

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIA SONIA ALLAICO PACHECO:

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Petitioners,

-against-

WILLIAM JOYCE, in his official capacity as acting New York Field Office Director for U.S. Immigration and Customs Enforcement, KRISTI NOEM, in her capacity as Secretary for the United States Department of Homeland Security; PAMELA BONDI, in her official capacity as the Attorney General of the United States,

Respondents.

Case No. 1:25-cv-9348

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS AND COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

PRELIMINARY STATEMENT

1. Petitioners, Maria Sonia Allaico Pacheco and Mi [REDACTED] (“Petitioners”), bring this Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief (“Petition”) pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Immigration and Nationality Act (“INA”) and regulations thereunder; the Administrative Procedure Act (“APA”), 5 U.S.C. § 701, and Article I, Section 9, Clause 2 of the United States Constitution (“Suspension Clause”) and the Fifth Amendment of the United States Constitution.
2. Petitioner Mi [REDACTED] is the daughter of Petitioner Maria Sonia Allaico Pacheco. Maria Sonia Allaico Pacheco is a national and citizen of Ecuador born on [REDACTED] in Ingapirca, Ecuador. Petitioner Mi [REDACTED] was born on [REDACTED]. Petitioners last entered the US on August 2, 2021.
3. Petitioners were put in proceedings on January 19, 2022. Petitioners had their individual hearing on November 29, 2022, where the judge ordered removal.
4. Petitioners submitted an appeal to the Board of Immigration Appeals on December 9, 2022, which was dismissed on June 13, 2025.
5. Petitioners filed a Petition for Review on July 2, 2025 with the Second Circuit Court of Appeals. Petitioners have a T visa application pending. Additionally, the Special Immigrant Juvenile Family Court Process is complete. A Form I-360 has been filed with USCIS in order for the minor Petitioner to achieve lawful permanent residence.
6. On November 8, 2025, Petitioners were detained by DHS/ICE in an effort to effectuate their Order of Removal. ICE failed to provide a modicum of due process. 8 C.F.R. § 241.4. and 8 C.F.R. § 241.13 detail the due process procedures that should have been afforded to the Petitioners:

- a. 8 C.F.R. § 241.4 states that “Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.4(l)(1).
- b. § 241.13 states that “The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). “Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.” 8 C.F.R. § 241.13(i)(3).

7. The District Court, in *LARIOS, infra*, considered an identical situation for an immigrant who was detained with an order of removal and held that *LARIOS, infra v. ALBARRAN, et al., Defendants*, 2025 WL 3043391 (N.D. Cal. Oct. 31, 2025):

On balance, the *Mathews* factors show that Rivera Larios is entitled to a pre-deprivation hearing, which should have been provided before he was detained. “[T]he root requirement’ of the Due Process Clause” is “‘that an individual be given an opportunity for a hearing before [she] is deprived of any significant protected interest.’” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971)); see *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (“Applying [the *Mathews*] test, the Court usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty”). The Supreme Court has held that due process requires a pre-deprivation hearing before those released on parole from a criminal conviction can have their bond finally revoked. See *Morrissey*, 408 U.S. at 480-86. The same is true for those subject to revocation of probation. *Gagnon v. Scarpelli*, 411 U.S. at 782. Given the absence of “evidence of urgent concerns,” the Court concludes that “a pre-deprivation hearing [was] required to satisfy due process.” *Guillermo M. R.*, 2025 WL 1983677, at *9. With these considerations in mind, Rivera Larios is likely to succeed on the merits of his procedural due process claim. See also *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778 (E.D. Cal. Aug. 20, 2025) (“Accordingly, the court finds that respondents have failed to comply with the requirements of 8 C.F.R. § 241.13(i)(3) as detailed above. Of course, “[g]overnment agencies are required to follow their own regulations.... Because there is no indication that an informal interview was provided to Petitioner, the court finds Petitioner is likely to succeed on his claim that his re-detainment was unlawful.” *Hoac*, 2025 WL 1993771, at *4 (citing *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)).”) See Also *Ceesay v. Kurzdorfer*, — F. Supp. 3d —, 2025 WL 1284720, at *21 (W.D.N.Y. May 2, 2025) (“In sum, because ICE did not follow its own regulations in deciding to re-detain Ceesay [without providing an informal interview], his due process rights were violated, and he is entitled to release.”).

