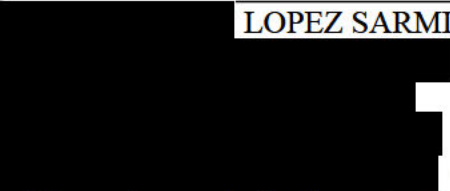
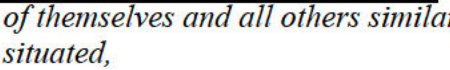


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

 LOPEZ SARMIENTO;
 on behalf
of themselves and all others similarly
situated,

Petitioners-Plaintiffs,

v.

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

Respondents-Defendants.

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

Case No. 1:25-cv-01644

INTRODUCTION

1. In furtherance of its explicit goal to deport as many noncitizens as possible, the Department of Homeland Security (“DHS”) recently announced an unlawful policy to detain, without the opportunity to seek bond, any immigrant who is alleged to have entered the country without inspection—including those who came to the United States as unaccompanied minors and Special Immigrant Juveniles. Under this immediate mandatory detention policy, young people are being arrested, detained, and refused bond simply based on the allegation that they crossed the

border illegally years ago, even though they were either previously released after the government determined they do not present a risk of flight or dangerousness or they have been granted Special Immigrant Juvenile Status (“SIJS”) and would eventually be eligible for permanent resident status. Petitioners-Plaintiffs (“Petitioners”) are such individuals. As part of this unlawful policy, Respondents are regularly seeking to summarily remove Petitioners to unsafe third countries pursuant to newly executed asylum cooperative agreements, and to strip unaccompanied minors and SIJS recipients of their deferred action and work authorization, thereby coercing them to forgo the very protections Congress created for them.

2. Each Petitioner has lived in the United States for years, was initially apprehended by immigration officials within the country, was designated as an unaccompanied minor, was placed in the custody of the Office of Refugee Resettlement (“ORR”), and was released to a sponsor in the United States after ORR determined that they did not pose any danger to the community or risk of flight.

3. Each Petitioner applied for SIJS, and Petitioners [REDACTED] [REDACTED] Lopez Sarmiento [REDACTED] were granted such status. Petitioner [REDACTED] application is still pending. SIJS provides unaccompanied minors with a pathway to lawful permanent residence status and eventual U.S. citizenship. While they are waiting for their lawful permanent residence status, SIJS recipients typically receive “deferred action,” which is a promise by the government not to attempt to remove them absent some new justification. Petitioners [REDACTED] each received deferred action after their SIJS applications were approved.

4. DHS is now seeking to remove Petitioners based on the allegation that they entered the United States without inspection. *See* 8 U.S.C. §1182(a)(6)(A)(i).¹

5. Based initially only on this allegation in Plaintiffs’ removal proceedings, DHS denied each Plaintiff release from immigration custody, despite an immigration judge’s initial bond determination ordering Petitioners [REDACTED] to be released on bond. Those denials were consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (“ICE”) employees to consider anyone alleged to be inadmissible under §1182(a)(6)(A)(i)—i.e., those who entered without inspection—to be subject to immediate mandatory detention under 8 U.S.C. §1225(b)(2)(A) and therefore ineligible for release on bond.

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

JURISDICTION & VENUE

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

¹ DHS inexplicably added an additional charge under 8 U.S.C. §1182(a)(7)(A)(i)(I) against [REDACTED] subsequent to their re-detention.

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

9. Federal district courts also have federal question jurisdiction through the Administrative Procedure Act (“APA”) to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas petitions. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Respondents’ detention of Petitioners and similarly situated persons without a bond hearing has adversely and severely affected their liberty and freedom.

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

11. Petitioners are properly joined in this action because they jointly assert a right to release from custody and raise *at least* one “question of law or fact common to all plaintiffs,” including whether detention without bond is lawful and whether the Department of Justice and

Homeland Security have complied with the INA and implementing regulations in continuing their detention. Fed. R. Civ. P. 20(a)(1).

PARTIES

12. Petitioner-Plaintiff [REDACTED] is a native and citizen of El Salvador who was designated as an unaccompanied minor in June 2022 and obtained SIJS with deferred action in January 2024. He was detained in Farmville Detention Center when the first amended complaint was filed.

13. Petitioner-Plaintiff [REDACTED] is a native and citizen of El Salvador who was designated as an unaccompanied minor in June 2022 and has a pending application for SIJS. He was detained at Farmville Detention Center when the first amended complaint was filed.

14. Petitioner-Plaintiff [REDACTED] is a native and citizen of Honduras who was designated as an unaccompanied minor in March 2023 and obtained SIJS with deferred action in August 2024. He was detained at Caroline Detention Facility when the first amended complaint was filed.

15. Petitioner-Plaintiff [REDACTED] is a native and citizen of Honduras who was designated as an unaccompanied minor in 2018 and obtained SIJS with deferred action in April 2023. He is currently detained at Farmville Detention Center.

