until superseded." 2025 Guidance at 1. It explicitly "rescinded and superseded" the 2021 Directive and 2011 Policy, thereby reneging the government's promise to protect noncitizen crime victims and greenlighting a deportation campaign that ignores their potential eligibility for relief.

76. Specifically, the 2025 Guidance requires, when ICE officers seek to detain or remove individuals with pending U visa petitions, that they (1) merely "coordinate and deconflict internally" with law enforcement agencies "to ensure criminal investigative and other enforcement actions will not be compromised," (2) "consult with" local ICE attorneys only "to ensure any such action is consistent with applicable legal limitations," (3) need not consider a noncitizen being "a victim of a crime" as "a positive discretionary factor," and (4) will not "routinely request expedited adjudications from USCIS," but may do so only when "it is in ICE's best interests." 2025 Guidance at 2-3.

77. The 2025 Guidance marked an abrupt about-face from longstanding DHS practices, under which immigration agencies generally refrained from enforcement against crime victims absent serious adverse factors.

78. As a result of the 2025 Guidance, ICE now engages in an unlawful policy and practice under which it routinely detains and deports people who have valid grants of deferred action from USCIS in connection with pending U or T visa petitions.[5] Neither Respondent ICE nor USCIS provides any notice or opportunity to be heard regarding whether such deferred action should be revoked prior to doing so. This policy, referred to herein and in *ICWC* as the De Facto Revocation Policy, unlawfully renders deferred action status meaningless.

iv. Petitioner is a deferred action class member in *ICWC v. Noem.*

79. On October 14, 2025, several individual plaintiffs and non-profit legal organizations serving immigrant survivors filed a class action complaint in *ICWC*, challenging the lawfulness of the 2025 Guidance and, as relevant here, the De Facto Revocation Policy. See Compl. ¶¶ 200-233 *ICWC v. Noem*, No. 2:25-cv-09848-AB-AS (C.D. Cal. Oct. 14, 2025) [Dkt. 1].

80. On May 20, 2026, the U.S. District Court for the Central District of California granted plaintiffs' Motion for Class Certification and granted in part plaintiffs' Motion for APA § 705 Relief and Individual and Classwide Preliminary Injunction. *ICWC PI Order.*

[5]A T visa petition is a separate survivor-based immigration benefit program, for survivors of severe forms of human trafficking.

81. As part of its ruling, the court provisionally certified three classes, including, as relevant here, the Deferred Action Class,[6] and stayed the De Facto Revocation Policy pursuant to 5 U.S.C. § 705 as to Deferred Action Class members. *Id.* at 95-96 ("Pursuant to 5 U.S.C. § 705, the Court hereby STAYS the 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.").

82. Specifically, the court concluded that plaintiffs were likely to prevail on the merits of their claims that the De Facto Revocation Policy is arbitrary and capricious under the APA, violates the *Accardi* doctrine requiring agencies to follow their own procedures, and violates class members' due process rights under the Fifth Amendment. *Id.* at 75-84 ("Because ICE lacks authority to revoke USCIS grants of deferred action status, ICE cannot de facto revoke that status."); id. at 84 (holding ICE violated class members' "right to due process because pursuant to the Policy, Defendants have pursued immigration enforcement actions against them despite their deferred action status."). As a result, ICE may not detain Deferred Action Class members.

83. Here, Petitioner is a member of the Deferred Action Class in *ICWC* because he:

a. is an individual to whom USCIS has granted deferred action based on a pending U visa petition; and

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[6]The Deferred Action Class is defined as: "All 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." *ICWC* PI Order at *95.

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b. during the authorized period of deferred action, was detained by ICE without being provided notice and an opportunity to be heard regarding the potential revocation of that deferred action status.

ICWC v. Noem, 2026 WL 1455004, at *46–47; *see also* n.7 *supra.*

84. Accordingly, the 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," may not be applied to Petitioner. *Id.* at 96. Therefore, immediate release is warranted.

B. DUE PROCESS CLAUSE: PROCEDURAL DUE PROCESS

85. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *accord Trump v. J.G.G.*, 605 U.S. 670, 673 (2025). "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.

86. This fundamental due process protection applies to all noncitizens within the United States, including both deportable and inadmissible noncitizens. *See id.* at 693 (explaining procedural due process applies to all "persons" within the United States, including noncitizens, "whether their presence here is lawful, unlawful, temporary, or permanent"); *Plyler v. Doe*, 457 U.S. 202, 212 (1982); *see also, e.g.*, *Abdirashid H. M. v. Noem*, No. 25-4779 (JRT/EMB), 2026 WL 127698, at *4 (D. Minn. Jan. 9, 2026) (finding constitutionally protected liberty interest when petitioner had previously been "liv[ing] a productive life in the community"); *Maldonado v. Olson*, 795 F. Supp. 3d

1134, 1148 (D. Minn. 2025) (finding a noncitizen had a significant constitutionally protected private interest in part based on separation from her children); *Ixquiactap-Ajpacaja v. Mullin*, No. 4:26-CV-3143, 2026 WL 1295702 (D. Neb. May 12, 2026) (ordering outright release for individual with previous UAC status released by ORR). [7]

87. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risk of danger to the community and prevent flight. *Zadvydas v. Davis*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. Thus, to withstand constitutional scrutiny, the nature and duration of immigration detention must be reasonably related to these purposes. Absent adequate procedural protections, substantive due process requires a "special justification" that "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690; *accord, e.g.*, *Fernandez v. Lyons*, 2025 WL 2531539, at *4 (D. Neb. Sept. 3, 2025) (describing the standard for substantive due process violation).

88. Additionally, procedural due process protects noncitizens against deprivation of liberty without adequate notice and the opportunity to be heard. *A.A.R.P. v. Trump*, 605 U.S. 91, 95-96 (2025); *J.G.G.*, 604 U.S. at 673. To evaluate whether civil immigration detention violates procedural due process, courts apply the three-part

[7] The recent decisions in *Avila v. Bondi,* 170 F.4th 1128 (8th Cir. 2026) and *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) address only statutory habeas claims. Accordingly, other claims for habeas relief are not foreclosed. *See, e.g.*, *See, e.g., Manuel G. v. Blanche*, No. 26- CV-2385 (SRN/ECW), 2026 WL 1256358, at *3 (D. Minn. May 7, 2026) ("While Avila addressed a noncitizen's statutory rights, it did not address his due process rights."); *Hassen v. Noem*, 3:26-cv-00048-DB, 2026 WL 446506, at *2 n.1 (W.D. Tex. Feb. 9, 2026) (explaining that *Buenrostro-Mendez* did not change the outcome of a habeas grant on due process grounds).

balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), weighing (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." *See, e.g.*, *Selvin Adonay E.M. v. Noem*, No. 25-cv- 3975, 2026 WL 3157839, at *8 (D. Minn. Nov. 12, 2025) (applying *Mathews*); *Abdirashid*, 2026 WL 127698, at *4 (same); *Aleksei M. 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).

