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

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

Petitioners-Plaintiffs,

v.

PAUL PERRY, *et al.*

Respondents-Defendants.

Case No. 1:25-cv-01644

MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

In a total reversal of decades of policy and practice, the Trump Administration is stripping any semblance of due process for thousands of noncitizens whom the government has allowed to build deep and meaningful connections within the United States. Among those people, unaccompanied minors (UCs) and special immigrant juveniles (SIJS), including the Petitioner-Plaintiffs (Petitioners) in this case, had been on a Congressionally-designed pathway to stable and permanent legal status, until they were caught in the government's arbitrary and cruel mass detention campaign.

Petitioners seek to represent two proposed classes of people in Virginia who are being denied consideration for release by the Department of Homeland Security and the immigration courts, and are being stripped of the benefits of their status as SIJS and UCs. They ask for a preliminary injunction against Respondents' new detention policy and the additional draconian consequences imposed as part of that policy, including the rescission of deferred action and work

authorizations. Petitioners and the proposed classes are entitled to preliminary injunctive relief requiring Respondents to provide pre-deprivation hearings prior to any re-detention, bond hearings under 8 U.S.C. §1226(a) for detained class members, and setting aside the unlawful termination of deferred action and employment authorization. In addition, as described below, they request a temporary restraining order for Petitioner-Plaintiff [redacted] who is being deprived of necessary [redacted] while in detention.

Respondents' actions are harming Petitioners on an ongoing and irreparable basis: they have been detained without bond and stripped of their deferred action and lawful employment status. They are therefore entitled to preliminary relief because Respondents' actions are contrary to law, arbitrary and capricious, and violate the Due Process Clause. Further, the equities weigh heavily in favor of certifying a provisional class for the purposes of a preliminary injunction because, without access to release on bond, class members are unable to pursue the protections afforded special immigrant juveniles to adjust their status as lawful permanent residents. Finally, the requested relief does not interfere with any legitimate public or government interest and would not interfere in any way with the removal proceedings against Petitioners or the proposed classes.

[redacted] is also entitled to a temporary restraining order. He has been [redacted] is entitled to a TRO releasing him in order [redacted], in addition to the relief he is entitled to as a member of the putative classes, as described above.

BACKGROUND

A. Legal Framework of Immigration Detention

Until very recently, the government recognized that noncitizens who have been residing in the United States and subsequently detained by immigration authorities are entitled to consideration for release on bond. This case arises from the government's effort to completely reverse course on this issue and attempt to drastically expand its authority to detain noncitizens, including those designated as unaccompanied minors or Special Immigrant Juveniles.[1]

As relevant here, two provisions of the Immigration and Nationality Act ("INA") govern immigration detention: 8 U.S.C. § 1226(a) and § 1225(b). The distinction between the two is critical. Noncitizens subject to § 1226(a) are arrested "[o]n a warrant," and once detained, are eligible for release by ICE on bond or conditional parole. S*ee* 8 U.S.C. § 1226(a)(1); 8 C.F.R. § 236.1(c)(8). If ICE does not release the individual, they can seek a custody redetermination (otherwise known as a bond hearing) before an immigration judge. See 8 C.F.R. § 1236.1(d). At that hearing, the noncitizen may present evidence to show they are not a flight risk or danger to the community. *See generally*, *In re Guerra,* 24 I&N Dec. 37 (BIA 2006). Thus, noncitizens subject to §1226(a) are considered subject to "discretionary" detention.

By contrast, noncitizens detained under § 1225(b) are subject to mandatory detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); 8 U.S.C. § 1182(d)(5). This means that neither ICE nor an immigration judge has jurisdiction to consider the noncitizen's release on bond or conditional parole, and the individual must remain detained while their immigration case proceeds.

[1] This case does not challenge the detention of individuals subject to one of the INA's special detention provisions, such as the detention authority for people in expedited removal, *see* 8 U.S.C. § 1225(b)(1), and those with final orders of removal that have not been executed, *see id*. § 1231(a)(6).

These two provisions reflect a long-held distinction in immigration law between noncitizens arrested after entering the country (§ 1226) and those arrested while arriving in the country (§ 1225). The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) codified the detention authority that exists today. Prior to 1996, the statutory authority for custody determinations was found at 8 U.S.C. § 1252(a) (1994), which authorized the detention of noncitizens during "deportation" proceedings and their release on bond. That provision governed the detention of anyone within the United States, regardless of manner of entry. IIRIRA maintained the same authority for detention and release on bond at 8 U.S.C. § 1226(a). *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (explaining the new § 1226(a) "restate[d] the current provisions in [then 8 U.S.C. § 1252(a)] regarding the authority … to … detain, and release on bond").

The IIRIRA also enacted new mandatory detention provisions for people apprehended on arrival to the U.S. at 8 U.S.C. § 1225. *See Jennings,* 583 U.S. at 303. In implementing the IIRIRA's detention authority, the then-INS clarified that people entering the U.S. without inspection and who were not apprehended while "arriving" would continue to be detained under § 1226(a) (formerly § 1252(a)) and would be eligible for release on bond. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Inadmissible [noncitizens], except for arriving [noncitizens], have available to them bond … This procedure maintains the status quo.").

B. Respondents' New Immediate Mandatory Detention Policy

During the almost thirty years since the IIRIRA's passage, Respondents DHS and the Executive Office for Immigration Review ("EOIR") – the immigration court system – applied § 1226(a) to detain people caught in the interior after entry without inspection. Under that longstanding interpretation, such individuals—including unaccompanied minors and Special

Immigrant Juveniles ("SIJS")—were entitled to seek release on bond unless detained for reasons specified elsewhere in the INA. Now, Respondents have adopted a new, sweeping mandatory detention policy that strips UCs and SIJS youth of access to bond, pre-deprivation process, and deferred-action–based employment authorization.

