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

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

Petitioner-Plaintiffs respectfully submit this Supplemental Reply Brief to respond to arguments that Respondents raised for the first time in their court-ordered supplemental briefing, following the initial round of briefing on Petitioner-Plaintiffs' Motion for a Temporary Restraining Order, Dkt. 27, and the Court's hearing on December 17, 2025. Respondents' opposition, Dkt. 38 ("Resp. Br."), once again loses track of what and who the present briefing is about: emergency relief for [redacted] who has remained unlawfully trapped in ICE custody since July. The Government mistakenly contends that this request is the same as the separate request for class-wide relief, and that unaccompanied minors "are not at issue here," Resp. Br. 1, even though [redacted] claims plainly hinge on his release as an unaccompanied minor and subsequent re-detention.

Setting aside the Government's broader confusion, one fundamental error runs through its response: discretion. The Government wrongly equates the initial "decision . . . *not to pursue*

deportation proceedings"—a quintessential exercise of prosecutorial discretion—with the decision to rescind Special Immigrant Juvenile-based deferred action. Resp. Br. 14 (quoting *Casa de Maryland v. U.S. DHS,* 924 F.3d 684, 691–92 (4th Cir. 2019)). These two are not the same. While the Government's discretion to abandon immigration proceedings in the first instance may be unreviewable, the Supreme Court has made clear that the rescission of deferred action—particularly where, as here, that deferred action confers concrete benefits such as work authorization—is subject to judicial review, and no statutory jurisdictional bar applies. *See DHS v. Regents of the Univ. of Cal*., 591 U.S. 1, 25–26 (2020).

With this established, the Government cannot avoid that [redacted] liberty was arbitrarily and unlawfully revoked. Indeed, conspicuously absent from the Government's briefing is *any* defense of the merits of [redacted] detention—Respondents provide no justification whatsoever for why they threw him back in detention after granting him Special Immigrant Juvenile Status ("SIJS" or "SIJ status") and associated deferred action. Instead, Respondents' position appears to rest exclusively on the notion that there are "no legal impediments"—not the Constitution, not the Administrative Procedure Act (APA), not judicial review—to their "discretionary ability to rescind deferred action" without process or explanation. Resp. Br. 2. On their view, deferred action is simply "an act of administrative grace" that may be granted or rescinded whenever the Government pleases, for any reason, or for no reason at all. *Id.* at 15. This violates bedrock principles of administrative and Constitutional law, and is no rejoinder to [redacted] ample showing that he is entitled to immediate release.

ARGUMENT

I. This Court has Jurisdiction to Adjudicate [redacted] Claims.

The Government first raises statutory bars to this court's jurisdiction under 8 U.S.C. § 1252(b)(9) and 1252(g), but fails to recognize that [redacted] does not challenge his removal here.

Rather, he challenges the Government's abject failure to provide him with lawful process or explanation *for his re-detention*, and the unlawful policy consequences associated with it.

This Court has recognized that "where a petitioner is 'not asking for review of an order of removal' or 'challenging any part of the process by which their removability will be determined'" § 1252(b)(9) "does not present a jurisdictional bar." *Quispe v. Crawford*, No. 1:25-CV-1471-AJT, 2025 WL 2783799, at *3 (E.D. Va. Sept. 29, 2025) (Trenga, J.) (citation omitted). Similarly, § 1252(g) does not apply, because [redacted] does not challenge "the commencement of removal proceedings," "adjudication of removal proceedings," or "the execution of removal orders." *Id.* To be sure, [redacted] seeks to challenge his removal proceedings before the immigration court, but only the lawfulness of *his detention*, and the policies that flow from it, are before this Court. *Id.* In eliding this key distinction, the Government's jurisdictional arguments all lack merit.