89. The Eighth Circuit recently rejected a claim that prolonged mandatory detention under 8 U.S.C. § 1226(c)—which applies to people with certain types of criminal records while their removal proceedings are pending—violated procedural due process. *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024). There, the Circuit concluded that the Supreme Court's holding in *Demore v. Kim* controlled. *Banyee*, 115 F.4th at 933 (stating that the majority in *Demore* "opted for a bright-line rule" that "the government can detain an alien for as long as deportation proceedings are still 'pending'" (quoting *Demore*, 538 U.S. at 527)). *Demore*, in turn, expressly dealt only with mandatory detention for people with certain criminal records pursuant to the version of 8 U.S.C. § 1226(c) in effect at that time. The *Demore* Court concluded that this mandatory detention statute was reasonable only after reviewing in detail the information Congress

had before it when enacting the provision, which showed that writ large, noncitizens with certain criminal records were failing to appear for removal proceedings (flight risk) *and* posed a serious risk of criminal recidivism (danger to the community). *Demore*, 538 U.S. at 518-21. Detention under § 1225(b) was not at issue in *Banyee* or *Demore*, and as-applied due process challenges to § 1225(b) detention remain available. *See Maldonado*, 795 F. Supp. 3d at 1154 (rejecting application of *Banyee* where, unlike Mr. Banyee, the petitioner did not have a "lengthy criminal history that placed [them] in custody under § 1226(c)"); *Selvin Adonay E.M.*, 2025 WL 3157839, at *8 (similar); *see also Jenkins C. v. Barr*, No. 20-cv-320, 2020 WL 2559562, at *5 (D. Minn. May 4, 2020) (noting that *Jennings* left open as-applied constitutional challenge to § 1225(b) detention), *report and recommendation adopted*, 2020 WL 2557947 (May 20, 2020); *see also Doh H. v. Blanche*, No. 0:26-cv-02413 (D. Minn. May 06, 2026) (ordering outright release even where petitioner was detained under 1226(c)).

90. Accordingly, a number of courts in the Eighth Circuit have granted habeas petitions filed by unadmitted noncitizens challenging various forms of mandatory detention on procedural due process grounds. *See, e.g.*, *Javier R.M. v. Blanche,* No. 26-CV-2283 (LMP/DLM), 2026 WL 1506306 (D. Minn. May 29, 2026) (granting habeas and ordering bond hearing for SIJS beneficiary detained by ICE years after release to sponsor as a UC, on procedural due process grounds); *Axel J.M.C. v. Stanski*, No. CV 26-2281 (JRT/EMB), 2026 WL 1171344, at *3 (D. Minn. Apr. 29, 2026) (Granting habeas on procedural due process grounds and ordering a bond hearing within 24 hours or release to SIJS beneficiary detained by ICE years after being processed and released as a

UC); *see also Selvin Adonay E.M.*, 2025 WL 3157839, at *8-10; *Abdirashid H.M.*, 2026 WL 127698, at *4-5; *Feisal O. v. Noem*, No. 26-CV-81 (JMB/EMB), 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026); *Mahad S. v. Noem*, No. 26-CV-476 (JMB/JFD), 2026 WL 177860, at *3 (D. Minn. Jan. 22, 2026); *Rodriguez Vega v. Arnott*, No. 6:26-cv-3097, 2026 WL 482906, at *6 (W.D. Mo. Feb. 20, 2026); *Eliseo A.A. v. Olson*, No. CV 25-3381 (JWB/DJF), 2025 WL 2886729, at *7 (D. Minn. Oct. 8, 2025); *Yrysbaev v. Arnott*, No. 6:26-cv-3047, 2026 WL 395897, at *3-4 (W.D. Mo. Feb. 12, 2026); *Garcia Picazo v. Sheehan*, No. C25-4057-LTS-MAR, 2025 WL 3006188, at *3-4 (N.D. Iowa Oct. 27, 2025); *Jacinto v. Trump*, 796 F. Supp. 3d 584, 590-91 (D. Neb. 2025).

91. Where an individual has been re-detained with no pre-deprivation process following a previous determination by the government that they were not a danger to the community or a flight risk, many courts have found outright release to be the appropriate remedy. *See*, *e.g.*, *Feisal O. v. Noem*, No. 26-CV-81 (JMB/EMB), 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026) (granting release because Petitioner's re-detention "without Respondents first formally revoking [his Order of Supervision] … violates due process"); *Garcia Picazo v. Sheehan*, No. C25-4057-LTS-MAR, 2025 WL 3006188, at *5 (N.D. Iowa Oct. 27, 2025) (ordering immediate release on due process grounds where DHS continued detaining Petitioner after IJ determined he could be released on bond); *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*, No. 2:25CV6065 (NJC), 2025 WL 3314420, at *31 (E.D.N.Y. Nov. 28, 2025) (explaining

that, in cases of re-detention of a noncitizen in violation of the Fifth Amendment, "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").

C. DEFERRED ACTION

92. Separately, this case also involves a grant of deferred action. "Deferred action" is an "affirmative immigration benefit" that operates to "prevent[] recipients' removal from the United States," for a specified period of time, even if they are otherwise potentially removable. *Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901, 909, 912 (W.D. Wash. 2025); *see generally* USCIS Policy Manual [hereinafter "USCIS PM"], Vol. 1, Pt. H, Ch. 2.A.4, https://www.uscis.gov/policy-manual; *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) (noting deferred action means "no action will thereafter be taken to proceed against an apparently deportable alien even on grounds normally regarded as aggravated"); *Victor G. v. Lyons* No. 26-cv-119, 2026 WL 127733, at *2-3 (D. Minn. Jan 17, 2026) (explaining deferred action). Deferred action is a "formal determination" by DHS "not to remove a particular individual," and noncitizens with deferred action are "considered to be in a period of stay authorized under USCIS policy for the period deferred action is in effect." *Sepulveda Ayala*, 794 F. Supp. 3d at 912-13 (citation omitted); *see* 8 C.F.R. § 1.3(A)(4)(vi). Deferred action is "not simply a non-enforcement policy." *DHS v. Regents of University of Cal.*, 591 U.S. 1, 18 (2020). Rather, it is an "affirmative determination that certain individuals meet enumerated criteria and are entitled to forbearance from removal and work authorization." *Sarmiento*

v. Perry, No. 25- cv-01644-AJT-WBP, 2026 WL 131917, at *7 (E.D. Va. Jan. 19, 2026) (citing *Regents*, 591 U.S. at 18); *see also* 8 C.F.R. § 247a.12(c)(14) (eligibility for work authorization).