16. Respondent Jeffrey Crawford is the Director of the Farmville Detention Center (“Farmville”), which is owned and operated by CoreCivic and contracts with ICE to detain non-citizens. Mr. Crawford is (or was) the immediate custodian of Petitioners [REDACTED]. He is sued in his official capacity.

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

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

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

20. Respondent Pamela Bondi is the Attorney General of the United States. She oversees the immigration court system, which is housed within the Executive Office for Immigration Review (“EOIR”) and includes all immigration judges and the Board of Immigration Appeals (“BIA”). She is sued in her official capacity.

FACTUAL ALLEGATIONS

I. Legal Framework

A. Protections for Unaccompanied Minors

21. Minors who arrive in the U.S. without a parent or other legal guardian are considered “unaccompanied minors” and receive special treatment under the immigration laws because of their vulnerable status. This includes their treatment in detention and numerous legal

protections that guarantee that they are not removed without due process and are able to pursue forms of relief from deportation for which they may be eligible.

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

23. Congress transferred to the Office of Refugee Resettlement (“ORR”), within the Department of Health and Human Services (“HHS”), the responsibility for the care of unaccompanied minors “who are in Federal custody by reason of their immigration status.” 6 U.S.C. § 279(a), (b)(1)(A). The HSA defined an unaccompanied minor as a child who: (A) has no lawful immigration status in the United States;² (B) has not attained 18 years of age; and (C) with respect to whom (i) there is no parent or legal guardian in the United States or (ii) no parent or legal guardian in the United States is available to provide care and physical custody. *Id.* § 279(g)(2). Congress also transferred to ORR the responsibility for making all placement decisions for unaccompanied minors and required ORR to coordinate those placement

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

decisions with DHS and ensure that unaccompanied minors are released to the care of a suitable adult or other placement for their safety. *See id.* § 279(b)(1)(C), (D), (b)(2).

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

25. In requiring an unaccompanied child to be placed “in the least restrictive setting that is in the best interest of the child,” the statute directs the government to “consider danger to self, danger to the community, and risk of flight.” 8 U.S.C. § 1232(c)(2)(A). The implementing regulations confirm that the decision to release a child to a sponsor requires a determination about danger and flight risk:

[W]hen ORR determines that the detention of the unaccompanied child is not required either to secure the child’s timely appearance before DHS or the immigration court, or to ensure the child’s safety or that of others, ORR shall release a child from its custody without unnecessary delay . . .

45 C.F.R. §410.1201. This determination is memorialized in the ORR’s “Verification of Release” form when releasing an unaccompanied minor to the care of a sponsor. *See e.g.*, Ex. A at 9-10.

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

26. Because the Immigration and Nationality Act authorizes the detention of noncitizens only “pending a decision on whether the [noncitizen] is to be removed from the United States,” 8 U.S.C. § 1226(a), unaccompanied minors are issued a Notice to Appear (“NTA”) upon

their initial apprehension informing them of the immigration charges against them and the authority for immigration action. *See* 8 C.F.R. § 236.1(b). If DHS elects to commence removal proceedings against an unaccompanied minor, the NTA must then be filed with the immigration court.

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

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

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

30. The TVPRA also included amendments strengthening protections for unaccompanied minors with SIJS, a status established in 1990 to “protect abused, neglected, or

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

31. In creating SIJS, Congress included in the INA certain protections against removal for this class of young immigrants. *See* 8 U.S.C. § 1227(c) (certain grounds for deportation “shall not apply to a special immigrant described in section 101(a)(27)(J) based upon circumstances that existed before the date the alien was provided such special immigrant status”). Accordingly, although a juvenile with SIJS can be removed on certain grounds, such as having been convicted of a serious criminal offense, they cannot be removed simply for having entered the country illegally. *See id.*

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

33. Recognizing the special considerations surrounding young people eligible for SIJS, it was DHS’s standard practice to provide deferred action for people once their applications for

SIJS had been approved. See USCIS, *Policy Alert, Special Immigrant Juvenile Classification and Deferred Action*, Mar. 7, 2022, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf>.³

34. Deferred action is a form of prosecutorial discretion to defer removal action against an individual for a specific time, providing a host of additional benefits to the recipient, including eligibility for employment authorization.⁴ Notably, recipients of deferred action are considered “lawfully present.” *Arizona Dream Act Coal. v. Brewer*, 855 F.3d 957, 974 (9th Cir. 2017) (en banc); *Texas v. United States*, 809 F.3d 134, 147-48 (5th Cir. 2015) (explaining that deferred action recipients are “lawfully present” based on agency memoranda); see also 8 C.F.R. § 1.3(a)(4) (defining recipients of deferred action as “lawfully present in the United States” for purposes of applying for social security benefits).

C. Detention under the INA

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

36. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. See 8 U.S.C. § 1229a. Generally, noncitizens are entitled to a bond hearing at the outset of their detention. 8 U.S.C. § 1226(a); see also 8 C.F.R.