As for § 1252(b)(9), the Government's brief argues that this provision deprives district courts of jurisdiction to review decisions to seek removal or to "detain an alien *in the first place*." Resp. Br. 10 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (plurality opinion)). As already noted, [redacted] does neither—he is challenging his *re*-detention, and does not seek review of his removal here. But regardless, Respondents' argument ignores the thrust of *Jennings*, which squarely rejected the notion that § 1252(b)(9) deprives district courts of jurisdiction to review constitutional challenges to an immigrant's detention. *See Jennings*, 583 U.S. at 294. The Court warned that such a construction would "lead to staggering results," *id.* at 293—effectively forcing immigrants like [redacted] to remain in custody, unable to obtain timely review of unlawful detention, while they wait (often for months or years) for a final removal order before any court could hear their constitutional claims.

The Government's argument under § 1252(g) fails for similar reasons. Section 1252(g) is a narrow provision limiting review of cases arising from "*three discrete actions* that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno v. American-Arab Anti–Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 482 (1999) (emphasis added). The Supreme Court has rejected the "implausible" suggestion that § 1252(g) covers "all claims arising from deportation proceedings" or imposes "a general jurisdictional limitation." *Id.*

Here, the Government argues that this Court lacks jurisdiction under § 1252(g) because it contends [redacted] is challenging the Government's decision to "adjudicate cases." *See* Resp. Br. 11–12. Once again, no. [redacted] challenges his continued detention, not any removal decision. And the rescission of deferred action through a program, like SIJS, that has "associated benefits," "is not a decision to . . . 'adjudicate' a case or 'execute' a removal order" under 1252(g). *Regents*, 591 U.S. at 19. As the Fourth Circuit has recognized, "§ 1252(g) simply doesn't extend to habeas challenges to present immigration confinement," and therefore does not "strip district courts of jurisdiction over habeas challenges to unconstitutional immigration detention." *Suri v. Trump*, No. 25-1560, 2025 WL 1806692, at *7 (4th Cir. July 1, 2025). Indeed, the Government primarily relies on an interpretation of *AADC* that the Fourth Circuit soundly rejected in *Suri*—the notion that "§ 1252(g) [presents] precisely the kind of 'general jurisdictional limitation' that the Supreme Court 'rejected as implausible.'" *Id.* at *8 (quoting *Regents*, 591 U.S. at 19). Nor is [redacted] case anything like *Tazu v. Attorney General*, 975 F.3d 959 (3d Cir. 2020), in which the petitioner "ask[ed] the District Court to stop the Attorney General from executing his valid removal order." *Id.* at 294.

[redacted] does nothing of the sort here: he challenges the legality of detention without compliance with basic Due Process requirements, and the concomitant policy actions that flow

from that unlawful detention. At bottom, the Government's argument conflates the Government's "discretion to *abandon* the endeavor" of pursuing removal with the decision to *initiate* [redacted] re-detention without process or explanation, which is what is challenged here. Resp. Br. 12 (quoting *AADC*, 525 U.S. at 483–84). Nothing about these claims is precluded by these statutory bars. Indeed, to hold otherwise would require [redacted] to wait months or years before being able to review his prolonged detention, exactly the "absurd" result the Supreme Court rejected in *Jennings*, 583 U.S. at 293, and surely the exact opposite of the very Congressional goal the Government touts, of avoiding "prolonged" immigration proceedings. Resp. Br. 12 (quoting *Tazu* 975 F.3d at 296).

For all of these reasons, this Court is not deprived of jurisdiction. Indeed, numerous courts reviewing similar pre-deprivation challenges have proceeded to the merits, and have ordered immediate release. *See, e.g., F.R.P. v. Wamsley*, No. 3:25-CV-01917-AN, 2025 WL 3037858, at *3 (D. Or. Oct. 30, 2025) (reviewing merits of pre-deprivation claim, and ordering immediate release); *Maldonado v. Cabezas*, No. CV 25-13004, 2025 WL 2985256, at *6 (D.N.J. Oct. 23, 2025) (similar); *see also* Dkt. 37, at 19 n.3 (collecting cases). The Government fails to even mention these cases in its filing.