The change began earlier this year at the Tacoma Immigration Court, where IJs began denying bond to everyone who entered without inspection. *See Rodriguez Vazquez*, 779 F.Supp.3d 1239, 1244. Then, on May 22, 2025, the Board of Immigration Appeals ("BIA") issued an unpublished decision affirming one Tacoma IJ's decision that a noncitizen who had lived in the U.S. for over 10 years prior to being detained was subject to mandatory detention under § 1225(b)(2)(A). After the unpublished BIA decision, in July 2025, DHS "in coordination with the [DOJ]" issued a memo stating "effective immediately, it is the position of DHS" that anyone who entered without inspection is "subject to detention under [8 U.S.C. § 1225(b)] and may not be released from ICE custody." According to DHS, this means that the vast majority of noncitizens detained in the U.S. are now "ineligible for a [bond] hearing … and may not be released" during removal proceedings. Immigration judges in Virginia and nationwide have since adopted this interpretation, concluding that they lack jurisdiction to consider bond for UCs or SIJS, even when those individuals had previously been released from ORR after a government determination that they presented no danger or flight risk.

Since then, Respondent's policy has grown bolder still—Respondents began re-arresting and re-detaining UCs and SIJS youth without any pre-deprivation hearing or notice, despite the long-standing requirement that ICE may re-detain such individuals only upon a showing of materially changed circumstances before a neutral decisionmaker. *See Matter of Sugay*, 17 I&N Dec. 637 (BIA 1981). Despite their SIJS or UC status, ICE is now regularly seizing these

individuals from their homes or communities without any advance notice or neutral review and is subjecting them to mandatory detention.

These changes represent not merely a shift in detention policy but a coordinated campaign to unlawfully coerce noncitizens to abandon their lawful status. To accomplish this goal, Respondents: (1) block UCs and SIJS youth from seeking release under § 1226(a); (2) re-detain them without the pre-deprivation hearings required by Due Process; and (3) strip them of the deferred action and work authorization that historically ensured stability while they awaited visa availability. As a result, Petitioners and hundreds like them remain stuck in immigration detention for months while their immigration cases proceed—a process that can last years.

C. Unaccompanied Minors and Special Immigrant Juveniles Are Legally Afforded Bond Hearings

Federal law creates special protections to ensure the care and safety of UCs. The Trafficking Victims and Protection Reauthorization Act ("TVPRA"), which was signed into law in 2008, requires 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." 8 U.S.C. § 1232(b)(1). Under the TVPRA, the Department of Health and Human Services ("HHS") is responsible for all placement decisions for unaccompanied minors in its custody, who must be "promptly placed in the least restrictive setting that is in the best interest of the child," with considerations of danger to self and community and risk of flight. *Id.* Children apprehended upon or after entry in the United States and designated as unaccompanied minors must be "promptly placed in the custody of the Office of Refugee Resettlement and placed in the least restrictive settings, including being released from government custody to adequate sponsors without delay." 8 U.S.C. § 1232(c)(2)(a). Should the government seek to remove unaccompanied minors from the U.S., they must be afforded the full scope of due process to defend

against their deportation in standard removal proceedings; the government may not employ the expedited removal process. *Immigrant Defs. L. Ctr. v. DHS*, No. CV 21-0395, 2025 WL 1191572, at *13 n.17 (C.D. Cal. Mar. 14, 2025).

These protections extend even once a noncitizen who was designated a UC upon entry reaches the age of majority while residing in the U.S. on release pursuant to a sponsorship agreement. *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *5 (S.D.N.Y. June 12, 2018) ("In 2013, the TVPRA was amended as to minors who reach the age of eighteen after entry into the U.S., evidencing congressional intent to repeal, in part, 8 C.F.R. § 1003.19 (mandatory detention of arriving [noncitizens]).").

D. Background on Petitioners' Cases.

a. [redacted]

[redacted] is a 20-year-old Special Immigrant Juvenile ("SIJ") who entered the United States as an unaccompanied child in [redacted] after being [redacted] and experiencing years of [redacted] in his native [redacted]. Ex. 1, [redacted] Decl. ¶ 1. Upon arrival, he was designated a UC and transferred to the custody of the Office of Refugee Resettlement before being reunified with his [redacted] in Virginia. *Id.* ¶ 2. He was also placed in removal proceedings at the time of his arrival in the U.S. *Id.* ¶ 3. Although he initially [redacted] ultimately established deep roots in the United States. *Id.* ¶¶ 3–5. Prior to his current detention, he was employed, contributed significantly to his family's support, and played a major role in caring for his younger siblings. *Id.* ¶ 5.

In [redacted] 2023, [redacted] was granted SIJ status and deferred action while he awaited a visa number. *Id.* ¶ 3. His pending removal proceedings were terminated on that basis, and he remained in lawful deferred action status while awaiting visa availability. *Id.* In [redacted] 2025, however, Respondents re-detained him without any pre-deprivation process, denied him essential [redacted]

[redacted], revoked his employment authorization, and treated him as a mandatory detainee ineligible for bond pursuant to Respondents' unlawful bond-denial policy. *Id.* ¶ 9–12. [redacted] remains at the Farmville Detention Center—where Respondents have kept him detained since July. *Id.* ¶ 13

[redacted]

b. [redacted] Lopez Sarmiento

[redacted] Lopez Sarmiento is a [redacted] national who arrived in the United States alone in 2023, when he was [redacted] old. Ex. 3, [redacted] Decl. ¶ 1, 2. He was apprehended after entry and released to the custody of his uncle as required by the TVPRA. *Id.* ¶ 2. After his release from custody, [redacted] attended high school in D.C., where he excelled and developed an interest in pursuing higher education in the medical field. *Id.* ¶ 3. He also promptly applied for SIJS, which was approved in 2024, along with deferred action and work authorization. *Id.* ¶ 4.

On [redacted] 2025, without any warning, [redacted] was suddenly and violented re-arrested by a group of ICE agents who surrounded him outside his home with their guns drawn. *Id.* ¶ 5. He was initially detained at Farmville Detention Center and later transferred to Caroline Detention Facility. *Id.* Shortly after his arrest, USCIS sent notice to his immigration attorney, purporting to terminate his deferred action and work authorization, and instituted removal proceedings against him. *Id.* ¶ 7, 8. In response, through his immigration counsel, [redacted] motioned to terminate his removal proceedings based on his approved SIJS, so that he could adjust his status when a visa

became available. *Id.* ¶ 8. The immigration judge denied his motion and ordered him to file a different form of relief to defend against his deportation. *Id*.