93. Deferred action is granted "based on a prescribed set of factors generally related to humanitarian grounds," *Sepulveda Ayala*, 794 F. Supp. 3d at 912 (citations omitted), often in connection with an application for lawful immigration status for survivors of violence or abuse. For example, deferred action is available for: crime survivors with approved U-visa applications or pending applications USCIS has determined are bona fide; trafficking survivors with pending T-visa applications that USCIS has determined are bona fide; domestic abuse survivors with approved self-petitions under the Violence Against Women Act ("VAWA"), and youth who have been abused, neglected, or abandoned by a parent who have approved petitions for Special Immigrant Juvenile Status ("SIJS"). 8 C.F.R. §§ 214.14(d)(2), 214.205(c), (e); USCIS PM, Vol. 3, Pt. C, Ch. 5 & Pt. D, Ch. 5.D.2; *see also A.C.R. v. Noem*, No. 25-cv-3962, 2025 WL 102611 (E.D.N.Y. Jan. 14, 2026) (explaining SIJS deferred action program). Deferred Action for Childhood Arrivals ("DACA") is also a form of deferred action. *Regents*, 591 U.S. at 10.

94. In deciding deferred action requests, USCIS considers whether the noncitizen warrants a favorable exercise of discretion based on the totality of the evidence. Generally, this evaluation includes consideration of whether the noncitizen poses a danger to the public or a national security risk. *See, e.g.*, *Victor G.*, 2026 WL 127733, at *3 (noting USCIS "already determined [the petitioner] is not a 'risk to

national security or public safety' by virtue of its bona fide determination and grant of employment authorization and deferred action"); *F.R.P. v. Wamsley*, No. 3:25-CV-1917, 2025 WL 3037858, at * 4 (D. Or. Oct. 30, 2025) (explaining that the "mere fact" of the petitioner's VAWA approval, giving rise to deferred action, suggests he is neither a flight risk or a danger to the community, since it required a criminal background check and showing of "good moral character"); *Gamez Lira v. Noem*, No. 1:25-cv-855, 2025 WL 2581710, at *3 (D.N.M. Sept. 5, 2025) (explaining that a DACA grant was evidence that DHS already determined the recipient poses no danger or flight risk).

CLAIMS FOR RELIEF

COUNT I
Violation of APA 5 U.S.C. § 706(2)(A)
Petitioner's Detention Is Not in Accordance with Law because It Violates the *ICWC v. Noem* Preliminary Injunction Order

95. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

96. Kevin has a pending U visa petition, and he was granted deferred action based on that pending petition. He is therefore a member of *ICWC v. Noem* Deferred Action Class. *See ICWC v. Noem,* 2026 WL 1455004, at *47.

97. The court in *ICWC v. Noem* issued a preliminary injunction which reinstated ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Dec. 2, 2021) (the "2021 Directive"). *ICWC v. Noem,* 2026 WL 1455004, at *47.

98. The 2021 Directive provided that, for persons with pending U visa petitions, "absent exceptional circumstances," ICE was to "defer" enforcement until USCIS adjudicates the petition or issues a negative interim adjudication. *ICWC,* 2026 WL 1455004, at *6.

99. The *ICWC* court also ordered DHS to stay its De Facto Revocation Policy, under which ICE arrests, detains, and/or removes individuals who have been granted deferred action in connection with their pending petitions for U visas. The court described the policy as one "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.

100. Under the APA, courts "shall . . . hold unlawful and set aside agency action . . . found to be . . . not in accordance with law." 5 U.S.C. § 706(2)(A).

101. Respondent's detention of Kevin 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).

102. The stay applies in favor to members of the Deferred Action Class, which includes Kevin. *ICWC* PI Order at *47.

103. Respondents detained Kevin pursuant to the stayed De Facto Revocation policy.

104. Accordingly, Respondents' detention of Kevin is not in accordance with law because it violates the APA, as it directly contravenes the relief issued in the *ICWC* Preliminary Injunction Order.

COUNT II
Violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)
Petitioner's Re-detention After His Prior Release on Recognizance is a Violation of Law

105. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

106. The APA provides that a "reviewing court shall … hold unlawful and set aside agency action, findings, and conclusions" that are (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to constitutional right, power, privilege or immunity; (c) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, or (d) without obstruction of procedures required by law. 5 U.S.C. § 706(2). In order to be reviewable under the APA, the challenged action must constitute a final agency action, which includes "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). Final agency action is arbitrary and capricious if the agency fails to "articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (internal citations omitted). Courts may not consider an agency's "impermissible post hoc rationalizations." *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020) (internal citations omitted).

107. Although the INA purports to authorize DHS to revoke recognizance and parole "at any time," DHS has long applied the rule promulgated by the BIA in *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) in the context of parole revocation—that DHS

requires a showing of a "material change in circumstances" before re-detaining noncitizens it previously released on recognizance. *See Saravia*, 280 F. Supp. 1168. Regardless, "[e]ven when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute." *Vilela*, 2025 WL 3101334, at *3.

108. DHS's decisions to re-detain Kevin constitutes reviewable final agency action because the re-detentions mark the "consummation" of the DHS's decision-making process on the question of Kevin's custody, and it is an action "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1977) (internal citations omitted). Indeed, the "practical and legal effects of the agency action" are that Kevin has been deprived of his liberty with no end in sight. *Or. Natural Desert Ass'n v. U.S. Forest Service*, 465 F.3d 977, 982 (9th Cir. 2006).

109. DHS's decision to re-detain Kevin was an abuse of discretion and contrary to law where it departed from its policy and practice of requiring a "material change in circumstances" before re-detaining noncitizens it had originally released on parole. *See Saravia*, 280 F. Supp. 3d at 1187. The decisions were also arbitrary and capricious in violation of the APA where the agency failed to contemporaneously—or ever—articulate any flight-risk or danger-based justifications for those decisions. *Motor Vehicle Mfrs. Ass'n of U.S.*, 463 U.S. at 42–43; *Regents*, 591 U.S. at 21. And as described below, the decisions were also contrary to constitutional right.

110. As such, DHS's decision to re-detain Kevin was in violation of the APA. Such action must be set aside, and release ordered.