II. The Rescission of SIJS-Based Deferred Action Is Reviewable Under the APA, Which Respondents Plainly Violated.

The Government also argues that Petitioners' APA claim is barred because [redacted] deferred action is "committed to agency discretion by law" under *Heckler v. Chaney*, 470 U.S. 821, 831–32 (1985). That argument is not only wrong, it is squarely precluded by the Supreme Court's holding in *Regents*. There, the Supreme Court held that where deferred action comes along with attendant Government benefits—just like SIJS does—APA challenges to the rescission of that deferred action are reviewable. *See Regents*, 591 U.S. at 16–18. Accordingly, *Heckler* is inapplicable, and [redacted] APA claims are reviewable. *Id*.

In *Heckler*, the Court established a narrow exception to the strong presumption of judicial review for certain types of non-enforcement decisions—there, the FDA's decision to refuse to take actions to preclude the use of certain lethal injection drugs. *See Heckler*, 470 U.S. at 832. Here, in contrast, the Government argues that this principle should apply to claims arising from the exact *opposite* circumstance: the Government's choice to *re-institute* immigration enforcement proceedings after it had previously dropped them when it granted [redacted] SIJS status.

The *Regents* Court rejected exactly such a challenge, in the context of the rescission of the Deferred Action for Childhood Arrivals (DACA) program. There, the Court recognized that DACA was "not simply a non-enforcement policy," because it established a "standardized review process" with "enumerated criteria" regarding which immigrants would be "sent formal notices indicating whether the alien would receive [a] two-year forbearance." *Regents*, 591 U.S. at 18. As a result of these decisions, recipients received tangible benefits, including work authorization. *Id.* Accordingly, DACA-based deferred action was a reviewable adjudication, which constituted "'an affirmative act of approval,' the very opposite of a 'refusal to act.'" *Id.* (quoting *Heckler*, 470 U.S. at 831–32).

The *Regents* reasoning applies fully here—if not even more so, since SIJS is a *statutory* program, not merely an executive action like DACA. As with DACA, Government's policy granting SIJS-based deferred action is no mere passive non-enforcement policy. SIJS establishes a program that confers affirmative relief on its recipients, including deferred action and attendant benefits such as work authorization pursuant to enumerated criteria. 8 U.S.C. § 1101(a)(27)(J). And it is only once USCIS approves the petition that the juvenile is eligible to adjust status to Lawful Permanent Residence (LPR) once a visa becomes available. *See* 8 C.F.R. § 245.1(g)(1). Accordingly, this Court has recognized that "Congress has granted SIJ designees various forms of

support within the United States, such as access to federally funded educational programming and preferential status when seeking employment-based visas." *Joshua M. v. Barr*, 439 F. Supp. 3d 632, 659 (E.D. Va. 2020).[1] USCIS approved [redacted] SIJS petition in 2023, upon finding the statutory criteria satisfied, granted him a four-year deferred action period, until [redacted] 2027, and terminated his immigration proceedings. *See* Dkt. 18-4 at 6–7.

But they then rescinded these actions without explanation or opportunity for review. *See id.* at 10 (rescission letter stating "you may not appeal or move to reopen/reconsider this decision"). This unexplained revocation of [redacted] deferred action is the definition of arbitrary and capricious agency action. And despite reams of briefing, Respondents do not meaningfully defend the rescission on its merits. Instead, they offer only a perfunctory invocation of the now-threadbare "presumption of regularity." *See* Resp. Br. 16; *see also* Ryan Goodman, "The 'Presumption of Regularity' in Trump Administration Litigation" Just Security, (last updated Nov. 20, 2025) https://www.justsecurity.org/120547/presumption-regularity-trump-administration-litigation/ (collecting recent cases discussing the presumption of regularity). If this decision had been "regular," one would think that the Government would present some reasoning for its action, but it has not.

