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

[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

SUPPLEMENTAL BRIEF IN SUPPORT OF PLAINTIFF-PETITIONERS' MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner [redacted] is a 20-year-old immigrant from [redacted], whom Respondents have kept locked in detention for nearly six months, even though he is a Special Immigrant Juvenile (SIJ) who is entitled to deferred action by statute and Government policy. He was never provided any pre-deprivation process to justify his re-detention. [redacted] has remained trapped in detention for months while fighting a protracted battle in immigration court to be permitted to stay here with his family. It is hard to imagine a stronger liberty interest than [redacted] he has lived, studied, and worked in this country for more than seven years, supports his immediate family here financially, and cares for his younger siblings, t[redacted].

[redacted] This, along with his continued unconstitutional detention, constitutes irreparable harm, which justifies a TRO entitling him to immediate release.

On December 17, 2025, this Court held a hearing on Plaintiff-Petitioners' Motion for a Temporary Restraining Order (TRO). *See* Pet'r-Pls.' Mot for a TRO & Prelim. Inj. ("Mot.") Dkts. 27, 27-1. At the hearing, the Court ordered that the parties file supplemental briefs focused on three issues: (1) what is legally required before the Government can revoke [redacted] deferred action as an individual with Special Immigrant Juvenile Status (SIJS); (2) the legal basis for Petitioner-Plaintiffs' claim that the Government should bear the burden of showing "changed circumstances" by clear and convincing evidence prior to [redacted] re-detention; (3) the proper remedy for this motion, beyond the § 1226(a) bond hearing the Court already provided. Plaintiff-Petitioners hereby respectfully provide the requested filing and, for the reasons described herein, request that the Court order [redacted] immediate release.

As set out more fully below, [redacted] is entitled to immediate release for three reasons. *First*, [redacted] liberty interest in deferred action and freedom from detention is substantial and constitutionally protected—not to mention protected by statute, and the Government's own policies—and the Government's unilateral revocation of that status without any meaningful process violated due process and lawful authority. Once deferred action has been conferred and relied upon—as this Court and others have recognized in the SIJS context, where Congress and DHS have established specific statutory and policy protections—due process requires at least minimal procedural safeguards before that status may be taken away, including notice and an opportunity to be heard *before* re-detention, not after.

Second, the Government has provided no lawful justification or reasoned explanation for its departure from its own policy of generally retaining SIJS deferred action through the period of

validity, nor any individualized finding that circumstances had changed sufficiently to warrant incarceration, rendering the revocation arbitrary and capricious under the APA and in violation of the *Accardi* doctrine.

And *third*, the remedy of immediate release is proper here, as [redacted] injuries have not been cured by the Court's prior order. Because [redacted] re-arrest and re-detention were unlawful during the period of his previously-granted deferred action, and were executed without any constitutionally adequate hearing to assess changed circumstances after his release from his original detention in 2018, no *post-hoc* § 1226(a) bond hearing can cure those fundamental defects; instead, the only remedy that restores the status quo and halts an ongoing deprivation of liberty without constitutionally required process is immediate release. Moreover, the balance of equities and public interest strongly support immediate release: the Government has no interest in continuing to engage in unlawful conduct, while [redacted] continues to suffer a deprivation of liberty, which is compounded by [redacted]. His ongoing detention inflicts continuing, profound harm and undermines the public interest in humane and lawful treatment of vulnerable detainees, while his family circumstances and deep community ties further weigh in favor of release.

At bottom, Respondents have taken the untenable position that [redacted] should remain confined for an indeterminate period, effectively conditioning his liberty on the abandonment of his pending statutory and constitutional claims and pressuring him to forego those claims by departing the United States. For all of these reasons, the Court should enjoin the Government from re-detaining [redacted] without demonstrating, by clear and convincing evidence, changed circumstances indicating that he is a flight risk or a danger.

FACTUAL AND PROCEDURAL BACKGROUND

I. [redacted] Immigration History and Re-Detention.

[redacted] first arrived in the United States in 2018 as a 13-year-old unaccompanied child fleeing [redacted]. He was placed into the custody of the Office of Refugee Resettlement (ORR) and charged with unlawful entry. Dkt. 18-4 at 5 (ORR Release Documents); *see also* 6 U.S.C. § 279. [redacted] was then released to his [redacted] pursuant to the Trafficking Victims Protection Reauthorization Act (TVPRA), Pub. L. No. 110–457, § 235, 122 Stat. 5044, 5074–82 (2008) (codified at 8 U.S.C. § 1232), which provides that, when making custody determinations, ORR should consider "danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232(c)(2)(A). Accordingly, when [redacted] was released to his [redacted] in Virginia in 2018, the Government determined that [redacted] was not a danger to the community or a flight risk. Dkt. 18-4. SIJS beneficiaries are exempt from removability on the basis of unlawful presence, violations of nonimmigrant status or imposed conditions of entry, and inadmissibility at time of entry. 8 U.S.C. § 1227(c); *see also* 8 U.S.C. § 1255(h) (unlawful entry statute § 1182(a)(6)(A) "shall not apply" to a "special immigrant described in section 1101(a)(27)(J)"); *see also Rodriguez v. Perry*, 747 F. Supp. 3d 911, 917 (E.D. Va. 2024) (noting that a juvenile with SIJ status "cannot be removed for having entered the country illegally").