COUNT III
Violation of the Administrative Procedure Act,
5 U.S.C. § 706(2)(A) – *Accardi Doctrine*
Unlawful Failure to Follow/Effective Rescission of 8 C.F.R. § 236.1(c)(9); C.F.R. § 1236.1(c)(9)

111. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

112. Under the *Accardi* doctrine, federal agencies are required to follow their own binding regulations, and failure to do so renders resulting agency action unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). The *Accardi* doctrine extends beyond just "regulations" to include, e.g., "internal operating procedures," "handbook[s]," "policy statements," and other evidence of an agency's "usual practice." *Id.* at 1162.

113. Courts have regularly applied this principle to the immigration context. *See, e.g., Alcaraz v. I.N.S.*, 384 F.3d 1150, 1162 (9th Cir. 2004). The *Accardi* doctrine is particularly important "[w]here the rights of individuals are affected," and it gives rise to a claim against an agency "even where the internal procedures are possibly more rigorous than otherwise would be required" by statute. *Morton*, 415 U.S. at 235. *Accardi* thus applies with full force in immigration proceedings and is enforceable through habeas corpus where regulatory violations result in detention.

114. First, Respondents' act of re-detaining Kevin violates the *Accardi* doctrine because they failed to revoke his release before doing so. DHS regulations implementing 8 U.S.C. § 1226(b) authorize revocation of release from custody under the statute only in the "discretion of the district director, acting district director, deputy director, assistant director for investigations, assistant director for detention and deportation, or officer in charge (except foreign)." 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9); *see also Sandhu v. Mullin*, No. 7:26CV5009, 2026 WL 1146643, at *4 (D. Neb. Apr. 28, 2026) ("[A]s the regulation shows, that discretion [to revoke parole] must be exercised by *someone*; *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" is unlawful).

115. Here, there is no evidence a 'district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge' exercised discretion to revoke Sandhu's conditional parole." (emphasis in original) (citing 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9)).

116. The re-detention of Kevin revoked a prior custody determination by government officials not authorized by law to make this determination in violation of the APA and in violation of the *Accardi* doctrine's requirement that agencies comply with their own regulations.

117. Second, Respondents' act of detaining Kevin violates the Accardi doctrine because they did not revoke his deferred action in accordance with their procedure. The USCIS Policy Manual lays out specific grounds on which deferred action—and its protection against detention—may be revoked. For deferred action based on a U visa Bona Fide Determination, USCIS identifies four scenarios on which it may revoke: (1) "if USCIS determines a national security or public safety concern is present," (2) "if USCIS determines the BFD EAD and deferred action is no longer warranted," (3) if "the Form I-918 Supplement B law enforcement certification is withdrawn" by the certifying agency, or (4) "USCIS determines the prior BFD EAD was issued in error." PM vol. 3, pt. C, ch. 5.C.

118. As for deferred action based on an applicant's position on the waiting list, revocation is only permissible if USCIS determines that the person no longer qualifies for the U visa. 8 C.F.R. § 214.14(d)(2)-(3).

119. 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).

120. Here, Petitioner received deferred action through BFD. Thus, any revocation of this deferred action must take place in accordance with the USCIS Policy Manual. Rather than following these procedures, Respondent ICE took matters into its own hands by stripping deferred action through detaining Petitioner.

121. 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.

COUNT IV
Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution: Procedural Due Process

122. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

123. Even "[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner." *Salerno*, 481 U.S. at 746. Due process requires notice and opportunity for Kevin to be heard before he may be re-detained and before his deferred action may be revoked.

124. Kevin was released on recognizance in 2019, which under 8 U.S.C. § 1226(a) and 8 C.F.R. §1236.1(c)(8) requires a finding that he was not a flight risk or a danger. Therefore, due process requires that, prior to re-detaining him and effectively revoking this release, Respondents demonstrate before a neutral arbiter that conditions have materially changed, justifying Kevin's re-detention. *See Osman J.M.A. v. Blanche*, No. CV 26-2123 (DWF/DJF), 2026 WL 1005056, at *3 (D. Minn. Apr. 14, 2026) ("[Where a noncitizen] was released previously pursuant to an [order for release on

recognizance] . . . the government cannot revoke the [order for release on recognizance] without due process."); *Singh v. Warden of Golden State Annex Det. Facility*, No. 1:26-CV-1284 DJC CSK, 2026 WL 731053, at *5–6 (E.D. Cal. Mar. 16, 2026), *report and recommendation adopted sub nom. Singh v. Warden of the Golden State Annex Det. Facility*, No. 1:26-CV- 1284 DJC CSK, 2026 WL 802319 (E.D. Cal. Mar. 23, 2026) (ordering immediate release where petitioner was re-detained without notice or a hearing after previously being released on his own recognizance).

125. Further, Kevin received deferred action status through the BFD of his U visa application. Respondents' detention of Kevin and their attempts to remove him amount to a de facto revocation of such status. Deferred action issued by USCIS based on a pending U visa petition can only be revoked by USCIS. To date, neither Respondents nor USCIS have provided Petitioner any hearing at which they allege that USCIS's grant of deferred action should be revoked, nor have they provided Petitioner any opportunity to be heard on the issue of a potential revocation of deferred action. Therefore, there has been no process regarding the revocation of Kevin's deferred action.

126. Thus, the government's infringement on Kevin's liberty interest triggers a right to contest that infringement, for example, through a hearing before the right is deprived. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972). The essence of procedural due process is that a person risking a serious loss must have "an opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Yrysbaev v. Arnott*, Case No. 6:26-cv-3047-MDH, 2026 WL 395897, at *3 (W.D.Miss. Feb 12, 2026) (citation omitted).

127. To evaluate whether civil immigration detention violates procedural due process, courts apply the three-part balancing test in *Mathews v. Eldridge* weighing (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 v. Eldridge*, 424 U.S. 319, 335 (1976).

128. The first *Mathews* factor weighs heavily in Kevin's favor because the private interests that will be affected by his detention are profound. There is no question that freedom from government imprisonment is a significant private interest that "lies at the heart of the liberty that" Due Process protects. *Zadvydas*, 533 U.S. at 690. Here, Kevin's private interests are especially weighty because (1) he has developed strong ties to the United States by spending his childhood here, (2) his previous release from detention on recognizance creates a heightened interest in his continued freedom, and (3) his deferred action status and employment authorization create a property interest.

129. First, as a young man who has spent formative years in the United States, Kevin has a heightened private liberty interest. Kevin has resided in the United States since the age of 13. Over the course of seven years, he spent his childhood and young adulthood in this country. He has gotten an education in the United States, graduated high school, attained lawful employment authorization, and worked in his community. He lives with his father, has strong familial connections to his town, and has a U.S. Citizen

girlfriend who is pregnant. Since he was a child, Kevin has developed ties to his community. Therefore, Kevin's protected liberty interest "deserves great weight and gravity." *Acosta Dominguez v. Noem*, No. EP-25-CV-00741-DB, 2026 WL 67200, at *4 (W.D. Tex. Jan. 8, 2026). His liberty interest only increased over time.