³ In a policy alert dated June 6, 2025, DHS eliminated “automatic consideration of deferred action” for people with SIJS but explains that people “with current deferred action based on their SIJ classification will generally retain this deferred action, ... [and] employment authorization provided based on this deferred action, until the current validity period expires.” USCIS, *Policy Alert, Special Immigrant Juvenile Classification and Deferred Action*, Jun. 6, 2025, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf>.

⁴ See generally, Ben Harrington, *An Overview of Discretionary Reprieves from Removal: Deferred Action, DACA, TPS, and Others* (CRS Report No. R45158) (2018), <https://www.congress.gov/crs-product/R45158>.

§§ 1003.19(a), 1236.1(d). However, there are several categories of noncitizens who are subject to mandatory detention under the INA.

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

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

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

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

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

without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.”).

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

43. In the past several months, Respondents have adopted an entirely new interpretation of the statute. On May 22, 2025, the BIA issued an unpublished decision holding that all

noncitizens who entered the United States without admission or parole are considered applicants for admission and are therefore ineligible for immigration judge bond hearings under 8 U.S.C. § 1225(b)(2)(A). *Matter of Q. LI*, 29 I&N Dec. 66 (BIA 2025).

44. On July 8, 2025, ICE, in coordination with the Department of Justice (“DOJ”), announced a corresponding policy that rejected the well-established understanding of the statutory and regulatory framework and reversed decades of practice.⁵ This policy applies nationwide.

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

46. According to news reports, immigration officials within the Trump administration requested this new policy in response to Congress’s recent appropriation of billions of dollars to expand the immigration system, given that ICE will soon have the capacity to detain more than twice as many people on any given day.⁶

47. The new policy is reportedly in furtherance of the administration's mass deportation strategy by seeking to coerce noncitizens to relinquish any relief from deportation they may be entitled to by consenting to their deportation.⁷

⁵ See AILA, *ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission* (July 8, 2025), <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

⁶ See Michelle Hackman, *New ICE Policy Blocks Detained Migrants From Seeking Bond*, Wall Street Journal (July 15, 2025), <https://www.wsj.com/politics/policy/new-ice-policy-blocks-detained-migrants-from-seeking-bond-f557402a> [<https://perma.cc/K8NY-DAAZ>].

⁷ See Kyle Cheney, *Trump’s new detention policy targets millions of immigrants. Judges keep saying it’s illegal*, Politico (Sept. 20, 2025), <https://www.politico.com/news/2025/09/20/ice-detention-immigration-policy-00573850>; see also DHS, *New Milestone: Over 2 Million Illegal*

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

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

50. As part of their immediate mandatory detention policy, the government is also seeking to summarily remove noncitizens, including noncitizens designated as unaccompanied minors and special immigrant juveniles before hearing the merits of their claims for relief from deportation under the "safe third country" provision of 8 U.S.C. §1158(a)(2)(A). This provision allows the government to enter into international agreements, referred to as "asylum cooperative agreements" ("ACAs") only where the third country is "safe" and provides "full and fair" asylum process—such that people will have a meaningful opportunity to pursue asylum—and only where noncitizens would not face persecution or torture in the third country. 8 U.S.C. §1158(a)(2)(A). In

Aliens Out of the United States in Less Than 250 Days (Sept 23, 2025), <https://www.dhs.gov/news/2025/09/23/new-milestone-over-2-million-illegal-alien-out-united-states-less-250-days> ("All of these successes will make arresting, detaining, and deporting illegal aliens more efficient and streamlined than ever before – paving the way to continue the surge in deportations.").

recent months, the government has signed a series of new ACAs with countries that the U.S. State Department itself reports are unsafe, present serious human rights concerns, and/ or have weak or corrupt asylum systems. To date, these countries include at least Guatemala, Honduras, Paraguay, and Uganda; and an ACA with Ecuador is reportedly imminent,⁸ if it has not yet been signed.

51. Since at least July 2025, ICE attorneys have been filing motions in immigration courts, to prepermit noncitizens applications for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”) based on the new ACAs. In their motions, ICE attorneys argue that noncitizens need not be given any opportunity to express fear of removal to the ACA country, even though the possibility of removal to that third country is being raised for the first time.

52. On information and belief, the Department of Justice has issued guidance that authorizes and/or directs immigration judges to *sua sponte* order prepermission of applications for asylum, withholding of removal, and CAT protection and ordering removal of noncitizens a third country pursuant to an ACA without exception to noncitizens designated as unaccompanied minors and special immigrant juveniles.

53. On information and belief, the DHS and/or DOJ have issued guidance which authorizes and/or directs the foreclosure of noncitizens from the opportunity to seek withholding or removal and CAT protection either to a noncitizen’s home country or to the proposed ACA country or countries of removal even though the asylum statute’s safe third country provision does not provide an exception from withholding of removal or CAT protection.

⁸ Kylie Atwood, *US working with Ecuador on agreement to send asylum seekers to the country*, CNN (Sept. 4, 2025), <https://edition.cnn.com/2025/09/04/politics/us-ecuador-migrants-possible-agreement>.