In 2023, [redacted] was granted deferred action as a Special Immigrant Juvenile (SIJ), at which point the Government agreed to dismiss all immigration charges against him. Dkt. 18-4 at 6 (SIJ grant); Dkt. 18-4 at 7 (Order terminating proceedings). In reliance on his initial release and the established pathway to lawful permanent residence available to him, [redacted] has lived, studied, and worked in this country for more than seven years. Up until his current detention, he was financially supporting his immediate family here and [redacted]

[redacted], [redacted]. Dkt. 30-3 at 7–8 (bond motion); Dkt. 27-2 ([redacted] declaration). He has therefore developed a strong liberty interest in his freedom from physical restraint and the ability to pursue lawful permanent residence as a Special Immigrant Juvenile.

Nonetheless, in [redacted] 2025, while [redacted] period of deferred action was still valid, the Government re-detained him and determined that he was ineligible for release pursuant to its mandatory detention policy, re-charging him with unlawful entry even though his immigration charges had previously been dismissed—without ever providing him with a pre-deprivation hearing to establish changed circumstances justifying his renewed detention. After he was detained, the Government also terminated his deferred action without prior notice or an opportunity to be heard, which, along with his detention, could make him ineligible to pursue lawful permanent residence unless granted some other form of immigration relief, such as asylum.[1]

[redacted]

II. Claims in this Litigation and the Scope of the Present Motion.

[1] In the reopened immigration proceedings, [redacted] moved to terminate removal, arguing his removal proceedings were contrary to statutory authority, the Constitution, and the Administrative Procedure Act. The immigration judge denied the motion without providing any reasoning, and [redacted] intends to seek appeal. Dkt. 30-2. [redacted] also filed an application for asylum, which has now been fully briefed and heard by the immigration court, and remains pending. Dkt. 30-3 at 10.

In November 2025, [redacted] joined this litigation as a named Plaintiff-Petitioner in the Second Amended Complaint ("SAC"). Dkt. 18-1. On behalf of himself and the putative classes, he asserted eight claims challenging various aspects of the Government's mandatory detention policy. Only three of these claims are at issue in [redacted] present request for emergency relief: Counts III, V and VI. In Count III, [redacted] alleges that Respondents' termination of his deferred action without providing any rationale is arbitrary and capricious. SAC ¶¶ 116. In Count V, [redacted] alleges that Respondents violated the Fifth Amendment's Due Process Clause by re-detaining him without a pre-deprivation hearing to establish changed circumstances justifying the loss of his previously granted liberty, and by terminating his period of deferred action without notice or an opportunity to contest it. SAC ¶¶ 124–130. And in Count VI, he alleges that Respondents' decision to re-arrest and re-detain him on charges that had already been dismissed is arbitrary and capricious and violates the *Accardi* doctrine by failing to comply with Respondents' own binding rules and regulations. SAC ¶¶ 131–134.

The remaining claims are not before the Court on this motion. Counts VII and VIII raise issues related to third-country removals that do not (yet) apply to [redacted] Counts I and II, which challenged Respondents' failure to provide bond hearings under 8 U.S.C. § 1226(a), have already been resolved with respect to [redacted] by prior order of the Court, as described below.

III. <u>The Court's Prior Ruling, and Bond Hearing Before the Immigration Court</u>.

Upon granting Plaintiff-Petitioners leave to file the Second Amended Complaint, the Court *sua sponte* granted relief for [redacted] as to the mandatory detention policy claims in Counts I–IV, ordering that he be provided with a standard bond hearing under 8 U.S.C. 1226(a). *See* Order, Dkt. 26; *see also* SAC ¶ 102-123 (challenging failure to provide bond hearings). That relief

addressed only whether [redacted] was entitled to a bond hearing following his re-detention; it did not address the legality of Respondents' decision to re-arrest and re-detain him in the first instance.

At the December 8, 2025 bond hearing, the immigration court denied bond, concluding that while [redacted] was not a danger to himself or the community, [redacted] had failed to meet his burden of establishing that he was not a flight risk. Dkt. 30-2. That determination rested on [redacted] Importantly, the bond hearing did not address—and could not remedy—the distinct violations alleged in Counts V and VI. Those claims concern Respondents' failure to provide any pre-deprivation process *before* revoking [redacted] previously granted liberty and re-detaining him.

ARGUMENT

I. Respondents Have No Legal Basis to Detain [redacted] Due to his Deferred Action Status, and Because They Never Provided Him with Pre-Deprivation Process Prior to His Re-Detention.

A. The Government's Rescission of [redacted] SIJS-based Deferred Action is Unlawful and Unconstitutional.

[redacted] was granted SIJS in 2023, which entitled him to deferred action and an opportunity to pursue adjustment of status. *See* Dkt. 18-4 (dismissal of immigration proceedings in light of SIJS). But in July 2025, the Government rescinded that status after detaining him, without any adequate process or explanation. This is unlawful.

Consistent with Congress's purpose to protect vulnerable youth, SIJS beneficiaries are exempt from removability on the basis of unlawful presence, violations of nonimmigrant status or imposed conditions of entry, and inadmissibility at time of entry—the very immigration charges they have sought against [redacted] 8 U.S.C. § 1227(c); *see also* 8 U.S.C. § 1255(h) (unlawful entry statute § 1182(a)(6)(A) "shall not apply" to a "special immigrant described in section

1101(a)(27)(J)"). Moreover, DHS may only revoke SIJS by "good and sufficient cause," 8 U.S.C. § 1155; 8 C.F.R. § 205.2, and under USCIS's most recent policy on SIJS-based deferred action, "[noncitizens] with current deferred action based on their SIJ classification *will generally retain this deferred action, as well as retain their current employment authorization provided based on this deferred action, until the current validity periods expire*." USCIS, Policy Alert PA-2025-07 (June 6, 2025) (emphasis added), https://www.uscis.gov/sites/default/files/ document/policy-manual-updates/20250606-SIJDeferredAction.pdf. The Government never gave any rationale for departing from that policy in [redacted] case.

