UNITED STATES DISTRICT COURT

DISTRICT OF COLORADO

Civil Action No. 1:25-cv-04014

JOSUE ALDAIR ALFARO HERRERA,

Petitioner-Plaintiff,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Aurora Contract Detention Facility,

ROBERT HAGAN, in his official capacity as Field Office Director, Denver, U.S. Immigration and Customs Enforcement,

KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security,

TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement, and

PAMELA BONDI, in her official capacity as Attorney General of the United States.

Respondents-Defendants.

PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

1. Petitioner-Plaintiff, Josue Aldair Alfaro Herrera ("Josue"), by and through his undersigned counsel ("Counsel"), respectfully seeks a writ of habeas corpus and related relief to end his unlawful civil immigration detention by Respondents-Defendants, the Department of Homeland Security ("DHS") and Immigration and Customs Enforcement ("ICE").

2. Josue is a 22-year-old who came to this country from Honduras at the age of 16 in 2019 as an Unaccompanied Child. Josue fled his home country due to abandonment and neglect by his parents, as well as death threats by gangs. On December 14, 2020, Josue filed with U.S. Citizenship and Immigration Services ("USCIS") for Asylum, Withholding of Removal, and protection under the Convention Against Torture. USCIS has initial jurisdiction over asylum applications for children designated as Unaccompanied Children. That application remains pending.

3. On July 21, 2021, Josue received a grant of Special Immigrant Juvenile Status ("SIJ" status), meaning that a court has found—and DHS has agreed—that it is not in his best interest to be returned to Honduras. On May 12, 2022, USCIS issued Josue an amended SIJ status approval notice granting him "deferred action" in accordance with USCIS policy aimed at allowing youth to remain in the United States and obtain employment authorization while they await the chance to apply for permanent residency. Since 2016, the ability to apply for permanent residency has been restricted by date, because the number of SIJ beneficiaries has surpassed the supply of available visas. This has left an estimated 100,000+ beneficiaries in a backlog, waiting to apply for

permanent residency. Because of this backlog, Josue is unable to apply for permanent residency until his priority date becomes current.

4. Despite the approval of SIJ status and deferred action providing safeguards against his removal to Honduras, and without prior notice, officers for ICE arrested and detained Josue on May 28, 2025, following his arrest by the Laramie County Sheriff's Office for an alleged traffic infraction, possession of a controlled substance, and driving under the influence. Today, he remains unlawfully incarcerated at the ICE Aurora Contract Detention Facility ("Aurora facility") in Aurora, Colorado, a prison privately owned and operated by GEO Group, Inc.

5. Josue's detention and attempted removal violate his statutory and constitutional rights, and thwart the entire purpose of SIJ status. For years, the government has recognized that SIJ status carries vested rights and a congressional guarantee of protection for vulnerable youth who cannot safely return to their countries of origin. In keeping with that understanding, the government has routinely shielded SIJ status recipients from removal through grants of "deferred action," allowing them to remain in the United States and pursue lawful permanent residency as Congress intended.

6. Here, however, despite USCIS agreeing with an Arizona state court's finding that it is not in Josue's best interest to return to Honduras, approving his petition for SIJ status, and granting him deferred action, Respondents now have terminated his grant of deferred action, detained him, and are seeking to remove him. These efforts amount to a de facto, unlawful revocation of SIJ status, depriving Josue of the statutory

benefits Congress provided without *any* process, let alone due process required under the Fifth Amendment.

7. Respondents' decision to summarily detain Josue without notice or explanation also violates Josue's procedural and substantive due process rights. Because Josue cannot be lawfully removed from the United States and he is not a flight risk, his ongoing detention serves no lawful purpose and runs afoul of the substantive and procedural due process protections of the Fifth Amendment, the Administrative Procedure Act ("APA"), and the Immigration and Nationality Act ("INA") and its implementing regulations.

8. As of the filing of this petition, Josue has already been detained by ICE for six months. Josue was previously in the custody of the Office of Refugee Resettlement ("ORR") for nearly two years. Together with his present indeterminate detention, Josue has been detained for over two-and-a-half years. Even without considering his ORR custody, Josue's detention has become unconstitutionally prolonged; with it, it is unconscionable. His continued detention is unjustified and violates Josue's due process rights. Not only has Josue missed the birth of his daughter and the first few months of her life, but his continued detainment threatens to extinguish his parental rights to care for her. Moreover, Josue has been suffering from both anxiety and depression as a result of his detainment.

9. Josue respectfully asks this Court to hold that his continued detention is unlawful and order his immediate release from custody.

JURISDICTION AND VENUE

10. This Court has jurisdiction under Art. I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas authority); 28 U.S.C. § 1331 (federal question jurisdiction); 8 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

11. District courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their civil immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *LG v. Choate*, 744 F. Supp. 3d 1172, 1178 (D. Colo. 2024).