54. Also as part of their immediate mandatory detention policy, the Government has been routinely purporting to strip unaccompanied minors and special immigrant juveniles of their deferred action and deferred-action-based employment authorization, ensuring that even if petitioners managed to avoid Respondents' mandatory detention and removal, they would be unable to lawfully work in this country, despite having previously been assured of the opportunity to do so. On information and belief, DHS and/or DOJ have issued guidance which authorizes or directs the foreclosure of work authorization and deferred action for unaccompanied minors and special immigrant juveniles who Respondents have placed in mandatory detention.

D. Due Process Right to an Individualized Determination Pre-Detention

55. By statute and regulation, ICE has the ability to revoke an immigration bond and re-arrest the noncitizen. 8 U.S.C. §1226(b); 8 C.F.R. §236.1(c)(9). However, in *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981), the BIA has recognized an implicit limitation on ICE's authority to re-arrest noncitizens. There, the BIA held that "where a previous bond determination has been made by an immigration judge, no change should be made by [DHS] absent a change of circumstance." *Id.* In practice, DHS "requires a showing of changed circumstances both where the prior bond determination was made by an immigration judge and where the previous release decision was made by a DHS officer." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

56. ICE has further limited its authority as described in *Sugay*, and "generally only re-arrests [noncitizens] pursuant to § 1226(b) after a material change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197 (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and stated ICE practice, ICE may re-arrest a noncitizen who had been

previously released on bond only after a material change in circumstances. *See id.* at 1176; *Matter of Sugay*, 17 I. & N. Dec. at 640.

57. This rule applies when the government releases an unaccompanied minor without requiring any bond because the government has already made a determination about flight risk and dangerousness and found that there is no risk. Thus, re-detention of an already-released unaccompanied minor is not permitted without demonstrating to a neutral arbiter that there has been a material change in circumstances.

58. ICE's power to re-arrest a noncitizen who is at liberty is constrained not only by regulation and statute but also by the demands of due process. *See Miranda v. Garland*, 34 F. 4th 338, 352-353 (4th Cir. 2022) (permitting review of constitutional challenges "to the procedures adopted by the Attorney General for all detention decisions under §1226(a)"); *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("[T]he government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). Under these circumstances, DHS is required to provide a pre-deprivation hearing in order to determine whether it may re-detain an individual.

59. Federal courts have repeatedly recognized this due process right. *See e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *4 (N.D. Cal. June 14, 2025); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D. Cal. June 14, 2025); *Guillermo M.R. v. Polly Kaiser*, No. 3:25-cv-05436-RFL, 2025 WL 1983677, at *7 (N.D. Cal. June 30, 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1808702, at *3 (E.D. Cal.

June 30, 2025); *Domingo v. Kaiser*, No. 25-CV-05893 (RFL), 2025 WL 1940179, at *10 (N.D. Cal. July 14, 2025); *Quoc Chi Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at 3 (E.D. Cal. July 16, 2025); *Soto Garcia v. Andrews*, No. 2: 25-CV-01884-TLN-SCR, 2025 WL 1927596, at * 5 (E.D. Cal. July 14, 2025); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025); *Zakzouk v. Becerra*, No. 3: 25-CV-06254 (RFL), 2025 WL 2097470, at *4 (N.D. Cal. July 26, 2025); *Salam v. Maklad*, No. 1:25-CV-00946, 2025 WL 2299376, at *9 (E.D. Cal. August 8, 2025); *Ramirez Tesara v. Wamsley*, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663, at *3 (W.D. Wash. Sept. 12, 2025).

II. Custody of Petitioners

A. [REDACTED]

60. Petitioners [REDACTED] are brothers who were apprehended by immigration officials after entering the United States as unaccompanied minors in 2022. They were both issued Form I-200, warrant for arrest, citing INA Section 236 (8 U.S.C. §1226(a)) as the authority for their detention and an NTA charging them as “[noncitizens] present in the United States who [have] not been admitted or paroled.” Ex. A, [REDACTED] immigration documents at 1-8. These NTAs were never filed with the immigration court to initiate removal proceedings against them.

61. As unaccompanied minors, they were subsequently placed in the custody of the ORR and then released into the care and custody of their aunt in Newport News, Virginia. *Id.* at 9-10.

62. In September 2023, the Juvenile and Domestic Relations District Court in Newport News, Virginia, granted their aunt sole and legal physical custody of them and found that, *inter*

alia, reunification with their parents was not viable due to abandonment. This finding allowed them to submit an application to USCIS for SIJS.

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

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

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

66. [REDACTED] were re-apprehended by ICE on August 21, 2025, in Newport News, Virginia without prior notice or a pre-deprivation hearing. DHS filed their NTAs in the immigration court for the first time, charging them under 8 U.S.C. § 1182(a)(6)(A)(i) as a “[noncitizen] present in the United States without being admitted or paroled.” *Id.* at 27-30.