When the Government seeks to rescind a grant of SIJS-based deferred action, it must still comply with procedural due process, the APA, and its own regulations. As this court itself has recognized, SIJS "reflects the determination of 'Congress to accord those abused, neglected, and abandoned children a legal relationship with the United States and to 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) (citing *Osorio-Martinez v. Attorney Gen. United States of Am.*, 893 F.3d 153, 163 (3d Cir. 2018)); *see also Rodriguez v. Perry*, 747 F. Supp. 3d 911, 917 (E.D. Va. 2024) (noting that a juvenile with SIJ status "cannot be removed for having entered the country illegally"). Accordingly, it recognized that rescission of SIJS-based deferred action presents viable procedural due process and APA claims. *Id*. As the Supreme Court explained, "[t]he defining feature of deferred action is the decision to defer removal (and to notify the affected [noncitizen] of that decision)." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1911 (2020). Decades prior, the Supreme Court described deferred action as meaning that "no action will thereafter be taken to proceed against an apparently deportable [noncitizen], even on grounds normally regarded as aggravated." *Reno v. Am.-Arab Anti-Discrimination*

Comm., 525 U.S. 471, 484 (1999) (quoting 6 C. Gordon, S. Mailman, & S. Yale–Loehr, Immigr. L. & Proc. § 72.03 [2][h] (1998)); *see also*, *Gonzalez v. Garland*, 16 F.4th 131, 144 (4th Cir. 2021) (remanding a petition for review where the BIA failed to consider Petitioner's deferred action status for administrative closure).

Courts have consistently held that deferred action means that the government "takes *no action* 'to proceed against an apparently deportable [noncitizen]' based on a prescribed set of factors generally related to humanitarian grounds." *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1119 n.3 (9th Cir. 2001) (citation omitted and emphasis added); *Ariz. Dream Act Coal. v. Brewer*, 81 F. Supp. 3d 795, 800 (D. Ariz. 2015) (defining deferred action, generally, as "a form of prosecutorial discretion" by which the Secretary of Homeland Security "decide[s] not to pursue the removal of a person unlawfully in the United States"); *Primero v. Mattivelo*, No. 25-cv-11442, 2025 WL 1899115, at *5 (D. Mass. July 9, 2025). USCIS policy is similarly aligned. *See* USCIS Policy Manual, Vol. 1, Part H, Ch. 2(A)(4) (deferred action "defers removal action (deportation) against a[] [noncitizen] for a certain period of time"), https://www.uscis.gov/policy-manual/volume-1-part-h-chapter-2 (last visited Dec. 19, 2025).

Here, the Government purported to rescind his deferred action *after* he had been served with a Notice to Appear and re-detained, without any individualized basis for the termination. *See* Notice to Appear, (July 23, 2025), Dkt. 18-4, PageID 404; *cf.* Deferred Action Recission Letter (July 28, 2025), Dkt. 27-2, PageID473. Indeed, the decision to rescind [redacted] deferred action appears more like a post-hoc rationalization than a reasoned agency explanation. *See Appalachian Voices v. U.S. Dep't of Interior*, 25 F.4th 259, 264 (4th Cir. 2022) (post-hoc rationalizations are "impermissible").

The Fifth Amendment provides that the Government shall not deprive a person of "life, liberty, or property, without due process of law." U.S. Const. amend. V. And although *Town of Castle Rock v. Gonzales,* established that "a benefit is not a protected entitlement if government officials may grant or deny it in their discretion," 545 U.S. at 756*,* (2005), once a particular benefit has been conferred, it may not be taken away without procedural due process. *Bell v. Burson*, 402 U.S. 535, 539 (1971); *see Medina v. U.S. Dep't of Homeland Sec.*, No. C17-0218RSM, 2017 WL 5176720, at *9 (W.D. Wash. Nov. 8, 2017) ("[T]he Court also finds that the representations made to applicants for DACA cannot and do not suggest that no process is due to them, particularly in Plaintiff's case where benefits have already been conferred.").

Here, [redacted] deferred action status was a personally-conferred concrete entitlement, including lawful presence and work authorization. As courts have observed, "even absent a claim of entitlement to an important benefit, once it is conferred, recipients have a protected property interest that requires a fair process before the government may take that benefit away." *Inland Empire—Immigrant Youth Collective v. Nielsen*, Case No. EDCV 17-2048, 2018 WL 4998230, at *19 (C.D. Cal. 2018) (internal quotation marks omitted) (emphasis in original) (collecting cases). By simply ignoring a grant of deferred action in order to detain people, like [redacted] the government is creating the kind of "arbitrary imprisonment without law or the appearance of law" that violates due process. *Boumediene*, 553 U.S. at 785, 128 S.Ct. 2229. Thus, *Castle Rock's* reasoning simply does not apply when the Government seeks to revoke without explanation or process a concrete entitlement it has already bestowed.

The government had no basis to detain [redacted] in [redacted] 2025 because he had deferred action status, which prevented all immigration enforcement action against him, including arrest and detention. His deferred action status, at a minimum, protected him from removal from the United

States; thus, the government had no lawful basis under immigration law to detain him. Respondents' subsequent unilateral termination of [redacted] deferred action status without any individualized determination or process whatsoever cannot cure his unlawful detention because the revocation likewise failed to comport with due process. Therefore, Respondents have no lawful basis to justify [redacted] continued detention because he cannot be removed from the United States.