[redacted] was initially granted release on a bond, but the immigration judge later reversed his decision based on Respondents' new mandatory detention policy. *Id.* ¶ 9. Pursuant to this Court's order, Dkt. 16, [redacted] was given a new bond hearing on [redacted] 2025, and ordered released on a $7,000 bond. He was released from custody the next day. *Id.* ¶ 10, 11.

c. [redacted]

Petitioners [redacted] are [redacted] brothers who came to the United States as unaccompanied minors in 2022. Ex. 4, [redacted] Decl. ¶ 1-2; Ex. 5, [redacted] Decl. ¶ 1-2. They were apprehended after entry and released to a sponsor, their [redacted] in Newport News, Virginia, as required by the TVPRA. *Id*. After settling in Newport News, they developed strong ties to their community where they attended high school, play in their church band, and work towards a stable and independent adulthood. [redacted] Decl. ¶ 3-4; [redacted] Decl. ¶3. They also subsequently applied for SIJS, which [redacted] obtained in 2024 with deferred action and work authorization, and [redacted] remains pending. [redacted] Decl. ¶ 5-7; [redacted] Decl. ¶ 4.

On August 21, 2025, the brothers were passengers in a van with their [redacted] when they were pulled over by an unmarked car for no apparent reason. [redacted] Decl. ¶ 8; [redacted] Decl. ¶ 5-6 . Without prior notice or an opportunity to contest their re-apprehension, [redacted] and [redacted] were re-detained by immigration officials at this traffic stop and transferred to Farmville Detention Center. [redacted] Decl. ¶ 8-10; [redacted] Decl. ¶7. While in Farmville, ICE instituted removal proceedings against them for the first time. Like [redacted] had previously done and [redacted] attempted, [redacted] sought to terminate his removal proceedings based on his grant of SIJS and deferred action. *Id*. ¶8. The immigration judge denied [redacted]'s motion and required both brothers to present any other applications for relief from deportation to [redacted] for which they may be

eligible. *Id.* [redacted] and [redacted] filed I-589, applications for asylum, withholding of removal, and protection under the Convention Against Torture. *Id.*; [redacted] Decl. ¶ 11.

Initially, the immigration judge in the brother's case ordered them released on bond, but reversed his decision after the implementation of the Respondents' new mandatory bond policy. Following the Court's order, Dkt. No. 16, the immigration judge ordered [redacted] and [redacted] released on $3,000 bonds, and they were released on [redacted] 2025. [redacted] Decl. ¶ 11; [redacted] Decl. ¶ 9-10. The following day, through counsel, they received notice that the immigration judge pretermitted their asylum applications under 8 U.S.C. 1182(a)(2), ordering them removed to Honduras. [redacted] Decl. ¶ 14; [redacted] Decl. ¶11.

LEGAL STANDARD

A TRO is governed by the same standard as that for preliminary injunctions. *See U.S. Dep't of Lab. v. Wolf Run Mining Co.*, 452 F.3d 275, 281 n.1 (4th Cir. 2006). Petitioner [redacted] is entitled to a TRO, and the putative class members are entitled to a preliminary injunction, because (1) they are likely to succeed on the merits of their claims; (2) they are likely to suffer irreparable harm absent an injunction; (3) the balance of hardships tips in their favor; and (4) they can show that an injunction is in the public interest. *Vitkus v. Blinken*, 79 F.4th 352, 361 (4th Cir. 2023) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). To satisfy the first factor, "[a] plaintiff need not establish a certainty of success, but must make a clear showing that he is likely to succeed at trial." *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017) (internal quotation marks omitted). When the government is the defendant, the last two factors merge. *Vitkus*, 79 F.4th at 368.

Further, under the Administrative Procedure Act (APA), a court may also "to the extent necessary to prevent irreparable injury, . . . issue all necessary and appropriate process to postpone

the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. § 705.

ARGUMENT

I. Petitioners and the putative class members are suffering irreparable harm.

The "deprivation of a constitutional right, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Miranda v. Garland*, 34 F. 4th 338, 365 (4th Cir. 2022) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Respondents' new mandatory detention policy, as applied to Petitioners and putative class members, continues to unconstitutionally deprive them of their physical liberty. This clearly establishes that Petitioners and putative class members are suffering irreparable harm.

In addition to the loss of physical liberty, the Government is also regularly stripping putative SIJS class members, including [redacted],[2] of their deferred action and employment authorization, without providing any basis for doing so, thereby ensuring that even if they are released from their unlawful detention, they will remain unable to work lawfully in this country.

In addition to the unconstitutional deprivation of liberty and due process that all putative class members have suffered, Petitioner [redacted] is suffering irreparable harm based on Respondents' ongoing refusal to provide [redacted] while he remains in detention. Refusal to provide medical care amounts to irreparable harm. *See Pashby v. Delia*, 709 F.3d 307, 329 (4th Cir. 2013) (denial of needed medical care amounts to irreparable harm). Respondents are depriving him of the ability

[2] After his release from detention, officials at Farmville Detention Center refused to return [redacted]'s employment authorization card along with the rest of his property. [redacted] Decl. ¶ 10. He has received no formal notice, however, revoking his deferred action or employment authorization. *Id*.

to see [redacted] he needs, despite the fact that [redacted] Decl. ¶ 13. [redacted]'s attorney has been pleading for this relief from Farmville for months, as has [redacted] himself, to no avail. *See* Garfinkel Decl. This refusal of [redacted], all of which certainly constitute irreparable harm. *See Provident Pharm., Inc. v. Amneal Pharms., LLC*, No. 3:08-cv-393, 2008 WL 3843505, at *3 (E.D. Va. Aug. 15, 2008) (citing *Multi–Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 551 (4th Cir. 1994)) ("[i]rreparable injury is suffered when monetary damages are difficult to ascertain or are inadequate").