PARTIES

8. Petitioner Mi [REDACTED] is the daughter of Petitioner Maria Sonia Allaico Pacheco. Maria Sonia Allaico Pacheco is a national and citizen of Ecuador born on [REDACTED] in Ingapirca, Ecuador. Petitioner Mi [REDACTED] was born on [REDACTED]. Petitioners last entered the US on August 02, 2021. Petitioners were put in proceedings on January 19, 2022. Petitioners had their individual hearing on November 29, 2022, where the judge ordered removal. Petitioners submitted an Appeal on December 9, 2022, which was dismissed on June 13, 2025. Petitioners filed a Petition for Review on July 2nd, 2025. On November 8, 2025, Petitioners were detained by DHS/ICE in an effort to effectuate their Order of Removal. ICE failed to provide a “pre-deprivation hearing.”
9. Respondent William Joyce is named in his official capacity as Field Office Director New York for the U.S. Immigration and Customs Enforcement. In this capacity, he is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a); routinely transacts business in the Southern District of New York, and is legally responsible for pursuing Petitioners’ detention and removal; and as such is the legal custodian of Petitioners. Respondent Joyce’s address is 26 Federal Plaza, 9th Floor, Suite 9-110, New York, NY 10278.
10. Respondent Kristi Noem is named in her capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a); routinely transacts business in the Southern District of New York, and is legally responsible for pursuing Petitioners’ detention and removal; and as such is the legal

custodian of Petitioners. Respondent Noem's address is U.S. Department of Homeland Security, Washington, District of Columbia 20528.

11. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to INA § 103(g), 8 U.S.C. § 1103(g), routinely transacts business in the Southern District of New York, is legally responsible for administering Petitioners' removal proceedings and the standards used in those proceedings, and as such is the legal custodian of Petitioners. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

JURISDICTION AND VENUE

12. This action arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., 8 U.S.C. § 1231; and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.
13. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. § 701; and for injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.
14. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging DHS' conduct. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Federal district courts also have jurisdiction to hear "collateral legal and constitutional challenges to the process by which the government seeks to remove [a noncitizen]." *Fatty v. Nielsen*, No. C17-1535-MJP, 2018 WL 3491278, at *2 (W.D. Wash. Jul. 20, 2018); *see also You v. Nielsen*, 321 F. Supp. 3d

451 (S.D.N.Y. Aug. 2, 2018); *Villavicencio Calderon v. Sessions*, 330 F. Supp. 3d 944, 957-59 (S.D.N.Y. Aug. 1, 2018).

15. Federal courts have jurisdiction to hear habeas petitions, because “absent suspension, the writ of habeas corpus remains available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (plurality opinion of O’Connor, J.); U.S. Const.art. I, § 9, cl. 2 (“The Privilege of the Writ of Habeas Corpus shall not be suspended”); 28 U.S.C. § 2241(c)(3) (stating federal courts may grant the writ to any person “in custody in violation of the Constitution or laws or treaties of the United States”).
16. The Suspension Clause saves this Court’s jurisdiction and ability to hear Petitioners’ claims. Although the Respondents will likely argue that 8 U.S.C. § 1252 strips the Court of jurisdiction, but, as applied, the statute unconstitutionally suspends the habeas writ by failing to provide an adequate alternative forum for review. *Boumediene v. Bush*, 553 U.S. 723, 736, 771 (2008) (determining first whether the statute “denies the federal courts jurisdiction,” and then whether the statute “avoids the Suspension Clause mandate” by providing “adequate substitute procedures for habeas corpus”); *see also Hamdan v. Rumsfeld*, 548 U.S. 557, 575 (2006) (tracing the requirement of an “unmistakably clear statement” at least as far back as *Ex parte Yerger*, 75 U.S. 85, 104-05 (1868)). Thus this Court retains residual habeas jurisdiction as the lack of an adequate alternative forum to meaningfully seek review would amount to a suspension of the writ of habeas corpus, such that the statutes would need to be read to permit Petitioners’ claims to avoid a constitutional violation.
17. At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive encroachment on liberty, and it is in that context that its protections have been strongest. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). These protections extend fully