B. [redacted] Re-Detention is Unlawful Because He was Never Provided a Pre-Deprivation Hearing.

The Due Process Clause forbids the Government from depriving a person of liberty without constitutionally adequate process. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by due process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). That protection applies fully to noncitizens present in the United States, including those residing lawfully pursuant to deferred action. *Id.* at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent."); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) ("It must be concluded that all persons within the territory of the United States are entitled to the protection guaranteed by [the Fifth Amendment], and that even [noncitizens] shall not ... be deprived of life, liberty, or property without due process of law."); *Trump v. J. G. G.*, 604 U.S. 670, 673 (2025) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)) (cleaned up) ("It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in the context of removal proceedings.")).

Pre-deprivation process is the baseline rule, because an "essential principle" of due process is that a deprivation of life, liberty, or property must be "*preceded* by notice and opportunity for hearing appropriate to the nature of the case." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (emphasis added) (citation omitted). Post-deprivation process may suffice only in the

extraordinary circumstance where pre-deprivation safeguards are impracticable or where the deprivation results from a random and unforeseeable event. *Zinermon v. Burch*, 494 U.S. 113, 127–28 (1990). That is, post-deprivation process is not an *alternative* to pre-deprivation safeguards, but is rather a narrow exception applicable only where advance process is either impracticable or incompatible with the Government's need to act immediately to avert serious harm. *See, e.g.*, *Mohamed v. Holder*, No. 1:11-cv-50-AJT, 2015 WL 4394958, at 7-9 (E.D. Va. July 16, 2015) (upholding delayed notice because pre-deprivation disclosure would compromise counter-terrorism investigations); *Glob. Relief Found. v. O'Neill*, 315 F. 3d 748, 754 (7th Cir. 2002) (upholding immediate asset freeze to prevent terrorist funds from being used violently). Where the Government can easily anticipate the deprivation of liberty, marshal evidence in advance, and provide a hearing without undermining any urgent public interest, due process does not permit incarceration first and justification later. *See Bagley v. Boyte,* 94 F.3d 641 (4th Cir. 1996) (per curiam) (post-deprivation process is only proper where there is "necessity of quick action" or "impracticality of providing any meaningful predeprivation process").

Certainly, nothing in these facts fits these narrow exceptions: [redacted] was released from Government custody for years, lived openly in the community, maintained employment, and was ultimately re-detained on previously dismissed removal charges—a decision that the Government could just as easily have made *after* a pre-deprivation hearing. But no such hearing ever happened. As numerous courts have recognized, "the government's initial release of an individual from custody creates an 'implicit promise' that the individual's liberty will be revoked only if they fail to abide by the conditions of their release." *Shen v. Larose*, No. 25-cv-3235-GPC, 2025 WL 3552747, at *5 (S.D. Cal. Dec. 11, 2025) (quoting *Calderon v. Kaiser*, No. 25-cv-06695-AMO, 2025 WL 2430609, at *2 (N.D. Cal. Aug. 22, 2025)).

The Fourth Circuit's decision in *Miranda v. Garland*, 34 F.4th 338 (4th Cir. 2022), does not excuse the Government's failure to provide pre-deprivation process here. *Miranda* addressed the adequacy of procedures used in § 1226(a) bond hearings *after detention had already lawfully occurred*. *Id.* at 346–47. The court emphasized that due process was satisfied in that context because detainees were afforded multiple subsequent opportunities to seek release from custody. *Id*. at 366. But *Miranda* did not hold—explicitly or implicitly—that post-deprivation custody hearings can substitute for constitutionally required pre-deprivation process where the Government seeks to revoke a previously granted liberty interest. To the contrary, the Fourth Circuit reaffirmed that neither § 1226(e) nor § 1252(a)(2)(B)(ii) bar constitutional challenges to detention, *id*. at 352–53 & n. 6, and nothing in *Miranda* suggests that the Government may re-arrest and re-detain an individual who has lived freely in the community for years without first providing notice and a hearing.

Indeed, *Miranda* could not have so held, because doing so would fly in the face of the Supreme Court's conditional-release jurisprudence. In *Morrissey v. Brewer*, the Court held that a parolee—whose liberty, like a deferred-action recipient, is expressly revocable at the Government's discretion—may not be returned to custody without pre-revocation process, including notice and a hearing before a neutral decisionmaker. 408 U.S. 471, 482, 488 (1972). This rule applies in light of the strong liberty interest in conditional release, notwithstanding that parole is highly discretionary. *See id.* at 483 ("A simple factual hearing will not interfere with the exercise of discretion"). The Court emphasized that conditional liberty "includes many of the core values of unqualified liberty" and therefore cannot be arbitrarily abrogated. *Id*. at 482. Post-revocation proceedings were deemed constitutionally insufficient in *Morrissey* because they could not prevent the erroneous deprivation of liberty in the first instance. *Id.* at 484–85 (requiring

preliminary hearing at the time of re-arrest). That principle has been repeatedly reaffirmed. *See Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (probation may not be revoked without a preliminary hearing); *Young v. Harper*, 520 U.S. 143, 147–48 (1997) (pre-parole release creates a liberty interest requiring pre-deprivation process); *Hurd v. D.C., Gov't*, 864 F.3d 671, 683 (D.C. Cir. 2017) (holding that re-detention after pre-parole conditional supervision requires a pre-deprivation hearing). Indeed, courts have recognized that immigration detainees should be accorded even *more* process than those in criminal detention, given the civil nature of immigration proceedings. *See, e.g.*, *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) ("Given the civil context, [an immigration detainee's] liberty interest is arguably greater than the interest of parolees in *Morrissey*").