II. Petitioners and putative class members are likely to succeed on the merits.

Respondents' mandatory detention policy as applied to unaccompanied minors and special immigrant juveniles is clearly unlawful under the Immigration and Nationality Act, the APA, and the Fifth Amendment to the U.S. Constitution, and therefore, Petitioners and putative class members are likely to succeed on the merits of their challenge to that action. "When a complaint alleges multiple causes of action, a plaintiff need only show a likelihood of success on one claim to justify preliminary injunctive relief." *Doe v. Noem*, 783 F. Supp. 3d 907, 921 (W.D. Va. 2025) (citing *Abrego Garcia v. Noem*, 777 F. Supp. 3d 501, 515–516 (D. Md. 2025); *Variable Annuity Life Ins. Co. v. Coreth*, 535 F. Supp. 3d 488, 505 (E.D. Va. 2021); *Nabisco Brands, Inc. v. Conusa Corp.*, 722 F. Supp. 1287, 1292 n.4 (M.D.N.C.), aff'd, 892 F.2d 74 (4th Cir. 1989) (table decision)).

a. Petitioners and putative class members are likely to succeed on their Constitutional challenges.

The Fifth Amendment's Due Process Clause specifically forbids the Government from "depriv[ing]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. amend.

V. It is well established that noncitizens present in the United States are entitled to due process protections under the Fifth Amendment. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

Indeed, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, (2001); *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action."). "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Supreme Court has consistently reaffirmed that detention "for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Jones v. United States*, 463 U.S. 354, 361 (1983) (quoting *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases)); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders). Immigration detention is no exception. *See Zadvydas*, 533 U.S. at 690.

Accordingly, the government may not deprive noncitizens of liberty—including through immigration detention—without the procedural and substantive protections guaranteed by due process. *See Zadvydas*, 533 U.S. at 690-93; *Hernandez-Lara v. Lyons*, 10 F.4th 19, 29 (9th Cir. 2022); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). Thus, even assuming *arguendo* that the government could construe 8 U.S.C. §§ 1225 or 1226 to authorize detention without a bond hearing (and it cannot), that interpretation must still be constrained by constitutional limitations. Holding Petitioners and putative class members in custody without

providing them any individualized opportunity to seek release on bond, and no hearing prior to the deprivation, violates the Fifth Amendment.

i. Respondents' blanket refusal to provide bond violates Procedural and Substantive Due Process.

Given the substantial liberty interest at stake, the Constitution requires that the government furnish adequate procedural safeguards before continuing to restrain Petitioners' freedom. This inquiry is governed by the framework articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). In assessing procedural Due Process, courts examine the *Mathews* factors:

> "First, the private interest that will be affected by the official action; second, 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 finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

Mathews, 424 U.S. at 335.

On the first prong, this Court has recognized that UCs and SIJS beneficiaries are "accorded significant benefits and procedural protections," and therefore required to receive a "prompt, individualized bond hearing" as a matter of procedural due process. *Rodriguez v. Perry*, 747 F. Supp. 3d 911, 919 (E.D. Va. 2024); *see also Pineda-Medrano v. Bondi*, No. 1:25-CV-01870, 2025 WL 3472152, at *3 (E.D. Va. Dec. 3, 2025) (Trenga, J.). Indeed, "the interest in being free from physical detention by one's own government" is "most elemental" of the liberties protected by the Due Process Clause. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (plurality opinion); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause"). Moreover, in creating SIJS status, Congress included protections against removal, *see* 8 U.S.C. § 1227(c), and ensured individualized bond hearings under § 1226. *See Salazar*, 2025 WL 2676729, at *5 (D.N.M. Sept. 17, 2025) ("noncitizens detained pursuant to § 1226 are entitled additional due process considerations")

(internal citations omitted). In this context, numerous courts have recognized that plaintiffs have a highly significant interest in receiving a bond hearing. *Duarte Escobar v. Perry*, No. 3:25CV758, 2025 WL 3006742, at *14 (E.D. Va. Oct. 27, 2025) ("Petitioner's Private Interest in Remaining Free from Physical Detention Weighs in His Favor" on *Mathews* factor one.); *see also Flores v. Olson*, No. 25 C 12916, 2025 WL 3063540, at *3 (N.D. Ill. Nov. 3, 2025) ("the denial of bond based on *Yajure Hurtado* violates procedural due process."); *Salazar v. Dedos*, No. 1:25-CV-00835, 2025 WL 2676729, at *5 (D.N.M. Sept. 17, 2025) (same); *I.C.A. v. Lyons*, No. 1:25-cv-01542-SKO, 2025 WL 3496432 (E.D. Cal. Dec. 5, 2025).

On the second prong, there is also significant risk of erroneous deprivation, and significant benefit from additional procedural safeguards that individualized bond hearings provide. *See Duarte Escobar*, 2025 WL 3006742, at *15 (E.D. Va. Oct. 27, 2025) ("*Mathews* Factor Two: There is a Significant Risk of Erroneous Deprivation of Petitioner's Due Process Rights" from failure to provide individualized bond hearings). Indeed, Petitioner-Plaintiff [redacted] and scores of additional putative class members like him have *already* been deprived erroneously of their liberty by being denied individualized bond hearings. *See also Rodriguez*, 747 F. Supp. 3d at 919.

Finally, on the third prong, the Government has little if any interest in depriving petitioners and putative class members of bond hearings. Indeed, the Government is in no way inhibited from pursuing lawful immigration enforcement merely by providing such individuals with a bond hearing, particularly where the Government has no basis for dangerousness or flight risk to justify keeping them detained. *See, e.g.*, *Duarte Escobar*, at *15.