to noncitizens subject to an order of removal. *Id.*; see also Gerard L. Neuman, Habeas Corpus, Executive Detention, and the Removal of Aliens, 98 Colum. L. Rev. 961, 1044 (1998) (“[H]istorical precedents beginning shortly after 1787 and reaching to the present confirm the applicability of the writ of habeas corpus to the detention involved in the physical removal of aliens from the United States. These precedents include opinions . . . denying the power of Congress to eliminate judicial inquiry.”).

18. The right to seek habeas corpus relief is fundamental to the Constitution’s scheme of ordered liberty. Habeas corpus is “a writ employed to bring a person before a court, most frequently to ensure that the party’s imprisonment or detention is not illegal.” *Boumediene*, 553 U.S. at 737 (quoting Black’s Law Dictionary 728 (8th ed. 2004)). Blackstone called it “the most celebrated writ in English law,” 3 Blackstone’s Commentaries 129 (1791), and deemed the Habeas Corpus Act of 1679 “the bulwark of the British Constitution.” 4 Blackstone’s Commentaries 438 (1791).
19. In the penultimate Federalist Paper, Alexander Hamilton praised the establishment of the writ as a defense against “the favorite and most formidable instruments of tyranny.” The Federalist No. 84, p. 251 (R.M. Hutchins ed. 1952). Indeed, the “great writ of liberty”, see *Darr v. Burford*, 339 U.S. 200, 225 (1950) (Frankfurter, J., dissenting), is “the only common-law writ to be explicitly mentioned” in the Constitution. *Hamdi*, 542 U.S. at 558 (Scalia, J., dissenting) (citing U.S. Const. Art. I, § 9, cl. 2.).
20. The U.S. Constitution followed its English counterpart in permitting legislative suspension of the writ in extreme circumstances. In England, “the parliament only, or legislative power, whenever it sees proper, [could] authorize the crown, by suspending the habeas corpus act for

a short and limited time, to imprison suspected persons without giving any reason for so doing.” 1 Blackstone’s Commentaries 132 (1791).

21. The United States Constitution, however, does not permit suspension of the writ “whenever [the legislature] sees proper,” but rather guarantees in the Suspension Clause that “The Privilege of the Writ of Habeas Corpus shall not be suspended, The Suspension Clause provides that “[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” U.S. Const. art. I, § 9, cl. 2. “[B]ecause of that Clause, some ‘judicial intervention in deportation cases’ is unquestionably ‘required by the Constitution.’” *St. Cyr*, 533 U.S. at 300 (quoting *Heikkila v. Barber*, 345 U.S. 229, 235 (1953)). For a statute to limit the writ, it “must overcome both the strong presumption in favor of judicial review of administrative action and the longstanding rule requiring a clear statement of congressional intent to repeal habeas jurisdiction.” *St. Cyr*, 533 U.S. at 298 (footnote omitted). Congress can strip jurisdiction without violating the Suspension Clause only where it provides “a collateral remedy which is neither inadequate nor ineffective to test the legality of a person’s detention.” *Swain v. Pressley*, 430 U.S. 372, 381 (1977); *see also Boumediene*, 553 U.S. at 779.
22. “[I]f an otherwise acceptable construction of a statute would raise serious constitutional problems, and [] an alternative interpretation of the statute is fairly possible, [courts] are obligated to construe the statute to avoid such problems.” *St. Cyr*, 533 U.S. at 299-300. “Indeed, it is an elementary rule in construing acts of Congress that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.” *Skilling v. United States*, 561 U.S. 358, 406, (2010).