130. Yet Kevin, who is a 20-year-old, is being held "far from [his] family," in "the same conditions as criminal inmates." *Jacinto v. Trump*, 796 F. Supp. 3d 584, 590 (D. Neb. 2025); *see also Selvin Adonay E.M. v. Noem*, 817 F. Supp. 3d 720, 734 (D. Minn. 2025) (noting the first *Mathews* factor weighs in petitioner's favor when the conditions of confinement are "indistinguishable from criminal incarceration").

131. Second, Kevin's private liberty interest is heightened because he was previously released from custody as a 13-year-old child on recognizance. As a result, he has an interest in his continued liberty. In addition, the length of time—over seven years—that Kevin relied on this protected expectation of continued liberty "elevates and underscores his interest in liberty." *Singh v. Warden*, 2026 WL 731053, at *5, *report and recommendation adopted sub nom. Singh v. Warden*, 2026 WL 802319 (noting the liberty interest of petitioner released for over three and a half years on recognizance); *see also Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1030–33 (N.D. Cal. 2025) (holding that noncitizens on conditional release "possess an interest in their continued liberty, *which grows over time*, and a due process right to a hearing before being re-detained" (emphasis added); *Ventura Ramirez v. Warden*, No. 1:25-CV-1775-DC- CKD P, 2026 WL 743353 (E.D. Cal. Mar. 17, 2026) ("The government's actions in releasing petitioner into the United States and allowing him to reside at liberty for years and also to re-integrate into

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his community after release from jail supports finding a strong private interest for petitioner.").

132. Third, Kevin has a strong liberty interest in light of his grant of deferred action and his employment authorization. Where "continued possession" of benefits such as deferred action or employment authorization has "become essential in the pursuit of a livelihood," and revocation of those benefits "involves state action that adjudicates important interests," they "are not to be taken away without [] procedural due process." *Bell v. Burson*, 402 U.S. 535, 539 (1971). Because his detention constitutes a de facto revocation of his deferred action, Kevin's livelihood and private interests are at risk. *See* 8 C.F.R. § 274a.12(c)(14); *See, e.g.*, *Gamez Lira v. Noem*, No. 1:25-cv-00855-WJ-KK, 2025 WL 2581710, at *3 (D.N.Mex. Sep. 5, 2025) (finding DACA recipient had "a protectable liberty or property interest" in case challenging his detention where "he lived under the understanding" that enforcement, including attendant detention, was unlikely); *Oscar C.M. v. Lyons*, No. 1:25-cv-1915, 2025 WL 3712285, at *3 (E.D. Cal. Dec. 22, 2025) (finding a grant of deferred action "increased Petitioner's reliance on his liberty interest"); *ICWC* PI Order at *41 ("[a petitioner with deferred action's] private interest in avoiding removal or detention pending removal is great.").

133. The second Mathews factor also weighs heavily in Kevin's favor because the risk of erroneous deprivation of Kevin's liberty interests is high, while the probative value of a procedural safeguard, such as a pre-deprivation hearing, is high. No procedural safeguards have been exercised prior to depriving Kevin of his liberty. Kevin has been detained since early April of 2026, without first being given an individualized bond

hearing, despite Respondents bearing the burden to demonstrate that re-detention is reasonably related to a valid government purpose. *See Zadvydas*, 533 U.S. at 690. Additionally, Respondents have provided no process at all related to Kevin's U-Visa before engaging in immigration enforcement that effectively revoked his deferred action.

134. Given the lack of any process, the risk of error is extremely high. "[W]ithout an individual assessment [on the re-detention of a noncitizen previously released on recognizance], the risk of erroneous deprivation is high." *David J.C.P. v. Blanche*, No. CV 26-2181 (DWF/ECW), 2026 WL 1102725, at *2 (D. Minn. Apr. 23, 2026); *see A.E. v. Andrews*, No. 1:25-cv-00107-KES-SKO (HC), 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025).

135. Specifically in the context of deferred action, "the practice of automatic termination" of deferred action "creates an unacceptably high risk of erroneous deprivation." *Inland Empire-Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 PSG (SHKx), 2018 WL 4998230, at *19 (C.D. Cal. Apr. 19, 2018) (emphasis added); *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 classwide injunction for nationwide class in same case).

136. No determination has been made that Kevin is a danger or a flight risk, nor that his deferred action must be revoked, and his detention, without prior notice and a meaningful opportunity to respond, makes the risk of erroneous deprivation of liberty not just high, but certain. *See Cajina v. Wofford*, No. 1:25-cv-01566-DAD-AC (HC), 2025 WL 3251083, at *1, 6 (E.D. Cal. Nov. 21, 2025) (ordering petitioner's immediate release

and enjoining and restraining respondents from re-detaining petitioner absent a pre-detention hearing, despite petitioner being charged with driving under the influence).

137. The third *Mathews* factor favors Kevin as well, because the burden of pre-deprivation process is low. A pre-deprivation hearing in immigration court would impose a "minimal cost" to the government, as immigration courts hold bond hearings routinely. *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. Mar. 3, 2025).

138. Here, the government's interest in re-detaining Kevin without process is low because Kevin was previously released by order of recognizance after immigration officials determined he was not a danger to the community. When a noncitizen has previously been released on recognizance, a pre-detention showing of changed circumstances is required to revoke the release. *See Osman J.M.A.*, 2026 WL 1005056, at *3 (citing *Alvarez-Rico v. Noem*, No. 26-cv-729, 2026 WL 522322, at *6 (S.D. Tex. Feb. 25, 2026)); *Maldonado v. Olsen*, 795 F. Supp. 3d. 1134, 1153-54 (D. Minn. 2025) (granting habeas petition in part because there was no showing that public safety or attendance concerns required detention). Therefore, if Respondents now believe that circumstances have changed and Kevin is a danger, "they must support that claim." *Osman J.M.A*, 2026 WL 1005056, at *3.

139. To revoke deferred action, USCIS already has a pre-deprivation process; the agency has delineated the circumstances in which it may revoke deferred action it conferred based on a U visa petition, and thus subject people like Petitioner to immigration detention. USCIS Policy Manual vol. 3, pt. C, ch. 5.C.1, 6 (discussing conditions for USCIS to "terminate deferred action" based on U visa BFD). Respondents

can thus claim no legitimate interest in circumventing that process by revoking deferred action through arbitrary detention instead of its typical procedure.