The Fourth Circuit's decision in *Miranda v. Garland,* 34 F. 4th 338, 346 (4th Cir. 2022), is not to the contrary. There, the Fourth Circuit considered a class-wide preliminary injunction for detained noncitizens, including noncitizens who entered the United States without being admitted

or paroled and who alleged that their bond hearings under §1226(a) were inadequate because the burden of proof was placed on the noncitizen to show they did not pose a danger or flight risk and failed to take into account their ability to pay. Acknowledging the importance of the liberty interests at stake, the Fourth Circuit determined that the procedures used at that time satisfied due process because they provided noncitizens with "three opportunities to seek release from detention." *Miranda*, 34 F.4th at 346, 366. As this Court has recognized, "nowhere in that opinion did the Fourth Circuit hold—explicitly or implicitly—that the failure to comport with the procedures contemplated in section 1226(a), including the provision of a bond determination hearing, would also satisfy due process." *Pineda-Medrano*, at *3 n.5 (Trenga, J.).[3]

For all of these reasons, as applied, Respondents' new mandatory detention policy, which has permitted unilateral government detention of Petitioners and putative class members without a case-by-case determination—even after, in some cases, a reasoned finding by an IJ that the Petitioner does not pose a threat to safety or a risk of flight—violates substantive due process because the Government cannot assert any special justification that outweighs Petitioners' and putative class members' constitutionally protected liberty interests. Accordingly, Petitioners and class members' continued detention violates their substantive due process rights.

[3] Notably, notwithstanding *Miranda*'s recognition that due process is typically satisfied by the Government's ordinary 1226(a) procedures that place the burden on the bond applicant, subsequent cases from this district have recognized that that due process *does* sometimes require that the burden be placed on the Government to prove dangerousness or flight risk—for example, where individuals are granted SIJS status or have been detained for long periods of time. *See, e.g.*, *Rodriguez*, 747 F. Supp. 3d at 919 (citing *Haughton v. Crawford*, 221 F. Supp. 3d 712, 714 (E.D. Va. 2016) and *Portillo v. Hott*, 322 F. Supp. 3d 698, 709 (E.D. Va. 2018)). Here, because Plaintiff-Petitioners and putative class members here have been *re-detained* after their initial release from custody, the Government should bear the burden of justifying their re-detention. *See, e.g.*, *I.C.A.*, 2025 WL 3496432.

ii. Respondents' failure to provide pre-deprivation hearings prior to re-detaining petitioners and putative class members violates Procedural Due Process.

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, 127-128 (1990) (collecting cases); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971)). 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 128. 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.*

Recognizing this fundamental principle in the civil immigration detention context, courts have recognized that the Government must provide pre-deprivation hearings when it seeks to re-detain individuals who were previously held in immigration detention but were then released to the community. For example, in *Phouvieng K. v. Andrews*, No. 1:25-cv-01512-KES-SAB, 2025 WL 3265504, at *9 n. 11 (E.D. Cal. Nov. 24, 2025), the court held that due process required a pre-deprivation hearing before ICE could revoke that release and re-detain the petitioner, emphasizing that the petitioner's conditional liberty[4] created a protected liberty interest that could not be

[4] As the *Phouvieng* court recognized, even a conditional liberty interest is likewise protected by procedural due process and requires a pre-deprivation hearing. *See Phouvieng*, 2025 WL 3265504 at *7 (recognizing that "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole," and collecting cases). For example, the Supreme Court in *Morrisey* made clear that even a conditional form of liberty "includes many of the core values of unqualified liberty," and for that reason the State may not re-incarcerate a parolee without first providing a preliminary hearing to determine probable cause,

extinguished through unilateral agency action. *See id.* at *7. Specifically, it analogized to cases recognizing a liberty interest in parole in the criminal context. *See id.* (collecting cases). The court explained that ICE's revocation procedures lacked any neutral review and thus carried a "heightened risk of erroneous deprivation" under *Mathews*, and that the government's interest in bypassing a hearing was minimal given that custody hearings are routine in immigration court. *Id.* at *8. Because the government re-detained the petitioner without first providing an individualized hearing before a neutral decisionmaker to determine whether detention was justified, the court found a likely due process violation and ordered the petitioner's immediate release. *Id*.

In *I.C.A. v. Lyons*, the Eastern District of California recently reached the same conclusion, holding that ICE's re-detention of a noncitizen who had lived in the community for years after release violated procedural due process because it occurred without any pre-deprivation hearing. *See I.C.A. v. Lyons*, 2025 WL 3496432, at *5. The court recognized that the petitioner's four years of liberty—during which he lived in Maryland—created a constitutionally protected liberty interest analogous to the conditional liberty at stake in *Morrissey*. *Id.* Because ICE had re-detained the petitioner without first providing a hearing at which the government bore the burden of proof, the court found a due process violation, ordered the petitioner's immediate release, and enjoined ICE from re-detaining him absent a pre-deprivation bond hearing before a neutral decisionmaker at which the government must prove flight risk or dangerousness by clear and convincing evidence. *Id.* at *6.

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followed by a more formal revocation hearing. *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972) (explaining that "[t]he liberty of a parolee enables him to do a wide range of things open to persons who have never been convicted of any crime" and that the petitioner had "relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions.").

This reasoning should control here. Although the government has a substantial interest in regulating immigration, that interest does not justify summarily detaining Petitioners and UC class members, whom the government already released after finding that they do not pose any danger or flight risk, without a hearing where it demonstrates "changed circumstances." 8 C.F.R. § 241.13(i)(2). Petitioners are individuals whom the government itself previously designated as UCs; upon arrival were taken into federal custody and then affirmatively released to vetted sponsors. *See* 6 USC § 279(b)(1); 8 USC § 1232(b)(1), § 1232(c)(2)(a). Furthermore, the government allowed Petitioners to begin the congressionally proscribed process towards SIJS status, and has often granted that status. *See* 8 U.S.C. § 1101(a)(27)(J), 1153(b)(4), 1255. In fact, all the named Petitioners were approved for release, permitted to reside with family or other sponsors, attend school, work, and live in the community for years. Second Am. Compl., Dkt. No. 18-1 ¶¶60-91. Petitioners' liberty interest is one the government itself created and sanctioned. Accordingly, by the government's own actions, petitioners' liberty interest "is not the same as when someone is caught coming from across the border." *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff'd*, *Saravia ex rel A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (holding that the federal government violated the due process clause when it rearrested and detained minors who were previously released to sponsors under the TVPRA without providing a prompt hearing).