23. Courts have found that the Suspension Clause protects petitioners' rights to habeas relief because of the inadequacy of the motion to reopen process, *See Sean B. v. McAleenan*, 412 F. Supp. 3d 472, 490 (D.N.J. 2019) ("I am most moved here by the constitutional necessity of a stay under the Suspension Clause, see supra, and the likelihood of a violation of Petitioner's procedural and constitutional rights if it is not granted. Petitioner may or may not prevail before the BIA or the Court of Appeals; the Constitution requires, however, that his opportunity to put his case be preserved"); *Sukwanputra v. Barr*, No. 19-3965, 2019 U.S. Dist. LEXIS 159558, at *7-8 (E.D. Pa. Sep. 19, 2019); *Compere v. Nielsen*, 2019 DNH 017, 358 F. Supp. 3d 170, 182, (D.N.H. Jan. 24, 2019); *Siahaan v. Madrigal*, No. PWG-20-02618, 2020 U.S. Dist. LEXIS 184193 (D. Md. Oct. 5, 2020); *Devitri v. Cronen*, 289 F. Supp. 3d 294 (D. Mass. Feb. 1, 2018); *Ibrahim v. Acosta*, No. 17-cv-24574, 2018 WL 582520, at *5-6 (S.D. Fla. Jan. 26, 2018); *Jimenez v. Nielsen*, 334 F. Supp. 3d 370, 381-82 (D. Mass. 2018). Other courts have found that it was necessary to apply the canon of constitutional avoidance to avoid ruling on the Suspension Clause issues raised. *S.N.C. v. Sessions*, No. 18 CIV. 7680 (LGS), 2018 WL 6175902, at *3 (S.D.N.Y. Nov. 26, 2018); *Sied v. Nielson*, No. 17-cv-06785, 2018 WL 1142202, at *31-67 (N.D. Cal. Mar. 2, 2018).
24. For "non-core" habeas challenges, courts in this Circuit have relied on a combination of venue and personal jurisdiction principles in deciding whether they have venue. *See S.N.C. v. Sessions*, 325 F. Supp. 3d 401, 408-409 (S.D.N.Y. Aug. 28, 2018) (collecting cases). Under either test, applying "traditional venue considerations," such as the location of "material events," the location of "records and witnesses pertinent to the claim," and the relative "convenience of the forum" for each party or relying on principles of personal jurisdiction have asked whether the respondent can be reached by service of process and New York the

respondent falls under the state's long-arm laws, the Southern District of New York has venue over Petitioners' claims. ICE detained the Petitioners at 26 Federal Plaza, New York, New York.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

25. No exhaustion requirement applies to the constitutional claims raised in this Petition because no administrative agency exists to entertain Petitioners' constitutional challenges. *See Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995); *Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994), *see also Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) ("it is settled" that the immigration judge and the BIA cannot decide constitutional questions); *Burns v. Cicchi*, 702 F. Supp. 2d 281, 286 (D.N.J. 2010) (excusing further exhaustion where dispositive issues had been predetermined).
26. Additionally, exhaustion is not required where the Petitioners challenge the constitutionality of the agency procedure itself, "such that the question of the adequacy of the administrative remedy is for all practical purposes identical with the merits of the plaintiff's lawsuit." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992) (internal brackets omitted).
27. Finally, "courts may waive a judicially created exhaustion requirement where pursuing administrative remedies would be futile," as any would be here. *Brevil v. Jones*, No. 17 CV 1529-LTS-GWG, 2018 WL 5993731, at *2 (S.D.N.Y. Nov. 14, 2018) (quoting *Araujo-Cortes*, 35 F. Supp. 3d at 538-39)).