The Government downplays the fact that it rescinded [redacted] deferred action only after detaining him, but under the APA, timing matters. Agencies may not act first and justify later; *post hoc* rationalizations are forbidden. *See Appalachian Voices v. U.S. Dep't of Interior*, 25 F.4th 259,

[1] Interestingly, the Government cites *Casa de Maryland v. DHS*, 924 F.3d 684 (4th Cir. 2019) on this point. Resp. Br. 14. But in that case, the Fourth Circuit squarely held that the decision to rescind DACA was reviewable and violated the Administrative Procedure Act as arbitrary and capricious, vacating the rescission on that basis. Given that holding, it is unclear why the Government believes *Casa de Maryland* supports its position here.

269 (4th Cir. 2022). And because the Government bears the burden of justifying its action on the administrative record—which it has not produced—Respondents' complaint that Petitioners "provide *no evidence*" misses the mark. Resp. Br. 15. The undisputed allegations here are sufficiently supported: the Government granted [redacted] deferred action for a defined period, rescinded it before it expired, and did so without explanation and only after issuing a Notice to Appear (NTA) and detaining him. That sequence alone states a textbook claim for arbitrary and capricious agency action, particularly where no explanation exists, either before or after the fact.

III. [redacted] Was in Federal Custody, and the Government's Release Decision Triggered Due Process Protections.

The Government's argument that [redacted] is not entitled to due process appears to hinge on the notion that it was a different agency that previously released him, rather than ICE. Why this matters is unclear. Due process does not ask which component of the Executive Branch acted; it asks what the Government, acting as sovereign, has done to an individual's liberty. The Government cannot erase the constitutional significance of [redacted] release into the community—where he had the opportunity to "form the [] enduring attachments of normal life," *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972), including the ability to work, to pursue a pathway to lawful permanent residence, and to live with his family—by recharacterizing custody as having resided in one federal agency rather than another.

Accordingly, Respondents' attempt to distinguish plainly analogous cases on this basis makes no sense. *See* Resp. Br. 19 (discussing *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025); *Shen v. Larose*, No. 25-cv-3235-GPC, 2025 WL 3552747, at *5 (S.D. Cal. Dec. 11, 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969–70 (N.D. Cal., 2019)). And Defendants fail to even mention, let alone seek to distinguish, the plethora of other cited cases that have held in Petitioners' favor on this issue, including ones that are nearly identical to the facts here. *See, e.g.*,

Maldonado v. Cabezas, No. 25-13004, 2025 WL 2985256, at *2 (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); *see also* Pet'rs' Supp. Br. 19 & n.3, Dkt. 37 ("Supp. Br."); *infra* n.4.

But in any event, DHS is incorrect that [redacted] was never in the custody of the Department of Homeland Security (DHS). [redacted] arrived in the United States and presented himself to Customs and Border Protection officials—a subset of DHS. Because DHS determined that [redacted] was an unaccompanied minor, he was transferred, as required by statute, to the custody of the Office of Refugee Resettlement ("ORR") under the Department of Health and Human Services. *See* 8 C.F.R. § 236.3 (implementing the statutory mandate that DHS transfer unaccompanied minors to ORR custody). Continued detention is permissible *only* where the Government determines that confinement is necessary to ensure the child's safety, the safety of others, or the child's appearance at immigration proceedings. *See* 45 C.F.R. § 410.1201 (providing that when ORR determines detention is not required to secure the child's appearance or ensure safety, ORR "shall release" the child to an appropriate sponsor without unnecessary delay); *see also* 45 C.F.R. § 410.1903 (placing the burden on the Government at the initial hearing on dangerousness). Accordingly, [redacted] initial release from federal custody was not discretionary: it was legally mandated absent the Government showing that he was a danger or a flight risk.

Accordingly, [redacted] had a constitutionally cognizable liberty interest as soon as the federal Government decided to release him as an unaccompanied minor pursuant to statute. Far from diminishing over time, the Government's subsequent actions only reinforced that interest. After [redacted] had been living openly in the community for years, the Government granted him SIJS, authorized him to work, and granted him deferred action—affirmative acts that deepened his

integration into the community and even independently serve as protected entitlements. *See* Supp. Br. 10, 13 (explaining that because deferred action is a property and liberty benefit conferred, it cannot be stripped without due process).