67. [REDACTED] both sought and were given bond hearings at the Annadale Immigration Court. On September 11, 2025, the immigration judge initially granted [REDACTED]’s release on bond for \$3,000 and [REDACTED]’s release on bond for \$2,000. *Id.* at 31-34.

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

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

70. On October 9, 2025, [REDACTED] filed their applications for asylum, withholding and CAT protection to El Salvador. On October 22, 2025, DHS filed motions to prepermit their applications under third safe country provisions and order their removal to Honduras. On November 12, 2025, the immigration judge granted DHS motions, prepermitted their applications for asylum, withholding, and CAT protection and order them removed to Honduras. *Id.* at 39-48.

B. [REDACTED]

71. Petitioner [REDACTED] entered the United States in March 2023, was apprehended by immigration officials and issued Form I-200, warrant for arrest, citing INA Section 236 (8 U.S.C. § 1226(a)) as the authority for his detention and an NTA charging him as a “[noncitizen] present in the United States who has not been admitted or paroled.” Ex. B, [REDACTED]'s immigration documents at 1-4. This NTA was never filed with the immigration court to initiate removal proceedings.

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

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

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

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

76. On August 5, 2025, without notice or apparent cause, and without the required pre-deprivation hearing, [REDACTED] was arrested by immigration officials outside his home in D.C.

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

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

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

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

C. [REDACTED]

81. Petitioner [REDACTED] entered the United States in 2018 with his minor brother at the Paso Del Norte Port of Entry when he was 13 years old. [REDACTED] had fled Honduras after enduring nearly a year of severe physical and psychological abuse by his caretakers, and after being threatened and targeted by gangs that had taken control of his community, leaving him with no safe place to live. He was taken into immigration custody and served with an NTA charging him under 8 U.S.C. § 1182(a)(7)(A)(i)(I) as “not in possession of a valid unexpired immigrant visa ... or other valid entry document” at the time of application for admission. DHS filed this NTA with the immigration court to commence removal proceedings against him. Ex. C, [REDACTED] immigration documents at 1-3.

82. [REDACTED] was subsequently designated as an unaccompanied minor and transferred to the custody of ORR, where he remained for three months before he was released to his mother in Manassas, Virginia. *Id.* at 4.

83. Due to the severe trauma [REDACTED] suffered in Honduras, he had a hard time adjusting to life in the United States as a young teenager. He received two juvenile dispositions: for disorderly conduct in 2019, stemming from a disagreement with his mother, and assault of a family member and disorderly conduct in 2021 after he and his brother got in a fight at their house. He received probation for both offenses.

84. In October 2022, [REDACTED] applied for SIJS, and his application was approved in April 2023. Along with SIJS, he was granted deferred action for four years until April 2027. *Id.* at 5.

85. In July 2024, the immigration court dismissed [REDACTED]'s removal proceedings and initial NTA, which had charged him under 8 U.S.C. § 1182 (a)(7)(A)(i)(I), because he had been granted SIJS to allow him to adjust status when an immigrant visa became available. *Id.* at 6.

86. In July 2025, [REDACTED] was re-apprehended by immigration officials without prior notice or a pre-deprivation hearing and issued a new NTA, charging him under 8 U.S.C. §1182(a)(6)(A)(i) as a noncitizen “present in the United States without being admitted or paroled.” DHS subsequently filed this new NTA with the immigration court to commence removal proceedings against [REDACTED]. *Id.* at 7-8. Respondents made no attempt to demonstrate materially “changed circumstances” that would justify [REDACTED]'s re-detention. In September 2025, DHS inexplicably added an additional charge under 8 U.S.C. §1182(a)(7)(A)(i)(I) against [REDACTED].

87. In a letter dated July 28, 2025, USCIS terminated [REDACTED]'s deferred action, simply stating that the agency “has individually reviewed your case and exercised discretion to terminate your period of deferred action...” The letter also purports to notify him of the agency’s intent to revoke his work authorization. *Id.* at 9.

88. Despite his troubled childhood, [REDACTED] continues to live with his mother and younger siblings in Fredericksburg, Virginia. They have rebuilt their relationships to be a close-knit family.

He works full-time as a carpenter to support his family and often looks after his younger siblings when his mother is at work.

89. For the past several years, [REDACTED] has been suffering from chronic gastrointestinal issues, causing him such severe pain that he had to be hospitalized. After his most recent hospitalization, shortly before his re-apprehension by ICE, he was prescribed medication to manage his symptoms, including his pain, and referred to a specialist. Since being in ICE detention, he has been unable to access the medication to properly manage his symptoms, nor has he been able to be seen by a specialist for proper treatment.

90. As an adult, [REDACTED] has been charged with several minor misdemeanor offenses, including driving without a license, failing to leash his dog, failing to appear, and destruction of property. [REDACTED] has never been charged or convicted of an offense that would make him statutorily ineligible to adjust his status to lawful permanent resident.