LEGAL FRAMEWORK

28. To determine whether a civil detention violates a detainee's procedural due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See*

Velasco Lopez v. Decker, 978 F.3d 842, 851 (2d Cir. 2020) (applying Mathews test to a challenge involving discretionary noncitizen detention). “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To determine what process Petitioners are due, this Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government’s interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

MATHEWS FACTOR 1: THE PETITIONERS’ PRIVATE INTEREST AFFECTED BY THE GOVERNMENT ACTION IS COMPELLING

29. In an identical situation the District Court held that “with respect to the first factor, the Court finds that the private interest at issue is fundamental.” *Khan v. Kristi* 2025 WL 3089352 (E.D. Cal. Nov. 5, 2025) In *Khan, supra*, the Petitioner who had an order of removal was detained without a hearing. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. Here, Petitioners have been out of custody since they crossed the border into the United States, up until now. Additionally, Petitioners have a T visa application pending, and the Special Immigrant Juvenile Family Court Process is complete. A Form I-360 has been filed with USCIS in order for the minor Petitioner to achieve lawful permanent residence. “The length of time [s]he was on supervised release, as well as petitioner's ties to h[er] community, strengthen petitioner's

interest in h[er] continued release.” *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *8 (E.D. Cal. Aug. 20, 2025).

30. The liberty interest is not diminished by the fact that the Petitioners have an order of removal. Thus, the Ninth Circuit held that the liberty interests of detainees subject to a final order of removal “are comparable” to those of detainees not subject to a final order of removal. *Diouf v. Napolitano*, 634 F.3d 1081, 1086–87 (9th Cir. 2011). It “is beyond dispute” an immigration detainee’s “private interest at issue here is ‘fundamental’: freedom from imprisonment is at the ‘core of the liberty protected by the Due Process Clause.’ ” *Khan v. Kristi* 2025 WL 3089352 (E.D. Cal. Nov. 5, 2025); *Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017) (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

MATHEWS FACTOR 2: THERE IS A SUBSTANTIAL RISK THAT THE CURRENT PROCEDURES WILL CAUSE AN ERRONEOUS DEPRIVATION OF LIBERTY WHICH COULD BE EASILY REDUCED BY ADDITIONAL SAFEGUARDS

31. 8 C.F.R. § 241.4. and 8 C.F.R. § 241.13 detail the due process procedure that should have been afforded to the Petitioners:
- a. 8 C.F.R. § 241.4 states that “Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.4(l)(1).
 - b. § 241.13 states that “The Service may revoke an alien’s release under this section and return the alien to custody if, on account of changed circumstances, the

Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). “Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.” 8 C.F.R. § 241.13(i)(3).

32. ICE never complied with the procedures listed above. “The Supreme Court has consistently held that “the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.” *See Zinermon*, 494 U.S. at 127, 110 S.Ct. 975 (emphasis in original). Thus, “ ‘the risk of an erroneous deprivation [of liberty] is high’ where, as here, ‘[the petitioner] has not received any bond or custody redetermination hearing.’ ” *J.A.E.M.*, 2025 WL 3013377, at 7 (quoting *A.E. v. Andrews*, No. 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025)).

MATHEWS FACTOR 3: THE GOVERNMENT'S INTEREST IN DETAINING PETITIONERS WITHOUT A HEARING IS LOW AND DOING SO WOULD BE MORE ADMINISTRATIVELY BURDENSOME THAN AFFORDING THEM A HEARING

33. Lastly, the third factor of the *Mathews* test weighs heavily in favor of the Petitioners. The third factor requires the Court to weigh the private interests at stake and the risk of erroneous deprivation of those interests against the Government's interest. "Although the government has a strong interest in enforcing the immigration laws, the government's interest in detaining petitioner without a hearing is 'low.'" *J.A.E.M.*, 2025 WL 3013377, at *7 (citing *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Doe*, 787 F. Supp. 3d at 1094). See *Henriquez v. Garland*, No. 5:22-cv-00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022) ("Although the Government has a strong interest in enforcing the immigration laws and in ensuring that lawfully issued removal orders are promptly executed, the Government's interest in detaining Petitioner without providing an individualized bond hearing is low."). Courts generally have found that the cost of providing a custody hearing is relatively minimal, and there is nothing in the record before this Court demonstrating that providing Petitioners with a pre-deprivation hearing would be fiscally or administratively burdensome. See *J.A.E.M.*, 2025 WL 3013377, at *7 ("In immigration court, custody hearings are routine and impose a 'minimal' cost." (citing *Doe*, 787 F. Supp. 3d at 1094)).