12. This Court has jurisdiction to grant declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 2241(a); Fed. R. Civ. P. 57, 65; and based on its inherent authority to grant equitable relief. *See, e.g.*, *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971).

13. Venue is proper under 28 U.S.C. § 1391 because Josue is detained in the Aurora facility, which lies within the jurisdiction of this Court. *See* 28 U.S.C. § 2241(d); *Braden v. 30th Jud. Cir. Ct. Of Kentucky*, 410 U.S. 484, 493–94 (1973). Venue is also proper because at least one of the Respondents is a resident of this district, and a substantial part of the events giving rise to the claims in this action took place within this district. 28 U.S.C. § 1391.

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

15. The Supreme Court "has constantly emphasized the fundamental importance of the writ of habeas corpus in our constitutional scheme" and "steadfastly insisted that 'there is no higher duty than to maintain it unimpaired.'" *Johnson v. Avery*, 393 U.S. 483, 485 (1969). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990) (quoting *Ruby v. United States*, 341 F.2d 585, 587 (9th Cir. 1954)).

PARTIES

16. Josue is a citizen of Honduras and a resident of Massachusetts. He entered the United States as an Unaccompanied Child in 2019 after experiencing abandonment and neglect by his parents in Honduras, as well as death threats by gangs. He was subsequently transferred to ORR custody and granted SIJ and deferred action.

17. Respondent Juan Baltazar is named in his official capacity as the Warden of the Aurora facility, where Josue is detained, and is therefore his legal custodian.

18. Respondent Robert Hagan is named in his official capacity as the Acting ICE Denver Field Office Director. The Denver Field Office is responsible for carrying out

ICE's immigration detention operations at all of Colorado's detention centers. Respondent Hagan is a legal custodian of Josue.

19. Respondent Kristi Noem is named in her official capacity as the Secretary of DHS. She is responsible for the administration of U.S. immigration law and is legally responsible for the process of Josue's detention and removal. As such, she is a legal custodian of Josue.

20. Respondent Todd Lyons is named in his official capacity as Acting Director of ICE. As the head of ICE, he is responsible for the decisions related to the detention and removal of certain noncitizens, including Josue. As such, he is a legal custodian of Josue.

21. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the District of Colorado and is legally responsible for administering Josue's removal and bond proceedings as well as the procedural standards used in those proceedings. She is therefore a legal custodian of Josue.

EXHAUSTION OF REMEDIES

22. Petitions under 28 U.S.C. § 2241 are not subject to statutory exhaustion requirements. This Court has ruled that "exhaustion is not required in the immigration context when it would be futile or 'when "the interests of the individual in retaining prompt access to a federal judicial forum" outweigh the interests of the agency in protecting its own authority.'" *Quintana Casillas v. Sessions*, No. CV 17-01039-DME-CBS, 2017 WL

3088346, at *9 (D. Colo. July 20, 2017) (citing *Son Vo v. Greene*, 109 F. Supp. 2d 1281, 1282 (D. Colo. 2000)); *see also L.G. v. Choate*, 744 F. Supp. 3d 1172, 1181–82 (D. Colo. 2024).

23. Although exhaustion is not required, it would be futile in this case because Josue's claims cannot be meaningfully addressed or remedied through the administrative process. Moreover, neither an Immigration Judge ("IJ") nor the Board of Immigration Appeals ("BIA") has authority to rule on constitutional claims. *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."). There are no further remedies to exhaust.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

24. Josue was born in 2003 in Honduras. Ex. 1, Declaration of Josue Aldair Alfaro Herrera ("Josue Decl."). As found by the Arizona Juvenile Court in 2021, Josue was the victim of both abandonment and neglect by his parents. *Id.*; Ex. 2, Arizona Superior Court Findings of Fact. In 2015, Josue's father abandoned him, leaving Josue with his mother, who neglected him in a variety of ways, such as failing to provide him with proper education, medical care, supervision, and shelter. *Id.*

25. At the age of 12, instead of regularly attending school, Josue was forced to work six days a week and eight hours every day at a dangerous construction job to provide for himself, his mother, and his two sisters. *Id.* Josue experienced two significant injuries from this job—one in which he cut his finger after using dangerous tools such as an angle grinder and electric screwdriver and one in which he fell off the roof of a one-

story house and suffered a severe back injury and ongoing pain. *Id.* In both instances, Josue's mother failed to seek medical attention. *Id.*

26. Josue's mother did not provide proper shelter in Honduras, where their home only had running water a few days a week, and whenever it rained, water leaked through the roof and chipped away at the cement floor. *Id.*