91. In September 2025, the immigration court denied [REDACTED]'s motion for bond, finding that the immigration judge lacked jurisdiction to consider bond based on *Matter of Hurtado*. *Id.* at 10-11.

CLASS-WIDE ALLEGATIONS

92. Petitioners bring this class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2), or alternatively as a representative habeas petition, on behalf of themselves and two classes of similarly situated individuals pursuant to a procedure analogous to Rules 23(a) and 23(b)(2). *See Coreas v. Bounds*, No. CV TDC-20-0780, 2020 WL 5593338, at *7 (D. Md. Sept. 18, 2020) (“there is substantial precedent for pursuing habeas actions on a class basis”). *See also Geraghty v. U.S. Parole Commission*, 429 F. Supp. 737, 740 (M.D. Pa. 1977) (noting that “procedures analogous to a class action have been fashioned in habeas corpus actions where necessary and appropriate”).

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

94. Petitioners bring this class action for habeas and declaratory relief on behalf of themselves and others similarly situated for the purpose of asserting claims that are common to all members of the proposed class. They seek to represent two classes defined as:

Unaccompanied Minors Class: All noncitizens who are or will be held in civil immigration detention within the area of responsibility of WAS ICE who have entered or will enter the United States, are or were designated as unaccompanied minors, and are or will be denied consideration for release under 8 U.S.C. § 1226(a) based on Respondents' mandatory detention policy.

SIJS Class: All noncitizens who are or will be held in civil immigration detention within the area of responsibility of WAS ICE who have entered or will enter the United States, have or will have obtained SIJS status at the time of detention, and are or will be denied consideration for release under 8 U.S.C. § 1226(a) based on Respondents' mandatory detention policy.

95. Each of the proposed classes satisfy the requirements of Fed. R. Civ. P. 23(a)(1) because their members are so numerous that joinder of all members is impracticable. *See Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984) (holding that there is no specific numerical requirement for maintaining a class action). *See also J.D. v. Azar*, 925 F.3d 1291, 1322

(D.C. Cir. 2019) (noting that “classes including future claimants generally meet the numerosity requirement”).

96. Petitioners are not aware of the exact number of putative class members, as Respondents are uniquely positioned to identify such persons. Upon information and belief, there are hundreds, if not thousands, of individuals who were designated unaccompanied minors and have obtained SIJS in Virginia to whom Respondent’s mandatory detention policy applies or will apply if they are apprehended. This can be presumed based on government data, showing that between 2021 and 2022, USCIS received a total of 54,632 SIJS applications and approved 34,605 of them, and in the 2022 fiscal year alone, ORR released 6,214 unaccompanied minors to sponsors in Virginia. Ex. D. Additionally, the classes are likely to grow as Respondents continue to make arbitrary arrests throughout D.C. and Virginia and continue to implement their mandatory detention policy for putative class members.

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

98. Each of the proposed classes meet the commonality requirement of Fed. R. Civ. P. 23(a)(2). All members of each class present at least one core common question, including whether § 1225(b)(2)’s mandatory detention provisions apply to them and prevent them from being considered for release on bond under § 1226(a) and its implementing regulations. The Unaccompanied Minors class is further bound by the question whether class members are entitled to pre-deprivation hearings and notice prior to re-detention.

99. Petitioners [REDACTED] [REDACTED]'s claims are typical of both classes, as they face the same injury as the classes and assert the same claims and rights of the classes. Petitioner [REDACTED] [REDACTED]'s claims are typical of the Unaccompanied Minors Class, as Petitioner faces the same injury as other members of the class and asserts the same claim and rights of the class.

100. Each of the proposed classes meet the adequacy requirements of Fed. R. Civ. P. 23(a)(4). The named Petitioners have the requisite personal interest in the outcome of this action and have no interests adverse to the interests of the proposed classes. They will fairly and adequately represent the interests of all proposed class members. The proposed classes are represented by pro bono counsel from the American Civil Liberties Union Foundation of Virginia and the law firm of Sterne, Kessler, Goldstein & Fox PLLC, as well as experienced immigration counsel of the named Petitioners. Counsel has extensive experience litigating class action lawsuits and other complex cases in federal court, including civil rights and habeas lawsuits on behalf of detained immigrants.

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

CLAIMS FOR RELIEF

Count I

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

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

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

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

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

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

Count II

Violation of the Administrative Procedures Act, 5 U.S.C. § 706(2)(A) *Violation of Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19 on Behalf of All Petitioners and Similarly Situated Individuals*

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

108. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law.” 5 U.S.C. § 706(2)(D). Specifically, the APA requires agencies to follow public notice-

and-comment rulemaking procedures before promulgating new regulations or amending existing regulations. *See* 5 U.S.C. § 553(b), (c).

109. 8 C.F.R. §§236.1, 1236.1, and 1003.19 have not been rescinded and remain in effect.