Respondents' sole response is to expand the scope of Petitioners' motion beyond its actual contours. They suggest that Petitioners' argument means that "all individuals who have lived in the community for some period of time" cannot be detained without a pre-deprivation hearing. Resp. Br. 21. But that is not the claim here. Petitioners' claims are cabined to individuals, like [redacted] who have been granted SIJS, or who have been released as unaccompanied minors, by the Government's own actions. For those individuals, it should come as no surprise that pre-deprivation process is required, since that is the baseline constitutional requirement.[2]

IV. Respondents' Statutory Interpretation Would Strip SIJ Status of All Meaning.

The Government contends that it need not provide "good and sufficient cause" or "changed circumstances" to re-detain [redacted] because it "has not rescinded Petitioners' *SIJ* classification" but has rather simply rescinded his deferred action. Resp. Br. 22 & n.1. They read the statute restrictively, and counter-textually, such that the SIJS statute's protections are rendered essentially meaningless. *See, e.g.*, Resp. Br. 23–24 & n.13 (arguing that § 1255(h) still allows the Government to *charge* an individual with removal on the very same grounds that Congress specifically precluded as reasons for inadmissibility upon adjustment of status).

[2] The Government's invocation of *Rodriguez v. Olson* thus misses the point. Even assuming that decision is correctly decided (and its incorrect conclusion on the § 1225(b)(2) mandatory detention issue suggests otherwise), it involved a petitioner who had never previously been in government custody before his arrest and detention, and therefore does not present the same factual context as [redacted] re-detention after a period of released liberty and deferred action. *See Rodriguez v. Olson*, No. 1:25-cv-12961, 2025 WL 3672856 (N.D. Ill. Dec. 17, 2025) (denying habeas relief where petitioner conceded detention and did not raise issues tied to prior release status).

This is all wrong. Indeed, as the *Joshua* court recognized, a petitioner's SIJ status may negate the grounds for removal because, pursuant to the 8 U.S.C. §1255(h), such status waives the grounds for removal set forth in §1182(a)(6)(A), and it is "peculiar" at the very least "that DHS grants [a petitioner] relief pursuant to the SIJ statutes while another agency within DHS, Immigration and Customs Enforcement, simultaneously pursues removal," since "the removal process may inherently jettison his SIJ status for lack of presence in the United States." *Joshua M. v. Barr*, 439 F. Supp. 3d 632, 676, 679–80 (E.D. Va. 2020). Because Respondents' sole justification for detaining [redacted] is that he is removable—a ground expressly foreclosed by § 1255(h), which provides that § 1182(a)(6)(A) "shall not apply" to a "special immigrant described in section 1101(a)(27)(J)"—[redacted] detention lacked, and continues to lack, any lawful basis.

Respondents also attempt to distinguish *Saravia v. Sessions* on the notion that [redacted] is no longer a minor in ORR custody—and indeed, cite this court's *J.E.C.M.* decision for the notion that *Saravia* should not apply. *See* Resp. Br. 22–23 (citing *J.E.C.M. ex rel. Saravia v. Lloyd*, 352 F. Supp. 3d 559, 577 (E.D. Va. 2018)). But an individual does not lose unaccompanied minor status simply because he reaches the age of majority. *See, e.g.*, *Maldonado v. Olson,* 795 F. Supp. 3d 1134, 1153 (D. Minn. 2025) ("Respondents have not cited, nor is the Court aware of, any sunset provisions stripping [UAC status] upon a UAC reaching majority age."); *see also* USCIS Memorandum at 3 (requiring "asylum officers to adopt prior UAC determinations made by CBP or ICE . . . without further factual inquiry" even where applicant has reached majority). And, far from supporting their position, this court's decision in *J.E.C.M.* merely rejected the notion that detention claims were not moot where an individual had already been released. *See J.E.C.M.*, 352 F. Supp. 3d at 577. In doing so, the court in fact recognized that "a plaintiff who was released by ORR and subsequently re-arrested *would* have an entirely new claim based on ORR's prior