Lastly, the narrow circumstances in which the Constitution permits postponing process are not present here. Post-deprivation process suffices only where urgent action is necessary or where the deprivation arises from an unexpected, unavoidable event. *See Gilbert v. Homar*, 520 U.S. 924, 930 (1997); *Zinermon*, 494 U.S. at 128–29. Cases in which courts have excused pre-deprivation hearings involve urgent national security concerns or situations where advance notice would

undermine the Government's ability to protect the public. *See Mohamed v. Holder*, 2015 WL 4394958, at 7-9 (E.D. Va. July 16, 2015) (upholding delayed notice because pre-deprivation disclosure would compromise counter-terrorism investigations); *GRF v. O'Neill*, 315 F. 3d 748, 754 (7th Cir. 2002) (upholding immediate asset freeze to prevent terrorist funds from being used violently). Those concerns are clearly entirely absent here.

In sum, because these Petitioners were designated unaccompanied minors whom the government previously approved for release, the Government's interest in re-detaining them without first providing a hearing is minimal. These young people's liberty interests are significant, and the risk of error without a hearing is acute. This case presents no basis to depart from the foundational constitutional requirement that liberty cannot be taken without a pre-deprivation hearing.

iii. Respondents' attempts to strip petitioners and putative class members of their employment authorization and deferred action violate Procedural Due Process.

Plaintiffs and putative class members are also being deprived of their interest in their employment authorization and SIJS deferred action without Due Process. For example, in July 2025, after placing [redacted] in mandatory detention, Respondents sent [redacted] a letter purporting to rescind his deferred action as an SIJS and remove his employment authorization, without providing any opportunity to challenge that decision, nor any reasoned basis for doing so. Second Am. Compl., Dkt. No. 18-1 ¶ 87. In August 2025, Respondents sent [redacted] an identical letter dated the day after his arrest. *Id*. ¶ 77. The letters claimed that [redacted] and [redacted] "may not appeal or move to reopen/reconsider this decision." *Id.* These letters constitute part of the Government's *sub silentio* change in policy under which SIJS recipients are being unlawfully stripped of deferred action and denied the ability to obtain or retain employment authorization while the Government places them

in mandatory detention. *See, e.g. A.C.R. v. Noem*, No. 25-CV-3962 (EK)(TAM), 2025 WL 3228840, at *3 (E.D.N.Y. Nov. 19, 2025). This unannounced policy is a paradigmatic deprivation of liberty and property without Due Process.

First, Defendants' policy of terminating deferred action for SIJS recipients deprives individuals like [redacted] and [redacted] of their cognizable interest in remaining free from being detained without cause. As noted above, this interest has long been recognized by U.S. courts. *See, e.g.*, *Morrissey v. Brewer*, 408 U.S. 471 (1972) (individuals conditionally released from custody have a protected liberty interest requiring notice and a hearing before revocation of that liberty); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) (due process requires a hearing before probation revocation because the individual's conditional liberty cannot be terminated without procedural safeguards); *Young v. Harper*, 520 U.S. 143 (1997) (holding that a pre-parolee had a liberty interest in continued release). Like probation or parole, deferred action "enables [the recipient] to do a wide range of things open to persons who have never been" subject to immigration enforcement, "based on an evaluation" of the relevant SIJS factors. *Morrissey*, 408 U.S. at 482. Moreover, it allows the recipient to be "gainfully employed" and "free to be with family and friends and to form the other enduring attachments of normal life." *Id.* These are the paradigmatic indicia of a constitutional liberty interest. That deferred action is "discretionary" makes it no less cognizable—indeed, the same can be said of parole. *See id.* at 483 ("A simple factual hearing will not interfere with the exercise of discretion").

Second, automatically terminating employment authorization for these individuals equally violates Procedural Due Process. The Supreme Court has long held that employment, *i.e.*, "'the right of the individual . . . to engage in any of the common occupations of life'" falls "within the concept of liberty guaranteed by the Fourteenth Amendment." *Massachusetts Bd. of Retirement*

v. Murgia, 427 U.S. 307, 322 (1976) (quoting *Board of Regents v. Roth*, 408 U.S. 564, 572 (1972)). Government employment authorization is inarguably a government benefit, which cannot be rescinded without providing an opportunity to respond. *See Cleveland Bd. Of Education v. Loudermill*, 470 U.S. 532, 538, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985) (the government may not deprive a person of a property right in continued employment without due process); *Bell v. Burson*, 402 U.S. 535, 539 (1971) (Government licenses whose continued possession are "essential in the pursuit of a livelihood" are "not to be taken away without that procedural due process required by the Fourteenth Amendment.").

Here, the Trump Administration has adopted a policy of depriving SIJ recipients of their deferred action and employment authorization with no process whatsoever. This is plainly unconstitutional. Indeed, the Eastern District of New York recently stayed the Government's attempt to rescind the 2022 policy establishing deferred action for SIJS, thereby ensuring that deferred action would remain available for prospective applicants. *A.C.R.*, 2025 WL 3228840, at *17; *see also infra* at 24-25. But the Government is applying this policy not only prospectively, but also retrospectively: it is being used to deprive individuals like [redacted] and [redacted] of the SIJS deferred action that they had already been granted, as part of the Government's unlawful "mandatory detention" policy. Plaintiffs and putative class members are likely to succeed on this claim as well.

b. Petitioners and putative class members are likely to succeed on their APA and statutory challenges.

Respondents' mandatory detention policy—and the collateral consequences imposed as part of that policy—also violate the APA. *See* 5 U.S.C. § 706(2). The APA authorizes courts to "hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2).

Agency action is arbitrary and capricious if "the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). This standard requires that agency action be both "reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). In other words, "[p]ursuant to the APA's scheme of reasoned decisionmaking, an administrative agency 'must be required to apply in fact the clearly understood legal standards that it enunciates in principle.'" *Knox v. U.S. Dep't of Lab.*, 434 F.3d 721, 724 (4th Cir. 2006) (quoting *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 376 (1998)). Moreover, when an agency changes its position on an issue, it must provide "a reasoned explanation for disregarding facts and circumstances that underlay or were engendered by the prior policy." *Child's. Hosp. Ass'n of Texas v. Azar*, 933 F.3d 764, 773 (D.C. Cir. 2019) (citing *Fox*, 556 U.S. at 516). An "unexplained inconsistency" with an earlier position renders a changed policy arbitrary and capricious. *Nat. Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005).