140. Finally, Kevin's erroneous detention imposes high fiscal and administrative burdens on Respondents, and unlawful detention and violation of noncitizens' constitutional rights disserve the public interest. The third *Mathews* factor generally favors saving the government from expending "substantial resources on needless detention." *Idle H. v. Bondi*, No. 26-cv-315, 2026 WL 266462, at *7 (D. Minn. Feb. 2, 2026) (noting the "staggering" costs of immigration detention); *see also Rodriguez Vega*, 2026 WL 482906, at *6 ("[L]imiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from [unnecessarily] expending substantial resources.") (citation omitted). Unnecessary detention also "imposes substantial societal costs," such as "reduced economic contributions and tax payments by detained immigrants," as well as the separation of individuals from their families and communities. *Rodriguez Vega*, 2026 WL 482906, at *6 (citation omitted). In any event, detention with *no* process is wholly unnecessary to allow Respondents to detain those who truly pose a legitimate risk of flight or danger. *Ochoa v. Vergara*, No. 1:26-cv-266, 2026 WL 482211, at *3 (W.D. Tex. Feb. 20, 2026). Releasing Kevin and requiring the government to provide a pre-deprivation hearing before detaining him therefore stands to save the government money and effort wasted on erroneous detention.

141. For these reasons, regardless of the statutory authority, mandatory detention as applied to Kevin violates his procedural due process rights, rendering his ongoing

detention unconstitutional. *See, e.g.*, *Selvin Adonay E.M.*, 2025 WL 3157839, at *8-10 (finding procedural due process violation was an independent basis for granting habeas petition challenging application of § 1225(b)(2) to person who had been residing in the United States); *Abdirashid H.M.*, 2026 WL 127698, at *4-5 (similar); *Ochoa v. Vergara*, 2026 WL 482211, at *3 (finding mandatory detention of inadmissible noncitizen who had been living in the United States for over a year violated procedural due process under *Mathews*, collecting cases reaching the same conclusion, and ordering release as the appropriate remedy); *see also, e.g.*, *Juan M.*, 2026 WL 129059, at *1-2; *Luis S.I.*, 2026 WL 253630, at *1-2; *Santiago*, 2025 WL 2792588, at *13 (detention of DACA-holder violated procedural due process); *B.D.A.A. v. Bostock*, No. 6:25-cv-2062, 2025 WL 3484912, at 57 (D. Or. Dec. 4, 2025) (detention of recipient of U-visa-based deferred action violated procedural due process).

142. Respondents violated procedural due process by re-detaining Kevin after his 2019 release, without adequate procedural protections before deprivation of his liberty. *See, e.g.*, *Feisal O. v. Noem*, 2026 WL 92857, at *3 (concluding that the re-detention of a person previously ordered released without any pre-re-detention process violated the Due Process Clause); *Selvin Adonay E.M.*, 2025 WL 3157839, at *8-10 (similar); *Abdirashid H.M.*, 2026 WL 127698, at *4-5 (similar); *Rey A. v. Blanche*, No. 26-CV-2287 (NEB/JFD), 2026 WL 1678230 (D. Minn. May 29, 2026), *report and recommendation adopted*, No. 26-CV-2287 (NEB/JFD), 2026 WL 1683219 (D. Minn. Jun. 10, 2026) (ordering a bond hearing as required under due process clause for

noncitizen with a pending U-visa previously released on bond by an immigration judge, even with three DUI arrests).

143. Therefore, this Court should order Kevin's release without any restraints on his liberty and prohibit any re-detention absent pre-deprivation process. *Feisal O.*, 2026 WL 92857, at *3 (ordering release on that basis); *see also Mahad S. v. Noem*, 2026 WL 177860, at *3; *Ochoa v. Vergara*, 2026 WL 482211, at *3 (collecting cases finding mandatory detention violated procedural due process and ordering release as the appropriate remedy).

144. Kevin is entitled to immediate release: a post-deprivation hearing is not sufficient. *See, e.g., Feisal O.*, 2026 WL 92857, at *4 (ordering immediate release "in part because the redetention of Feisal O. violated his due process rights"); *Singh v. Mullin*, 2026 WL 1021846, at *4 (ordering release for individual re-detained with no procedural due process after previous release on parole); *Singh v. Warden*, 2026 WL 731053, at *7, *report and recommendation adopted sub nom. Singh v. Warden*, 2026 WL 802319 (ordering immediate release for individual re-detained with no procedural due process after release on recognizance); *Alegria Palma*, No. 25-cv-1942, at *8 (same); *Sanchez*, 2026 WL 2770629, at *4 (finding "no evidence of due process protections in the record," and ordering immediate release because "Respondents denied Petitioner constitutionally adequate protections before depriving her of her liberty interest in her parole").

COUNT V
Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution: Substantive Due Process

145. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

146. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). And "[f]reedom 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.

147. Because "[a]rbitrary civil detention is not a feature of our American government," *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018), civil confinement is only permissible "in certain special and narrow non-punitive circumstances," where a "special justification" asserted by the government "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (cleaned up); *see also Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) ("[L]iberty is the norm, and detention prior to trial or without trial is the carefully limited exception.") (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

148. Immigration detention is civil detention and must "bear a reasonable relation to the purpose for which the individual was committed" so that it remains "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690 (citation modified); *see*

also Schall v. Martin, 467 U.S. 253, 264–69 (1984) (stating that detention must be a proportional—not excessive—response to a legitimate state objective).

149. Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk pending removal and preventing danger to the community. *See Zadvydas,* 533 U.S. at 690–91. Additionally, these two purposes are not rubber stamps for detention: "[n]either ensuring an alien's availability for deportation at some unidentified, remote time in the future, nor an ordinary concern that an alien may . . . present a danger to the community provides the requisite special justification" for detention. *Jama v. Immigr. and Customs Enf't*, No. Civ. 01-1172 (JRT/AJ), 2005 WL 1432280, at *2 (D. Minn. Apr. 7, 2005). Neither of these two accepted justifications for keeping someone in civil immigration detention are sufficient as applied to Kevin.

150. "The first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility." *Id.* at 679. Here, deportation is a "remote possibility" as Kevin's deferred action status and his protected status as an *ICWC v. Noem* Deferred Action Class member protect him from removal. *Id.* "Where an individual is protected from removal through deferred action, their detention serves no valid purpose." *Santiago v. Noem*, Case No. EP-25-CV-361-KC, 2025 WL 2792588 at *12-13 (W.D. Tex. Oct. 2, 2025); *see Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *3 (W.D. Wash. Aug. 4, 2025) ("deferred action prevents recipients' removal from the United States"). Therefore, the government's inability to lawfully remove Kevin given his deferred action eliminates any justification of flight risk.