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

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

112. The application of § 1225(b)(2) to Petitioners and putative class members unlawfully mandates their continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. Respondents' adoption of their mandatory detention policy, therefore, violates the public notice comment rulemaking procedures required under the APA.

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

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

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

115. Respondents' adoption of a new mandatory detention policy subjects Petitioners and putative class members to mandatory detention without the opportunity for release on bond,

without regard to their unaccompanied minor designation or SIJS. This is arbitrary, capricious, and contrary to law, in violation of the APA.

116. Along with this unlawful policy, Respondents have arbitrarily and capriciously sought to terminate Petitioners' period of deferred action without providing any rationale for doing so whatsoever, and strip Petitioners of the deferred-action-based employment authorization that they had previously been entitled to.

Count IV
Violation of the Fifth Amendment of the U.S. Constitution
(Substantive Due Process)
Unlawful Detention of All Petitioners and Similarly Situated Individuals

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

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

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

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

121. The government’s new mandatory detention policy, subjecting Petitioners and putative class members to continued detention without bond, is wholly unjustified. The government has not demonstrated that unaccompanied minors and special immigrant juveniles—whose custody, care, release, and pathway to permanent immigration protection is specifically articulated in the TVPRA, the INA, implementing regulations and decades of practice and policy—

need to be detained without consideration for release on bond. *See Zadvydas*, 533 U.S. at 690 (finding that immigration detention must further the twin goals of preventing danger to the community or flight prior to removal).

122. The mandatory detention of Petitioners and putative class members is punitive as it bears no “reasonable relation” to any legitimate government purpose. *Id.* The sole basis of their detention—to facilitate the current administration’s expansion of immigration detention—is unlawful. Here, there are indications that Petitioners’ and putative class members’ “detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons.” *Denmore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring).

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

Count V
Violation of the Fifth Amendment of the U.S. Constitution
(Procedural Due Process)
Unlawful Re-Detention of All Petitioners and Similarly Situated Individuals

124. Petitioners incorporate by reference the allegations set forth in the preceding paragraphs.

125. Due Process mandates that Petitioners receive notice and a hearing before a neutral adjudicator prior to any re-arrest or re-detention.

126. All Petitioners and the putative unaccompanied minor class members were released from ORR custody and allowed to develop meaningful ties and relationships within the United States. As such, they possess a weighty liberty interest under the Due Process Clause in avoiding

re-detention. *See Young v. Harper*, 520 U.S. 143, 146-47(1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey*, 408 U.S. at 482-483.

127. The Supreme Court “usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies are “the only remedies the State could be expected to provide” can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where “one of the variables in the *Mathews* equation—the value of pre-deprivation safeguards—is negligible in preventing the kind of deprivation at issue” such that “the State cannot be required constitutionally to do the impossible by providing pre-deprivation process,” can the government avoid providing pre-deprivation process. *Id.*

128. Because here, the provision of a pre-deprivation hearing was both possible and valuable in preventing an erroneous deprivation of liberty, ICE was required to provide Petitioners and the putative class members with notice and a hearing prior to any re-detention. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in favor of [Petitioner’s] liberty” and required a pre-deprivation hearing before a neutral adjudicator, which ICE failed to provide.

129. As part of this unlawful policy, respondents have further sought to terminate Petitioners’ period of deferred action and deferred-action-based employment authorization without due process.

130. The re-detention of Petitioners and putative class members without a pre-deprivation hearing violates their liberty interest under the Due Process Clause of the Fifth Amendment.

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

131. Petitioners incorporate by reference the allegations set forth in the preceding paragraphs.

132. Respondents' practice or policy of re-arresting and re-detaining noncitizens like Petitioners and putative class members without changed circumstances is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, and in excess of statutory jurisdiction. 5 U.S.C. §706 (2)(A), (B), (C), and violates the *Accardi* doctrine and federal agencies' rules. *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

133. In addition, Respondents' failure to provide Petitioners and putative class members with the required pre-deprivation hearing before re-arresting and re-detaining them is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, and in excess of statutory jurisdiction. 5 U.S.C. §706 (2)(A), (B), (C).

134. Accordingly, Respondents' policy or practice violates the APA and should be held unlawful and set aside.

Count VII
Violation of the Administrative Procedures Act, 5 U.S.C. § 706(2)(A)
Contrary to law, 8 U.S.C. §§1232(a)(2)(B),(a)(5)(D), (d)(4)(A),(d)(8), 1101(27)(a)(J),
Implementing Regulations; and Arbitrary and Capricious Agency Action
on Behalf of all Petitioners and Similarly Situated Individuals

135. Petitioners incorporate by reference the allegations set forth in the preceding paragraphs.

136. By summarily ordering the removal of Petitioners [REDACTED] and putative unaccompanied minor class members pursuant to the safe third country provision, Respondents are violating the requirements that unaccompanied minors be afforded standard removal proceedings under 8 U.S.C. §1229a, both in their claims for relief from deportation to their home countries and to any alternative third country.