The Proper Remedy is Immediate Release

34. The proper remedy is to order Petitioners' release.

35. "It is clear, not only from the language of [28 U.S.C.] §§ 2241(c)(3) and 2254(a), but also from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)

(ordering release where detention became unlawful once condition release date had passed);
see also Munaf, 553 U.S. at 693.

36. Release is the only appropriate remedy for Respondents' shocking disregard for Petitioners' fundamental due process rights.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF PROCEDURAL DUE PROCESS

U.S. Const. amend. V

37. Petitioners reallege and incorporate by reference each and every allegation contained above.
38. Petitioners' detention without the procedural due process required by 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 deprives them of their right to procedural due process, and they are entitled to immediate release.

COUNT TWO

VIOLATION OF SUBSTANTIVE DUE PROCESS

U.S. Const. amend. V

39. Petitioners reallege and incorporate by reference each and every allegation contained above.
40. The Due Process Clause of the Fifth Amendment protects the substantive right of all persons in the United States, including noncitizens, to be free from unjustified deprivations of physical liberty. U.S. CONST. amend. V; see generally *Reno v. Flores*, 507 U.S. 292 (1993). “[G]overnment detention violates the [Due Process Clause] unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow nonpunitive circumstances, where a special justification . . . outweighs the individual’s

constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (quotation marks and citations omitted).

41. Petitioners’ detention does not serve the special justifications for immigration detention: mitigating flight risk and mitigating risk to the community. Petitioners’ detention without the substantive due process required by 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 deprives them of their right to substantive due process, and they are entitled to immediate release.
42. Petitioners’ detention therefore deprives him of his right to substantive due process, and he is entitled to immediate release.

COUNT THREE
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
5 U.S.C. § 706(2)

43. Petitioners reallege and incorporate by reference each and every allegation contained above.
44. The Administrative Procedure Act (“APA”) enables courts to “hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law.” 5 U.S.C. § 706(2).
45. The Respondents’ detention of the Petitioners without the procedural and substantive due process provided by 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 is arbitrary and capricious, in violation of the constitutional right to due process, in excess of statutory jurisdiction, and without observance of procedure required by law.

COUNT FOUR
Violation of Fifth Amendment Right to Due Process
(Failure to Provide an Individualized Hearing for Domestic Civil Detention)

46. “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).
47. The Fifth Amendment’s Due Process Clause specifically forbids the Government to “deprive[]” any “person . . . of . . . liberty . . . without due process of law.” U.S. CONST. amend. V.
48. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); see *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)
- (“[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”); cf. *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020) (holding noncitizens due process rights were limited where the person was not residing in the United States, but rather had been arrested 25 yards into U.S. territory, apparently moments after he crossed the border while he was still “on the threshold”).
49. “Freedom 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*, 533 U.S. 678 at (2001).
50. The Supreme Court has thus “repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,” including an individualized detention hearing. *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).

51. Petitioners were arrested inside the United States and are being held without being provided a pre-deprivation hearing.
52. Petitioners' continuing detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring the Petitioners outside the jurisdiction of the Southern District of New York pending the resolution of this case;
3. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
4. Declare that Petitioners' detention violates the Due Process Clause of the Fifth Amendment;
5. Declare that Petitioners' detention violates the Administrative Procedure Act;
6. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioners from custody on their own recognizance or under parole, bond, or reasonable conditions of supervision;
7. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
8. Grant such further relief as this Court deems just and proper.

Dated: New York, NY
November 9, 2025

Respectfully submitted,

By: /s/ Paul Grotas
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THE GROTA FIRM, P.C.
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917-436-4444

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioners because I am the Petitioners' attorney. On information and belief, I hereby verify that the factual statements made in the attached Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge.

Dated: New York, NY
November 9, 2025

By: /s/ Paul Grotas
Paul B. Grotas, Esq.
COUNSEL FOR PETITIONERS