In circumstances like [redacted] where long-standing release into the community created a liberty interest at least as substantial as parole or probation, due process required notice and a hearing *before* Respondents revoked that liberty and re-detained him. Indeed, [redacted] facts are much like those in *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025)—an influential decision that has been cited in nearly 150 similar habeas proceedings in the few short months since it was decided—in which the Northern District of California rejected the Government's argument that a post-deprivation 1226(a) bond hearing was constitutionally adequate where the Plaintiff-Petitioner had been previously released before being re-detained. The *Pinchi* court noted that the plaintiff-petitioner's longstanding release from custody meant that she "ha[d] an interest in remaining in her home, continuing her employment, providing for her family, obtaining necessary medical care, maintaining her relationships in the community, and continuing to attend her church." *Id.* at 1033. Moreover, "[e]ven assuming *arguendo* that the post-detention bond hearing provided under section 1226(a) provides constitutionally sufficient process" for *initial* detentions,

the court recognized that plaintiff-petitioners "circumstance [wa]s different" because—just like [redacted] she had previously been released, which "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Id.* at 1034 (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)).[2]

Accordingly, the *Pinchi* court granted the plaintiff-petitioner's preliminary injunction motion and enjoined the Government from re-detaining her without demonstrating, by clear and convincing evidence, that she was a flight risk or danger to the community. *See Pinchi* 792 F. Supp. 3d at 1038. This holding has been followed in similar circumstances by district courts across the country. *See Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *10 (W.D. Tex. Oct. 21, 2025) (noting that "the 'vast majority'—an 'overwhelming consensus'" of courts have placed the burden on the Government to prove danger or flight risk by clear and convincing evidence.); *see e.g., J.E.H.G.v. Chestnut*, No. 1:25-CV-01673-JLT SKO, 2025 WL 3523108, at *14 (E.D. Cal. Dec. 9, 2025) (placing the burden on the government is "logical"); *J.S.H.M. v. Wofford*, 2025 WL 2938808, at *17 (E.D. Cal. Oct. 16, 2025) (same); *Ortega v. Noem*, No. 1:25-CV-01663-DJC-CKD, 2025 WL 3511914, at *4 (E.D. Cal. Dec. 8, 2025) (same).

These principles all demonstrate that [redacted] continued detention is unconstitutional. Like the petitioner in *Pinchi*—who the Government had previously determined posed no dangerousness

[2] Notably, the *Pinchi* court distinguished *Rodriguez Diaz v. Garland* 53 F.4th 1189 (9th Cir. 2022), which, like *Miranda v. Garland* in the Fourth Circuit, had upheld the constitutionality of the typical § 1226(a) procedures for those already lawfully detained. But because the *Pinchi* petitioner's "release from ICE custody after her initial apprehension reflected a determination by the government that she was neither a flight risk nor a danger to the community," she had "a strong interest in remaining at liberty unless she no longer meets those criteria," and was entitled to immediate release. *Id.* at 1034 (citing ICE regulations requiring determination of dangerousness and flight risk before initial release).

or flight risk upon her initial release—[redacted] release to his [redacted] in 2018 occurred after the Government determined that [redacted] was neither a "danger to self, danger to the community, [nor] risk of flight." 8 U.S.C. § 1232(c)(2)(A). Then, in 2023, the Government granted [redacted] SIJS, which *again* reflected the Government's determination that "it would not be in the petitioner's best interest to be returned to the petitioner's . . . country of nationality." U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c). Having received deferred action through SIJS, [redacted] has lived and worked in the United States for years and has developed strong ties to his community. Yet Respondents re-detained him without notice, and without any finding that circumstances had changed since the Government itself previously determined that he posed neither a danger nor a flight risk. That failure plainly violates procedural due process, as alleged in Count V.

II. Respondents' Own Policies, and the Administrative Procedure Act, Require that the Government Demonstrate Changed Circumstances by Clear and Convincing Evidence Prior to Re-detention.

Respondents' decision to re-detain [redacted] without a pre-deprivation hearing also violates the *Accardi* doctrine and the Administrative Procedure Act (APA). The Government never made *any* attempt to justify [redacted] re-detention—they simply served him with a new Notice to Appear (NTA) charging him again with unlawful entry (a charge he should not be subject to, given his release from government custody as an unaccompanied minor),and re-detained him without explanation. *See Saravia* at 1196. This plainly contravenes the APA's requirements that agency actions be both "reasonable and reasonably explained," *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021), and that an agency that changes its position on an issue 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 Encino Motorcars, LLC v. Navarro, 579 U.S. 211, 220 (2016)).

As the *Saravia* court noted, "if DHS could, the day after a minor was released to a parent or other sponsor, arrest the minor on the same basis and restart the process, the TVPRA's instruction to place the minor in the least restrictive appropriate setting would mean little." Saravia at 1196 (citing *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971); *United States v. Kordosky*, No. 88-CR-52-C, 1988 WL 238041, at *7 n.14 (W.D. Wis. Sept. 12, 1988) ("Absent some compelling justification, the repeated seizure of a person on the same probable cause cannot, by any standard, be regarded as reasonable.")). Further, the *Saravia* court also recognized that "a minor previously placed with a sponsor by ORR cannot be rearrested solely on the ground that he is subject to removal proceedings." *Id.* at 1196. Instead, the Government must demonstrate that the minor is now a danger to himself or the community, or a flight risk. *Id*. Because the Government violated these principles, its action was unreasonable, arbitrary and capricious, and thus violates the APA.