determination." *Id.* (emphasis added) & n.8 ("*Saravia* does not support plaintiffs' argument on mootness; rather, it illustrates that were the released minor plaintiffs to end up back in ORR custody, *they would have claims of a different sort*." (emphasis added)). Accordingly, contrary to Defendants' argument, *J.E.C.M.* recognizes that claims like this one are viable.

Finally, Defendants purport to be "perplex[ed]" by Petitioners' argument that they are bound to follow BIA precedent under *Matter of Sugay*, and contend that this would be like arguing that they still need to follow *Yajure Hurtado*. *See* Resp. Br. 24. But the obvious problem with this argument is that *Yajure Hurtado*'s interpretation is unlawful—as this and scores of other district courts have already held. *See, e.g. Campos-Flores v. Bondi*, No. 3:25CV797, 2025 WL 3461551, at *2, 7 (E.D. Va. Dec. 2, 2025); *see also Josue I.C.A. v. Lyons*, No. 1:25-CV-01542-SKO (HC), 2025 WL 3496432, at *3 n. 6 (E.D. Cal. Dec. 5, 2025) (collecting cases). Nothing strips *Sugay* of its status as binding precedent on the agency, and it must therefore follow that precedent under *Accardi*. Respondents' attempt to distinguish *Sugay* makes no sense: they claim that [redacted] "was *never* granted bond," Resp. Br. 24, even though the Government previously released him as not a flight risk and not dangerous. *Sugay* plainly applies.[3]

V. The Requested Relief Is Narrow, and Preserves the Status Quo for [redacted] Pending Resolution of This Case.

The Government cavalierly brushes past the irreparable harm, public interest, and equities arguments, despite the grave constitutional errors at issue here. *See* Resp. Br. 25–26. Instead,

[3] The Government also invokes, in the Background section, its June 5, 2025 Policy Alert stating that DHS would no longer "automatically consider" SIJS recipients for deferred action. Resp. Br. 6. This document appears nowhere in its merits discussion, and for good reason: it was enjoined by the Eastern District of New York in *A.C.R. v. Noem*, No. 25-cv-3962, 2025 WL 3228840 (E.D.N.Y. Nov. 19, 2025), which the Government fails to mention. To the extent the Government implicitly seeks to rely on that document to rebut Petitioners' *Accardi* claim, the policy is unlawful for the reasons discussed in that case. *See id.*

Respondents cite the notion that there is no general constitutional right to be free from custody during the pendency of a deportation proceeding—which is totally irrelevant to the ongoing constitutional injury here, which derives from the failure to provide *pre-deprivation* process where it was required.[4] *See* Resp. Br. 27. The fact remains that there is an ongoing constitutional injury, which amounts to irreparable harm that justifies [redacted] release. And the Government has provided *no response* to the lengthy string cite with cases supporting this relief. *See* Supp. Br. 26 (collecting cases). Indeed, existing regulations already recognize that detention of unaccompanied minors require the burden to remain with the Government even *before* they are released and develop ties to the community in the way [redacted] did here. *See* 45 C.F.R. § 410.1903 (placing the burden on the Government to establish "by clear and convincing evidence that the unaccompanied child would be a danger to self or to the community if released.").