Respondents' new immediate mandatory detention policy—which deprives Petitioners and putative class members of pre-deprivation hearings and imposes collateral consequences like stripping them of deferred action and employment authorization—is a final agency action, and is reviewable under the APA. *See* 5 U.S.C. §704; *Biden v. Texas*, 597 U.S. 785, 808 (2022) (Memorandum issued by DHS was final agency action where it "marked the consummation of the agency's decisionmaking process and resulted in rights or obligations being determined") (citation modified); *see also DHS v. Regents of the Univ. of Cal.,* 140 S. Ct. 1891, 1906-07 (2020)

("*Regents*") (recission of DACA deferred action program was reviewable because DACA was "a program conferring affirmative immigration relief").

i. Denying bond hearings to Petitioners and putative class members, and stripping them of deferred action and employment visas, is arbitrary and capricious and contrary to law.

The government's immediate mandatory detention policy is arbitrary, capricious, and not in accordance with law because Respondents provided no reasoned basis for subjecting Petitioners and putative class members to mandatory detention under §1225(b), and because there is no permissible reason to do so. *See* 8 C.F.R. §§ 1003.19, 1236.1(d)(1). As this Court, along with more than 150 other district courts around the country, has recognized, the agency's reading of the INA bond statute is incorrect and contrary to law. Dkt. No. 16. It is also arbitrary and capricious. Because UCs and SIJS recipients are children or youth who have been abandoned, abused, or neglected—and whom Congress expressly sought to protect under the Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA") by placing them in the least-restrictive settings and prioritizing their welfare rather than detention—there is no reasoned basis to subject them instead to a blanket policy of mandatory detention. Nor have Respondents provided any reasoned basis to contend otherwise: the only indications of the reasons for subjecting unaccompanied minors and beneficiaries of SIJS to mandatory detention are the Respondent's generalized comments to detain as many noncitizens as possible to accomplish their mass-deportation agenda. *See* Second Am. Compl., Dkt. No. 18-1 ¶¶45-46. But a "generic explanation, which could apply to" numerous agency actions, is "neither persuasive nor specific," and therefore insufficient under the APA. *Woods v. Berryhill*, 888 F.3d 686, 693 (4th Cir. 2018).

Nor is it lawful under the APA to strip petitioners and putative class members of their deferred action and employment status. As the *A.C.R.* court recognized, Respondents' change of

position on SIJS status is no mere "nonenforcement policy" immune from APA review. *A.C.R.*, 2025 WL 3228840, at *7. Rather, it represents the rescission of a "program conferring affirmative immigration relief" that is therefore reviewable. *See id.* (recognizing that the Government's nonreviewability argument was foreclosed by *Regents*).

And the Government has provided no explanation whatsoever for its decision to strip SIJS recipients of deferred action and prevent them from working lawfully in this country. Nor could it: "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.*, 439 F. Supp. 3d at 659 (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 v. Att'y Gen. U.S.*, 893 F.3d at 168 (*citing Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011)). Respondents' decision thus flies in the face of Congress's express purpose of allowing such individuals the opportunity to adjust status and obtain lawful permanent resident status. *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"); *see also* 8 U.S.C. § 1232(c)(2)(A) (UCs should be "in the least restrictive setting that is in the best interest of the child").

ii. Respondents' re-detention of petitioners and putative class members without any attempt to demonstrate changed circumstances is arbitrary and capricious and contrary to law.

By regulation, an alien's release may only be revoked "on account of changed circumstances." 8 C.F.R. § 241.13(i)(2). But here, DHS has failed to even attempt, let alone demonstrate, any changed circumstances before placing UCs back into detention, despite having

been previously released based on an ORR determination that they were neither a flight risk nor a danger to the community, 45 C.F.R. §410.1201(a). And, in some cases, DHS's basis for re-detention is the very same charge that had previously been dismissed. For example, [redacted] has been re-detained and charged with failure to maintain a valid visa under 8 U.S.C. § 1182(a)(7)(A)(i)(I), even though that very same charge had been dismissed upon USCIS's grant of his I-360 to obtain SIJS status. [redacted] Decl. ¶ 3. No changed circumstances have ever been articulated, despite [redacted]'s months in detention. Hundreds of putative class members across Virginia are faced with the same situation.

This violates the APA and the *Accardi* doctrine. "Reasoned decisionmaking under the Administrative Procedure Act calls for an explanation for agency action." *Dep't of Com. v. New York*, 588 U.S. 752, 785 (2019). Here, no explanation has even been attempted—Respondents appear to have snared petitioners and putative class members in a blanket policy to re-detain UCs without any pre-deprivation process. This policy is patently unlawful.

It is also contrary to the agency's own regulations and, therefore, invalid under the *Accardi* doctrine. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Under *Accardi*, an administrative agency is bound to obey its own regulations or policies—and when it does not, its actions are invalid. In *Accardi* itself, the Supreme Court held that when regulations delegate discretionary authority to an agency decisionmaker, the agency may not bypass the decisionmaker or dictate the outcome in violation of its own internal rules. But that is exactly what DHS did here, by re-detaining individuals who had already been released from government custody without meaningfully applying or even referencing the regulations governing the revocation of release and holding them without bond. *See* 8 C.F.R. § 241.13(i)(2). That wholesale departure from agency procedure, without individualized findings or a reasoned explanation, is precisely the type of

regulatory violation the *Accardi* doctrine is designed to redress. For this reason, too, petitioners and putative class members are likely to succeed on the merits of this claim.

iii. Respondents' failure to explain their change in position is arbitrary and capricious and contrary to law.

The Government's abrupt shift to a blanket "no-bond, mandatory-detention" policy for UCs and SIJS youth — and the concurrent revocation of deferred action and employment authorization — constitutes a dramatic change in agency position for which the Government has offered no reasoned explanation. Under *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009), an agency that abandons a prior policy must provide a "satisfactory explanation" under the standard of arbitrary and capricious review. An agency need not show the new policy is "better" than the old one, but it still must demonstrate that the new policy is permissible under the statute, that there are "good reasons" for the change, and that the agency genuinely believes the new policy is better. *Fox,* 556 U.S. at 515.