As for *Accardi*, the TVPRA authorizes release from the Office of Refugee Resettlement (ORR) where the placement is "in the least restrictive setting that is in the best interest of the child," considering "danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232 (c)(2)(A). [redacted] was initially detained upon his entry to the United States in 2018, and then, after finding that he was neither a danger to himself or the community or a risk of flight, the Government released [redacted] to his mother's custody. Dkt. 37-1. Longstanding BIA precedent holds that where, like here, the Government has previously released a detained immigrant, "no change should be made . . . absent a change of circumstance." *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981). At the December 17 hearing, the Government sought to downplay the import of *Sugay*, claiming that it was merely "one BIA case that was decided in the 1980s" that was "not binding on anyone." Hr'g Tr. at 18: 21. But DHS itself has stated otherwise in prior litigation: as the

Saravia court recognized, "DHS has incorporated this holding into its practice," and by its own admission, DHS "generally only re-arrests a[] [noncitizen] . . . after a material change in circumstances." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017) (quoting statement of the Government), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). After giving this decision precedential weight for decades, the government cannot now purport to take an inconsistent position in a materially identical case. *Fed. Deposit Ins. Corp. v. Jones*, 846 F.2d 221, 234 (4th Cir. 1988) ("litigants are barred from taking inconsistent positions in related cases."). Because DHS is treating [redacted] contrary to this longstanding policy, it violates the *Accardi* doctrine.

At the December 17 hearing, Government counsel appeared to suggest that the fact that ORR is housed within the Department of Health and Human Services, rather than within DHS, means that Respondents may disregard the Government's prior TVPRA custody determination—and re-detain [redacted] without acknowledging or explaining any departure from the earlier finding that he was not a flight risk or danger to the community. *See* Hr'g Tr. at 19:15. That position is plainly incorrect. For purposes of detention authority and due process, the relevant actor is the Government—not the internal allocation of functions among agencies. And it is hardly relevant that ORR made the custody determination where ICE filed an NTA, and then agreed to dismiss it, as counsel conceded in the same breath. *See id.* at 19:17-18 ("the government does concede that an NTA was filed in that meantime"). The government's failure to acknowledge its previous custody determination and then demonstrate changed circumstances renders [redacted] re-detention arbitrary and capricious, violates the *Accardi* doctrine, and offends basic principles of due process.

III. The Proper Remedy for the Violation is Immediate Release, and an Injunction against Re-Detention without Due Process.

Here, the Court should order [redacted] immediate release and enjoin Respondents from re-detaining him without first demonstrating, by clear and convincing evidence, changed circumstances indicating that he is a flight risk or a danger to the community. This remedy is proper for five independent reasons: *First*, immediate release is necessary to remedy the ongoing constitutional violation arising from [redacted] re-detention and the Government's revocation of his deferred action. *Second*, immediate release preserves the status quo ante, as the last uncontested status between the parties. *Third*, [redacted] serious, undiagnosed medical condition weighs strongly in favor of immediate release under equitable principles. *Fourth*, the balance of equities and public interest strongly favor immediate release. And f*ifth*, it is proper to enjoin the Government from re-detaining [redacted] in the future unless it bears the burden of showing changed circumstances by clear and convincing evidence.

A. Immediate Release Is Necessary to Ameliorate the Ongoing Violations of [redacted] Rights and Prevent Future Violations.

As discussed above, [redacted] re-detention during his period of deferred action was a clear violation of his due process rights. There is no post-deprivation process that can cure this violation. Accordingly, immediate release is the only appropriate remedy here. Indeed, numerous courts have ordered this relief similar circumstances.[3] For example, in *F.R.P. v. Wamsley*, the District of

[3] *Doe v. Noem*, 778 F. Supp. 3d 1151, 1166 (W.D. Wash. 2025) ("Petitioner's immediate release is required to restore the status quo, meaning "the last uncontested status which preceded the pending controversy.") (citation omitted); *Maldonado v. Cabezas*, No. cv 25-13004, 2025 WL 2985256, at *1 (D.N.J. Oct. 23, 2025) (ordering immediate release of SIJS recipient despite government's provision of two bond hearings *because* the initial detention was unconstitutional); *F.S.S.M. v. Wofford*, No. 1:25-cv-01518-TLN-AC, 2025 WL 3526671 (E.D. Cal. Dec. 9, 2025) (granting TRO and ordering immediate release of a noncitizen re-detained by ICE years after release to a sponsor as an unaccompanied child, subsequent grant of Special Immigrant Juvenile Status and deferred action); *Pablo Sequen v. Kaiser*, 793 F. Supp. 3d 1114, 1120–21 (N.D. Cal. 2025) (granting TRO for immediate release)*; Garcia Domingo v. Castro*, No. 25-00979, — F. Supp. 3d —, 2025 WL 2941217 (D.N.M. Oct. 15, 2025) (same); *A.A.H. v. Chestnut*, No. 1:25-cv-

Oregon ordered the immediate release of an immigrant in detention who had previously been granted deferred action—like [redacted] petitioner had been re-detained without any pre-deprivation hearing to determine flight risk or danger to the community. *See* No. 3:25-cv-01917-AN, 2025 WL 3037858 (D. Or. Oct. 30, 2025). The Court noted—as is also true here—that "there are serious questions as to whether petitioner is removable at all." *Id.* at *4. The court collected numerous cases recognizing that, where petitioners have been previously granted deferred action before being placed in removal, serious questions going to the merits of procedural due process demonstrate petitioner's entitlement to such relief. *See id.* at *5 (collecting cases).