151. The government could not show that Kevin is a flight risk in any event, given his lengthy residence in the United States, his deep ties to his community in Minnesota, his approved employment authorization, and his pending derivative U visa application. Additionally, the government necessarily determined Kevin posed no danger or flight risk when it released him in 2019 and has provided no process to revoke that determination.

152. The second justification, detention for community safety, is only permissible "when limited to especially dangerous individuals and subject to strong procedural safeguards." *Zadvydas*, 533 U.S. at 691. To have received deferred action in the first place, Kevin necessarily passed background checks and was vetted for "any national security and public safety risks. . .". PM, vol. 3, pt. C, ch. 5 (discussing the required considerations made by USCIS when deciding to issue BFD on a U-Visa). "[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by . . . alternative conditions." *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). Because the government has not provided any process to assess whether Kevin now presents a threat to his community, it has no interest in detaining him.

153. Because the government is not detaining Kevin to serve legitimate interests in protecting against danger or flight risk, his detention violates substantive due process under the Fifth Amendment, and this Court should order his immediate release. *See Victor G.*, 2026 WL 127733, at *2; *Juan M. v. Bondi*, No. 26-cv-266, 2026 WL 129059,

at *1-2 (D. Minn. Jan. 17, 2026) (ordering immediate release where noncitizen argued detention despite a grant of deferred action violated substantive and procedural due process); *Luis S.I. v. Easterwood*, No. 26-cv-533, 2026 WL 253630, at *1-2 (D. Minn. Jan. 28, 2026), *report and recommendation adopted*, 2026 WL 257119 (Jan. 31, 2026) (similar).

COUNT VI
Violation of the Fourth Amendment to the U.S. Constitution, 8 U.S.C. § 1357(a)(2), and 8 C.F.R. § 287.3(d)
Unlawful Arrest

154. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

155. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. Amend. IV. Immigration arrests and detentions are seizures within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the "seizure" of the person).

156. As a general matter, the Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). "Probable cause requires a 'substantial probability; based on facts related to the individual." *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *15 (D. Colo. Nov. 25, 2025) (quoting *Storey v. Taylor,* 696 F.3d 987, 992 (10th Cir. 2012) (finding probable cause for immigration arrests lacking). That determination can

occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id.* It must, however, occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstance. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

157. There is a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). The INA thus provides immigration agents with only limited authority to conduct warrantless arrests. 8 U.S.C.§ 1357(a)(2). Specifically, an officer must have probable cause to believe the person is violating the immigration laws *and* that the person "is likely to escape before a warrant can be obtained," *i.e.*, is a flight risk. *Id.*; *see also Ramirez Ovando*, 2025 WL 3293467, at *2. Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

158. Upon information and belief, no warrant was served on Kevin prior to his arrest. Kevin was first detained by local law enforcement, then detained by ICE.

159. The Form I-213 alleges that on April 5, 2026, Respondents "reviewed a biometric match to a booking record at the Kandiyohi County Jail" and that "[q]ueries in Department of Homeland Security (DES) databases indicated that Kevin was unlawfully present in the U.S." Next, the Form I-213 alleges that on April 7, 2026, Kevin was served an I-200 and subsequently taken into immigration custody.

160. A warrant based on "'biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate' that the noncitizen is here

unlawfully or is otherwise removable" is insufficient to establish probable cause, because Kevin's "biometric information could have only been confirmed after [he] had been taken into ICE's custody." *Jefferson G.H.L. v. Blanche*, No. 26-cv-2344 (JRT/ECW), 2026 WL 1229623, at *1, 3 (D. Minn. May 5, 2026) (ordering outright release of a noncitizen who was in local law enforcement custody for DWI and careless driving charges when he was detained by ICE). Therefore, the circumstances around Kevin's arrest and detention give rise to a presumption that the warrant, if it exists, was not created with probable cause. *See Ruben D.A.G. v. Blanche*, No. 26-02041 (MJD/DJF), slip op. at 5 (D. Minn. Apr. 20, 2026) (disregarding Form I-200 administrative warrant that "clearly was not served on Petitioner until he arrived at the Freeborn County Adult Detention Center" after being arrested at the Rice County Courthouse).

161. Additionally, Kevin's warrantless arrest occurred without probable cause that he was a flight risk. "Courts have . . . made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties." *Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. CV 25-3417 (BAH), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (collecting cases). At the moment of his seizure, Kevin had been in the United States for over seven years and built strong ties to his community. He was the recipient of an employment authorization from DHS. Moreover, he fully complied with police officers and ICE officers and in no way tried to disobey or flee. Therefore, no officer could have probable cause that was likely to escape before a warrant could be obtained. Thus, Respondents' warrantless arrest of Kevin violated 8 U.S.C.§ 1357(a)(2).

162. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Kevin. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. He received no such judicial determination, yet his detention has continued well beyond 48 hours, rendering it presumptively unconstitutional.

163. Regulations also provide that noncitizens arrested without a warrant *pursuant to 8 U.S.C.§ 1357(a)(2)* must receive a custody determination within 48 hours of the arrest, unless there is "an emergency or other extraordinary circumstance" that requires "an additional reasonable period of time" to make the custody determination. 8 C.F.R. § 287.3(d). During that custody determination, the immigration officer must make findings as to whether "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). Similarly, upon information and belief, Kevin has received no such custody determination. Even so, because Respondents did not arrest Kevin "under the authority contained [in that section][,]" the regulations outlined in 8 C.F.R § 287.3 are inapplicable—following these regulatory steps after an unlawful arrest cannot cure the statutory violation. *Wilson L.L. v. Blanche*, No. CV 26-2475 (JRT/EMB), 2026 WL 1283186, at *2 (D. Minn. May 11, 2026) (ordering immediate release where the I-200 administrative warrant "was not served on Petitioner until after his arrest and detention") (citing *Francisco M.A.*, 2026 WL 1229701 at *1–2.

164. Kevin's re-detention after a prior release on recognizance, without any new showing of probable cause, was also unconstitutional. When the government releases a

person from detention, the purpose of their detention has been accomplished. *See Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020) ("It is axiomatic that seizures have purposes. When those purposes are spent, further seizure is unreasonable."). As a result, any probable cause justifying the prior arrest, if any, is extinguished.

165. Thus, under the Fourth Amendment, the government cannot re-arrest someone without changed circumstances that amount to new probable cause. *See Carlson v. Landon*, 342 U.S. 524, 546-47 (1952) (holding that re-arrest for immigration detention required a new warrant after previous release from immigration detention on bail).