Here, the Government has not attempted to satisfy even that minimal standard. Instead of offering a policy memorandum, regulatory justification, or even a public explanation, it simply began re-detaining previously released UCs and SIJS beneficiaries, revoking EADs, and denying bond hearings without announcement. *See A.C.R.*, 2025 WL 3228840, at *3 (noting that the Government adopted this changed policy "*sub silentio*"). It has provided no explanation as to why this sudden reversal was permissible under the law, or why the prior bond-hearing/deferred-action regime is no longer acceptable. This is yet another reason why the policy applied to Petitioners and putative class members, is arbitrary, capricious, and warrants injunctive relief.

iv. Respondents' policy is procedurally improper for failure to undertake notice and comment rulemaking.

Under the APA, when an agency issues a substantive rule that changes legal rights or obligations, it must do so through notice and comment rulemaking. 5 U.S.C. § 553. A "rule"

subject to this requirement is any "agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." 5 U.S.C. § 551(4). Here, Respondents adopted a new national mandatory-detention policy that (a) strips bond hearings from persons previously eligible under § 1226(a), (b) re-detains previously released UCs, and (c) automatically revokes deferred action and employment authorization without any opportunity to challenge that decision. That is not an isolated adjudication, discrete enforcement decision, or mere "interpretive" rule issued to advise the public of the agency's construction of law—it is a sweeping, generalized policy change affecting tens or hundreds of thousands of individuals.

The challenged policy is the paradigmatic "legislative" rule, which cannot be adopted without notice and comment, because it has "the force and effect of law." *Chrysler Corp. v. Brown*, 441 U.S. 281, 302–03 (1979). This is no mere "interpretive" rule, exempt from notice and comment because it is "issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers"—indeed, Respondents have failed to present anything about the policy to the public at all. *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 97 (2015) (citation omitted). Respondents have implemented a new, binding regime that substantively alters the rights and obligations of a large class of noncitizens, and they have done so without any public process, transparency, or statutory authority.

Courts consistently hold that, when an agency imposes new mandatory consequences that were not previously required, it has promulgated a legislative rule that must undergo notice and comment. *Id.* at 101; *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1021 (D.C. Cir. 2000). Respondents' policy does exactly that: it categorically deprives individuals of bond eligibility, transforms discretionary release determinations into mandatory detention, and triggers automatic revocation of deferred action and work authorization—none of which is compelled by statute or

existing regulations. Because the INA and its implementing regulations do not authorize this dramatic shift, and because the policy "imposes obligations on regulated parties" with the force of law, it constitutes a legislative rule adopted in violation of the APA's procedural requirements. See *Nat'l Fam. Plan. & Reprod. Health Ass'n v. Sullivan*, 979 F.2d 227, 235–37 (D.C. Cir. 1992). The policy is therefore procedurally invalid and must be set aside under 5 U.S.C. § 706(2)(D).

III. The Balance of Hardships and Public Interest Weighs Heavily in Petitioners' Favor.

The balance of hardships — where Petitioners and putative class members face irreparable harm, and Respondents face none — tips entirely in Petitioners' favor. Respondents have no legitimate interest in mandatorily re-detaining noncitizens who have already been released after the government determined they were neither a danger nor a flight risk, nor in stripping them of deferred action and preventing them from lawful employment. "The public undoubtedly has an interest in seeing its governmental institutions follow the law." *Vitkus,* 79 F.4th at 368, and "upholding constitutional rights surely serves the public interest." *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002). Similarly, the public has an interest in the lawful administration of the Immigration and Nationality Act, the TVPRA, and long-standing government policies that afford broader constitutional protections to noncitizens whom Congress intended to protect by providing a lawful permanent pathway to stable immigration status. Further, an order declaring that Respondents must provide bond hearings to Petitioners and putative class members would have no impact on their removal proceedings pending against them, or on any other legitimate government interest. On the other hand, such an order would maintain the status quo of constitutional protections afforded to noncitizens apprehended within the United States.

IV. No Security Should be Required.

Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined." The amount of any such security bond is left to this Court's discretion, "and in circumstances where the risk of harm is remote, a nominal bond may suffice." *Doe v. Pittsylvania Cnty.*, 842 F. Supp. 2d 927 (W.D. Va. 2012) (citing *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 (4th Cir. 1999)) (approving district court's fixing bond amount at zero in the absence of evidence regarding likelihood of harm). A district court may also waive the security requirement altogether, but must still "expressly address the issue of security before allowing any waiver." *Vyas v. Noem*, No. 3:25-0261, 2025 WL 1351537, at *11(W.D. W. Va. May 8, 2025) (*quoting Pashby v. Delia*, 709 F.3d 307, 332 (4th Cir. 2013), *abrogated on other grounds by Winter*, 555 U.S. 7 (cleaned up)).

Here, the Court should not require security in this case based on Petitioners' likelihood of success in prevailing on their claims and the fact that there is no realistic likelihood of harm or cost to Respondents from either a declaratory judgment or enjoining their illegal conduct. Courts in similar cases seeking declaratory or injunctive relief in challenges to immigration detention have waived the security requirement for the same reasons. *See e.g.*, Order, Dkt. No. 30, *Maldonado v. Feeley*, No. 2:25-cv-01542 (D. Nev. Sept. 17, 2025); *Coreas v. Bounds*, 457 F. Supp. 3d 460, 464 (D. Md. 2020)(waiving security requirement when the "financial impact [to the government] of an improperly imposed injunction [was] limited and would not create any significant hardship").

Because one aspect of the irreparable harm Petitioners are suffering as a result of Respondents' unlawful conduct is financial hardship, requiring a security bond in this case would

vitiate the meaningfulness of preliminary relief. *See*, *e.g.*, *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, No. 1:25-CV-00333-ABA, 2025 WL 573764, at *30 (D. Md. Feb. 21, 2025) (setting a nominal bond of zero dollars in granting a preliminary injunction and finding that the government's requested bond would essentially forestall plaintiffs' access to judicial review).

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court issue the relief requested in Petitioners' motion, on behalf of themselves and the putative classes.

Dated: December 8, 2025

Respectfully submitted,

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**pro hac vice* application forthcoming