The § 1226(a) bond hearing the Court already ordered *sua sponte* did not, and could not, provide relief for the legal wrongs [redacted] asserts here. He suffers ongoing harm from his unlawful detention without an individualized assessment *before* he was detained. While [redacted] has preserved his right to appeal the bond determination, that appeal would not remedy the constitutional defect at issue, because his detention was unconstitutional from the outset. Indeed, as noted above, [redacted] December 8, 2025 bond hearing was a custody *re-determination*, pursuant to 8 C.F.R. § 236.1(d)(1) ("*After an initial custody determination by the district director*, including the setting of a bond, the respondent may, at any time before an order under 8 CFR part 240 becomes final, request amelioration of the conditions under which he or she may be released." (emphasis added)). But [redacted] claim here is not a challenge to the bond determination, but rather a claim that he was

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01758-DJC-EFB, Order (E.D. Cal. Dec. 16, 2025) (same); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1030 (N.D. Cal. 2025) (granting TRO and subsequent preliminary injunction for immediate release*); Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785, at *13–14 (E.D. Cal. Sept. 18, 2025) (granting preliminary injunction ordering immediate release); *see also Guerra Leon v. Noem*, No. 25-01495 (W.D. La. Oct. 30. 2025) (ordering immediate release of SIJS beneficiary with final removal order because his receipt of deferred action rendered the detention unlawful).

not afforded a constitutionally adequate "initial custody determination" before he was detained. Accordingly, the availability of process in immigration court, including appeals of the bond determination, cannot remedy the constitutional harm. Indeed, several circuit courts, including the Fourth, have recognized that there is no requirement to exhaust such due process claims before bringing them in federal court. *See Farrokhi v. INS*, 900 F.2d 697, 700–01 (4th Cir. 1990); *Abdulla v. Att'y Gen. of United States*, No. 19-1167, 2025 WL 2460506, at *5 (3d Cir. Aug. 27, 2025) (citing *Calderon-Rosas v. Att'y Gen.*, 957 F.3d 378, 384 (3d Cir. 2020)).

Further, failing to grant immediate release and allowing the government to provide only a post-deprivation process would provide little incentive for the Government to cease its unlawful conduct, both with regard to [redacted] (should that post-deprivation process result in release) and with regard to other similarly situated individuals.

B. Immediate Release Preserves the *Status Quo Ante*.

Immediate release is also the most appropriate relief because the primary function of preliminary relief is to maintain or restore the status quo prior to a decision on the merits. *See Di Biase v. SPX Corp.*, 872 F.3d 224, 231 (4th Cir. 2017); *see also Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 422 (4th Cir. 1999) (explaining that "a preliminary injunction preserves the status quo pending a final trial on the merits[.]"). Under Fourth Circuit precedent, the "status quo" is the "last uncontested status between the parties which preceded the controversy." *Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013) (quoting *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 378 (4th Cir. 2012)). Here, because the last uncontested status was *prior* to [redacted] re-detention, immediate release is the proper remedy.

C. [redacted] Potentially [redacted] Warrants Immediate Release to Allow Him to Receive [redacted].

While the Court has "wide discretion to fashion injunctive relief in a particular case," it must nonetheless "mold its decree to meet the exigencies of th[is] particular case." *Cap. One Fin. Corp. v. Sykes*, No. 3:20-cv-767, 2021 WL 2903241, at *15 (E.D. Va. July 9, 2021) (quoting *Roe v. Dep't of Def.*, 947 F.3d 207, 231 (4th Cir. 2020)). Judges must choose, "from the spectrum of all available remedies, that which is suitable" to the case at hand. *United States v. Hunter*, 459 F.2d 205, 218–19 (4th Cir. 1972). Here, where Respondents' [redacted] amounts to irreparable harm, *Pashby v. Delia*, 709 F.3d 307, 329 (4th Cir. 2013), this, too, supports [redacted] immediate release from detention.

As noted previously, although [redacted] is not advancing a claim for deliberate indifference, it is notable that the facts here might well meet that high bar. *See* Reply, Dkt. 34 at 1 n.1. Specifically, [redacted] which confirm—rather than undermine—his showing of irreparable harm. *See* Dkt. 35-1 [redacted]

[redacted]

D. The Balance of Equities and Public Interest Strongly Favor Immediate Release.

Finally, the equities and public interest favor restoring [redacted] to the community in the status quo that prevailed for years before the Government's unexplained re-detention. [redacted] has strong community ties, a stable residence, and significant family responsibilities, including providing financial support and caring for [redacted]. He also has powerful incentives to comply with all proceedings because he has an approved SIJS petition and is awaiting visa availability—meaning the stakes of compliance are extraordinarily high for him.

The Government's interest in continuing [redacted] detention is minimal. At the outset, his re-detention was unlawful, and the Government can have no interest in continuing unlawful conduct. "The public undoubtedly has an interest in seeing its governmental institutions follow the law." *Vitkus v. Blinken*, 79 F.4th 352, 368 (4th Cir. 2023), and "upholding constitutional rights surely serves the public interest." *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002).