166. Respondents' warrantless re-arrest of Kevin and their refusal to provide a prompt (or any) probable cause determination, violated the Fourth Amendment, the INA, and implementing regulations. Thus, on this count alone, his immediate release is warranted. See *Hector J.A.S.*, 2026 WL 1243500 at *3; *Martha C.G.P.*, 2026 WL 1329577, at *3; *Jefferson G.H.L.*,2026 WL 1229623 at *3. When there is a warrantless arrest, no post-detention process can cure that violation. *See, e.g., Wilson L.L.*, 2026 WL 1283186, at *2 (ordering immediate release where the I-200 "was not served on Petitioner until after his arrest and detention") (*citing Francisco M.A.*, 2026 WL 1229701 at *1–2).

COUNT VII
Violation of the Immigration and Nationality Act and Procedural Due Process
(Argument presented in order to preserve it for further review)

167. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

168. As discussed above, the INA provides for mandatory detention of anyone alleged to be an "applicant for admission" who is "seeking admission" and whom an "examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Before the Eighth Circuit's decision in *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026), *petition for reh'g en banc filed*, No. 25-3248 (8th Cir. May 26, 2026), courts across the United States overwhelmingly concluded that noncitizens like Kevin who entered the United States without inspection and are detained by ICE for removal proceedings while they are residing in the United States are not detained under § 1225(b)(2)(A). *See, e.g.*, *Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *13-14 (S.D.N.Y. Nov. 26, 2025) (tallying more than 350 cases reaching the same conclusion, and only 12 going the other way). Courts in this district have concluded the same time and time again. *See, e.g.*, *Ahmed M.*, 2026 WL 25627, at *1 (D. Minn. Jan. 5, 2026) ("Every judge in this District to have addressed this question . . . has decided that § 1226(a)'s discretionary regime applies in cases like this, where the Petitioner has been in the country for some time and where his detention did not occur in connection with an attempt or request to enter the United States."), *abrogated by Avila*, 170 F.4th 1128 (8th Cir. 2026), *petition for reh'g en banc filed*, No. 25-3248 (8th Cir. May 26, 2026).

169. Petitioner asserts these arguments here for purposes of preservation for appeal or in the event that *Avila* is vacated or abrogated by the Supreme Court—especially now that multiple circuits have reached a contrary conclusion. *See Barbosa da Cunha v. Freden*, __ F. 4th __, No. 25-3141, 2026 WL 1146044 (2d Cir. Apr. 28, 2026);

Hernandez Alvarez v. Warden, __ F.4th __, Nos. 2514065, 25-14075, 2026 WL 1243395 (11th Cir. May 6, 2026); *Lopez-Campos v. Raycraft*, Nos. 25-cv-12486, 25-cv-13073, 25-cv-12546, 25-cv-01090 (6th Cir. May 11, 2026). Petitioner preserves for further review the argument that *Avila* was wrongly decided and that his current detention under 8 U.S.C. § 1225(b)(2)(A) violates both the INA and Kevin's procedural due process rights. As this renders his detention unlawful from its inception, he should be released.

REMEDY

170. The appropriate remedy for Respondents' unlawful conduct is Kevin's immediate release.

171. Immigration detention is civil in nature, and as a result Congress must have expressly authorized it by statute, and the detention must be reasonably related to its statutory purpose. *Zadvydas*, 533 U.S. at 687, 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

172. When a habeas petitioner's detention is unlawful, the typical remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the "typical remedy" for "unlawful executive detention"); *Feisal O. v. Noem*, No. 26-CV-81 (JMB/EMB), 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026) (granting release because Petitioner's re-detention "without Respondents first formally revoking [his Order of Supervision] … violates due process"); *Garcia Picazo v. Sheehan*, No. C25-4057-LTS-MAR, 2025 WL 3006188, at *5 (N.D. Iowa Oct. 27, 2025) (ordering immediate release on due process grounds where DHS continued detaining Petitioner after IJ determined he could be released on bond); *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*, No. 2:25CV6065 (NJC), 2025 WL 3314420, at *31 (E.D.N.Y. Nov. 28, 2025) (explaining that, in cases of re-detention of a noncitizen in violation of the Fifth Amendment, "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").

173. In the alternative, if the Court believes further process is required before ordering Kevin released, this Court should hold its own custody hearing and determine whether the government can prove by clear and convincing evidence that Kevin must remain in custody, or whether he may be released on recognizance, an appropriate bond in light of his ability to pay, or supervised release. This is a more efficient and effective remedy than ordering an immigration judge to conduct a hearing, which may lead to additional enforcement proceedings and delays before the unlawful detention in this case is remedied. *See L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight); *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 474-78 (D. Mass 2010) (granting petition and discussing at length habeas court's equitable power, which includes power to hold its own bail hearing); *see also Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond hearing was not individualized and did not comport with due process, and granting motion to enforce to

hold the court's own bond determination); *Ramirez v. Watkins*, No. 10-cv-126, 2010 WL 6269226, at *19-20 (S.D. Tex. Nov. 3, 2010), rep. and rec not reached, (S.D. Tex. Dec. 8, 2010) (dismissing case as moot) (recommending the habeas court conduct its own bail inquiry, as it would be more efficient, ensure supervision over any compliance issues, and avoid further proceedings).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court:

1. Assume jurisdiction over this matter;
2. Immediately issue an Order to Show Cause:
   A. Enjoining Petitioner's removal or transfer outside of this District pending adjudication of this petition;
   B. Requiring Respondents to show cause within **three days** as to why this petition should not be granted;
3. Issue a Writ of Habeas Corpus declaring that Petitioner's detention is unlawful and ordering Respondents to immediately release Petitioner from custody without restraints on his liberty beyond those that existed prior to his unlawful re-detention;
4. Pursuant to the May 20, 2026 Preliminary Injunction Order in *ICWC v. Noem*, order that Respondents cannot re-detain Petitioner while he is in valid deferred action status;
5. Order that, if at any time in the future Petitioner is no longer in valid deferred action status, Respondents cannot re-detain Petitioner without

notice and a pre-deprivation hearing before this Court where the government bears the burden of justifying re-detention by clear and convincing evidence;

6. Order that upon Petitioner's release, Respondents must return to Petitioner any personal property, including personal identification documents and employment authorization documents;

7. Retain jurisdiction over this matter to decide any future motion for an award of reasonable attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, Local Rule 54.3(a), and on any other basis justified under law; and

8. Grant Petitioner any further relief that this Court deems to be just and proper.

Dated: June 26, 2026

BALLARD SPAHR LLP

By: */s/ Conor H.M. Smith*

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ATTORNEY FOR PETITIONER KEVIN JOSE RAMIREZ MANCIA

VERIFICATION

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. My firm has discussed the factual assertions in this petition with Petitioner's separate immigration counsel. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status, are true and correct to the best of my knowledge.

Executed on this 26th Day of June, 2026

Conor H.M. Smith, Esq.
Attorney at Law