The Government also minimizes the import of [redacted] n, suggesting that "habeas relief cannot be premised upon a [redacted]." Resp. Br. 27. But their only support for that plainly incorrect contention comes from cases rejecting deliberate indifference claims. *See id.* As Petitioners have already noted, *see* Pet'r's Reply at 2 n.1, Dkt. 34, [redacted] is not bringing such a claim, (although his facts may well meet the standard). Instead, he argues that his [redacted] is yet another harm that results from Respondents' unlawful actions, which immediate release would remedy, and which the court has authority to order. *See* Supp. Br. 22. Here, too, the Government has no substantive response whatsoever—including any

[4] Respondents point out a citation error in a footnote to Petitioners' brief at page 19, n.3 in the citation to *Doe v. Noem*, 778 F. Supp. 3d 1151, 1166 (W.D. Wash. 2025). The cited quotation actually appears in *F.R.P. v. Wamsley*, No. 3:25-CV-01917-AN, 2025 WL 3037858, at *7 (D. Or. Oct. 30, 2025), not in *Doe*. Respondents apologize to the Court for the inadvertent error.

contention that the [redacted] It plainly does not. *See* Supp. Br. 21–23.

Lastly, Respondents again artificially expand Petitioners' arguments to make them sound unreasonable, asserting that "Petitioner's argument, taken to its logical extreme, is that federal district courts are compelled to order immediate release of immigration detainees where they were detained without petitioners demanded pre-detention hearing." Resp. Br. 26. To the contrary, the Court has broad equitable discretion to craft an appropriate remedy. *See* Supp. Br. 21. Here, immediate release is the appropriate remedy because it restores the status quo ante, allows [redacted] to address his [redacted] that the Government has failed to meet, and is justified by the Government's inability to show any valid basis for his continued detention. It also ensures that the Government is incentivized to cease its unlawful conduct, both with regard to [redacted] and with regard to other similarly situated individuals. As the Supreme Court has recognized, "[o]nce a right and a violation have been shown, the scope of a district court's equitable powers" to provide relief "is broad, for breadth and flexibility are inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15 (1971). The Government further claims that Petitioner has not "explained why the remedy is not to grant Petitioner the very hearing he claims the Constitution demands." Resp. Br. 27. But there is no basis for assuming that a belated hearing would cure what is fundamentally an unlawful custodial posture from the outset.[5] In these

[5] Respondents seek to deflect *Pinchi* by suggesting that here, "the IJ determined Petitioners' three failures to appear rendered him a flight risk." Resp. Br. 28. For all of the reasons previously discussed, *see* Supp Br. at 24, the record here does not contain evidence of intentional flight: [redacted] The Government's position would seemingly suggest that any individual with [redacted] can be held *indefinitely* with no way to challenge their plainly unlawful detention prior to a final removal order. This cannot be right, and indeed would seemingly coerce [redacted] to give up his SIJ status through voluntary departure, which itself would raise constitutional infirmities. *See Zadvydas v. Davis*,

circumstances, immediate release is the only remedy that would fully vindicate his constitutional right to due process.

At bottom, Petitioners therefore only ask that the Court perform the traditional function of a temporary restraining order: to preserve the status quo pending resolution of serious constitutional and APA questions. The *Winter* factors strongly support such relief, given [redacted] substantial liberty interest, the complete absence of pre-deprivation process, and the significant [redacted] he continues to experience in detention.

CONCLUSION

For the foregoing reasons, and for all the reasons previously argued, Petitioner-Plaintiffs 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: January 2, 2026

Respectfully Submitted,

/s/ Sophia Gregg

Sophia Leticia Gregg, VSB No. 91582
Geri Greenspan, VSB No. 76786
Vishal Agraharkar, VSB No. 93265
Eden Heilman, VSB No. 93551
American Civil Liberties Union
Foundation of Virginia
P.O. Box 26464
Richmond, VA 23261
Tel: (804) 774-8242
Sgregg@acluva.org
Ggreenspan@acluva.org
Vagraharkar@acluva.org
Eheilman@acluva.org

533 U.S. 678, 690 (2001) ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem."); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013) (the unconstitutional conditions doctrine "vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up.").

J.C. Rozendaal, VSB No. 41857
Salvador M. Bezos, VSB No. 75942
William H. Milliken*
Sterne Kessler Goldstein & Fox PLLC
1101 K Street NW, Suite 1100
Washington, D.C. 20005
**pro hac vice* application forthcoming