Even if permitted to re-detain [redacted] had Respondents been required to identify clear and convincing evidence of changed circumstances demonstrating flight risk or dangerousness, they would have had none to offer. This is fully clear from the most recent bond record. Dkt. 30-2 (bond order), 30-3 (bond filing). The immigration judge found that [redacted] was not a danger to himself or the community. To the contrary, the bond record establishes that [redacted] has no history

of violent felony convictions, no pattern of dangerous conduct, [redacted] Dkt. 30-3 at 3–4, 10–12. As the record reflects, [redacted] has lived peacefully in Virginia for more than seven years, maintains a stable residence with his family, and worked steadily as a [redacted] prior to his detention. Dkt. 30-3 at 7–8. He plays a central caregiving role for [redacted], and provides financial and practical support to his household. Id. at 3, 7.

Instead, at the December 8, 2025 bond hearing, the immigration judge denied bond solely on the ground that [redacted] was a flight risk, relying on [redacted] But the bond record itself demonstrates that those incidents do not support any inference—much less clear and convincing evidence—of intentional flight. [redacted]. *Id*. These events reflect [redacted] hardship and confusion, not willful nonappearance. As such, they cannot give rise to any inference that [redacted] would willfully fail to appear at future immigration proceedings.

Moreover, [redacted] incentives to comply with all legal obligations are substantial and obvious. He has an approved SIJS petition and is awaiting visa availability, a posture that gives him every reason to appear and pursue relief rather than flee. Dkt. 30-3 at 10. He has already appeared for his individual merits hearing and is actively participating as a named plaintiff in this federal litigation, assuming public, court-supervised obligations that further anchor him to these

proceedings. *Id*. at 8–9. These facts all powerfully undercut any claim that [redacted] presents a current flight risk.[4]

This all underscores that the balance of equities and the public interest do not support continued detention or a remand for further custody proceedings. They support immediate release. Respondents already deprived [redacted] of his liberty without the constitutionally required pre-deprivation process, and the record confirms that there was no evidence—let alone clear and convincing evidence—of changed circumstances that could have justified that deprivation in the first place. Certainly, any public interest in keeping him detained is minuscule, where the "costs to the public of immigration detention are staggering." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (internal quotations omitted). Allowing [redacted] to remain in detention while Respondents retroactively attempt to justify that decision would invert due process and entrench an unlawful status quo—incentivizing Respondents to detain first and justify later. Restoring [redacted] to the community is therefore necessary to return the parties to the last lawful baseline, halt an ongoing constitutional injury, and vindicate the public interest in ensuring that deprivations of liberty occur only in accordance with law.

E. The Government Should Also Be Enjoined from Detaining [redacted] in the Future Unless it Bears the Burden of Showing Changed Circumstances by Clear and Convincing Evidence.

[4] To be clear, none of this is meant to suggest [redacted] is requesting that this Court reconsider the immigration judge's § 1226(a) decision—[redacted] intends to appeal that decision in the ordinary course, to the extent such an appeal remains necessary. But this is not a case where the underlying harm could be fixed by providing another bond hearing while he stays in detention, and it is hardly likely, in any event, that the Government will reverse its 1226(a) decision in any appeal given its clear intent to keep him detained no matter what. Rather, this Court's intervention remains necessary because [redacted] suffers an ongoing constitutional injury that Respondents cannot and will not address: Respondents re-detained [redacted] without any pre-deprivation process and without identifying any changed circumstances justifying the revocation of his previously granted liberty.

Along with an order of immediate release, this Court should enjoin the Government from re-detaining him unless it bears the burden of showing changed circumstances demonstrating that he is a flight risk or dangerous, by clear and convincing evidence. Indeed, numerous courts have adopted this standard. *See, e.g.*, *F.S.S.M., v. Wofford*, No. 1:25-cv-01518-TLN-AC, 2025 WL 3526671, at *1 (E.D. Cal. Dec. 9, 2025) (granting TRO, including immediate release, where petitioner had been approved for SIJS and granted deferred action); *Guerra Leon v. Noem*, No. 25-01495 (W.D. La. Oct. 30. 2025) (ordering immediate release of SIJS beneficiary with final removal order because his receipt of deferred action rendered the detention unlawful)(Ex. A); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *13 (W.D. Tex. Oct. 2, 2025) (granting habeas petition and ordering immediate release of DACA deferred action recipient); *Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *3 (W.D. Wash. Aug. 4, 2025) (deferred action is an immigration benefit that prevents removal); *Bustos-Alonso v. Chestnut*, No. 1:25-CV-01570-DJC-AC, 2025 WL 3254621, at *2 (E.D. Cal. Nov. 21, 2025) (same); *Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400 (W.D. Wash. July 24, 2025) (same). This Court should do the same.

Courts have recognized that burden-shifting to the Government is appropriate in these circumstances. *See, e.g.*, *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) ("because the minor cannot reasonably be rearrested absent a material change in circumstances, due process likewise requires that the minor receive a prompt hearing in which the government must show that these changed circumstances exist."). This is "[b]ecause the [noncitizen]'s potential loss of liberty is so severe . . . he should not have to share the risk of error equally." *German Santos v. Warden Pike Cnty. Correctional Facility*, 965 F.3d 203, 214 (3d Cir. 2020).

For all of these reasons, the remedy sought here is appropriate.

CONCLUSION

For the foregoing reasons, and for all the reasons previously argued, Plaintiff-Petitioners respectfully request that this Court order [redacted] immediate release, and enjoin Respondents from re-detaining him unless they can demonstrate, by clear and convincing evidence, changed circumstances indicating dangerousness or flight risk.

Date: December 19, 2025

Respectfully submitted,

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**pro hac vice* application forthcoming