137. By summarily ordering the removal of Petitioners and purported SIJS class members, Respondents are violating the provisions of the INA which provide permanent protections for special immigration juveniles under 8 U.S.C. §1101(27)(a)(J). By subjecting Petitioners and the proposed SIJS class to the safe third country provision, Respondents are also violating 8 U.S.C. §1155 and 8 C.F.R. §205.2 which require “good and sufficient cause” to revoke SIJS.

138. Respondents’ policy and practice of summarily removing Petitioners and proposed class members under the safe third country provision violates 8 U.S.C. §§1232, 1101(27)(a)(J) and the regulations for revoking SIJS, and is arbitrary and capricious agency action contrary to law under the APA, 5 U.S.C. §706(2)(A).

Count VIII
Violation of the Fifth Amendment of the U.S. Constitution
Unlawful Invocation of the Third Safe County Provision
on Behalf of Petitioners and Similarly Situated Individuals

139. Petitioners incorporate by reference the allegations set forth in the preceding paragraphs.

140. SIJS “reflects the determination of ‘Congress to accord those abused, neglected, and abandoned children a legal relationship with the United States and ensure they are not stripped

of the opportunity to retain and deepen that relationship without due process.” *Joshua M. v. Barr*, 439 F. Supp. 3d 632, 678 (E.D. Va. 2020) (quoting *Osorio-Martinez*, 893 F.3d at 170).

141. By preterminating Petitioners and the putative SIJS class members’ applications for asylum, withholding and CAT and ordering them removed under 8 U.S.C. §1158(a)(2), Respondents are effectively revoking their SIJS without “good and sufficient cause” as required under 8 U.S.C. §1155; 8 C.F.R. §205.2.

142. By statute a special immigrant juvenile is “an immigrant who is present in the United States.” 8 U.S.C. §1101(a)(27)(J). If Petitioners and SIJS class members are removed from the United States under the third safe country provision, they will be stripped of SIJS and unable to adjust status pursuant to the SIJS process.

143. Therefore, Respondents mandatory detention policy which includes summarily removing Petitioners and the putative SIJS class pursuant to the safe third country provision, violate their due process rights their pathway to lawful permanent residence through SIJS.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

- a. Assume jurisdiction over this matter;
- b. Order that Petitioners and putative class members shall not be transferred outside of the Eastern District of Virginia while this case is pending;
- c. Issue a writ of habeas corpus within three days of the filing of this petition, requiring that Respondents show cause why the relief Petitioner [REDACTED] seeks should not be granted, and set a hearing on this matter within five days of Respondents’ return on the order to show cause, pursuant to 28 U.S.C. § 2244;

- d. Order Petitioner [REDACTED], immediate release from custody and require Respondents to justify any re-detention based on “changed circumstances” before a neutral arbiter.
- e. Set aside the denial of bond hearing that Respondents issued to [REDACTED], and, to the extent he remains in detention or is re-detained in the future, order Respondents to provide him a new bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days of the order, or the date of re-detention, as applicable;
- f. Certify two classes consisting of all noncitizens who are or will be held in civil immigration detention within the area of responsibility of WAS ICE who were designated as unaccompanied minors or obtained SIJS at the time of detention and are or will be denied consideration for release under 8 U.S.C. § 1226(a) based on Respondents’ mandatory detention policy;
- g. Set aside Respondents’ unlawful immediate mandatory detention policy under the APA, 5 U.S.C. § 706(2), as contrary to law, arbitrary and capricious, and contrary to constitutional right;
- h. Declare that Respondents’ immediate mandatory detention policy and practice of denying consideration for bond on the basis of § 1225(b)(2) to Petitioners and putative class members—and the additional consequences that Respondents are imposing as part of that policy, as described above—violates the INA, its implementing regulations, and the Due Process Clause;
- i. Enjoin Respondents from re-detaining Petitioners and putative class members without a pre-deprivation notice and hearing where Respondents bear the burden of showing “changed circumstances” before a neutral arbiter.

- j. Declare that Respondents are prohibited from re-detaining Petitioners and putative unaccompanied minor class members without a pre-deprivation notice and hearing where Respondents bear the burden of showing “changed circumstances” before a neutral arbiter.
- k. Enjoin Respondents from applying the safe third country provision, 8 U.S.C. §1158(a)(2)(A) as a basis for ordering Petitioners removed.
- l. Declare that Respondents are prohibited from applying the safe third country provision, 8 U.S.C. §1158(a)(2)(A) to remove Petitioners and putative class members.
- m. Award reasonable attorneys’ fees and costs for this action; and
- n. Grant any other and further relief that this Court deems just and appropriate, including individual injunctions when requested as necessary to secure the rights of similarly situated Petitioners.

Dated: November 20, 2025

Respectfully submitted,

/s/
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**pro hac vice* application forthcoming

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

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

Dated: November 20, 2025

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Second Amended Petition for Writ of Habeas Corpus and Complaint and all attachments using the CM/ECF system, providing notice to all parties.

/s/

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