27. Josue's mother did not properly supervise him. *Id.* For example, during one of the times Josue went to a store by himself, he encountered [redacted] threatened him by putting a gun to his head and demanding he return the phone within a week, or else they would kill him. *Id.* Although Josue reasonably feared for his life after this encounter, his mother failed to report this to the police or take any other action after learning of this incident. *Id.*

28. After being abandoned by his father and neglected by his mother, Josue entered the United States in 2019 at the age of 16. *Id.* He was designated an Unaccompanied Child and was transferred to the custody of ORR pursuant to the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act ("TVPRA") of 2008. A few months later, Josue was transferred from a short-term ORR shelter (Children's Home of Kingston in New York) to Long-Term-Foster-Care ("LTFC") in Queen Creek, Arizona. Josue Decl. In May of that same year, Josue was transferred to another LTFC in Tucson, Arizona. *Id.*

29. On December 14, 2020, Josue filed a Form I-589 Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture with

USCIS as an Unaccompanied Child ("UC"). *Id.* USCIS has sole, exclusive, initial jurisdiction over that application according to the TVPRA. His asylum application remains pending.

30. On May 10, 2021, DHS filed a motion to dismiss Josue's removal proceedings with the Tucson Arizona Immigration Court arguing that doing so was appropriate as USCIS maintained initial jurisdiction over his pending I-589 and that dismissing the case was in the interest of docket efficiency. On May 13, 2021, the Tucson Immigration Court granted the motion, and Josue's removal proceedings were dismissed without prejudice.

31. On April 6, 2021, while still in LTFC in Tucson, Arizona, Josue obtained an order declaring his court dependency and entering findings establishing his eligibility for SIJ status—namely that he could not reunify with his parents due to neglect and abandonment and it would not be in his best interests to be returned to Honduras. Ex. 2.

32. Josue filed a petition for SIJ status with USCIS on June 9, 2021, which was granted by USCIS on July 21, 2021. Ex. 3, SIJS Approval Notice.

33. On September 3, 2021, Josue was accepted into the Unaccompanied Refugee Minor ("URM") program—a program wherein unaccompanied youth are released from ORR custody and placed in the legal custody of a state child welfare agency. Ex. 4, URMP Approval Letter.

34. On September 13, 2021, Josue entered the URM program in Massachusetts with the Massachusetts Department of Children and Families obtaining legal custody of him. Ex. A, Letter of Support. Josue voluntarily continued in his

placement and the URM program after turning 18, with the opportunity to remain there until he turned 23, upon request. Ex. 5, Voluntary Placement Agreement.

35. Josue remained in the program until his detention by ICE in May 2025 and intended to request to remain in the program, but his immigration attorney was informed that he was not eligible because he was no longer in Massachusetts. Ex. 6, Affidavit of Attorney. Should he be released from ICE custody, Josue will be able to continue receiving supportive services from the program, but he will be ineligible to rejoin the program, as he was in detention (and thus out of state) on his 22nd birthday, rendering him unable to request an extension on his participation in the program. Ex. A.

36. For nearly four years in the URM program, Josue lived in a supportive independent living apartment, graduated from high school, enrolled in community college, and obtained employment in the Boston, Massachusetts area to support himself and prepare for his higher education and future in the United States.

37. On May 12, 2022, USCIS issued Josue an amended SIJ status approval notice granting him "deferred action" in accordance with USCIS policy allowing youth to remain in the United States and obtain employment authorization while they await the chance to apply for permanent residency once their priority date becomes current. Ex. 7, Deferred Action Approval.

38. On October 17, 2022, USCIS granted Josue's application for work authorization based on his approved "deferred action." Josue Decl. After receiving this approval, Josue spent approximately two years working as a server at a well-known restaurant called Fogo de Chao. *Id.* Upon graduating from high school, he briefly worked

at a tile company and then transitioned to serving at another restaurant called Alma Gaucha for about eight months. *Id.* Most recently, Josue began a job as a driver with the company "El Toro Fashion," in which he traveled across the country transporting goods. *Id.*

39. On May 25, 2025, while Josue was driving in Wyoming for his job with El Toro Fashion, he was pulled over by an officer from the Laramie County Sheriff's Office for failure to maintain lane. *Id.* The officer asked Josue questions in English, but Josue, who has no history of criminal convictions, asked him to speak more slowly because he could not understand him. *Id.* However, the questions continued at a pace at which Josue could not understand. *Id.*

40. During the traffic stop, Josue was arrested for possession of "controlled substance-Plant" after handing over a vape pen containing CBD, purchased legally in Nebraska.

41. After his arrest, Josue was taken to the Laramie County Jail. Josue Decl. He posted a $1,000 bond on May 27, but he was then told his release was delayed due to an ICE hold. *Id.* The next day, ICE detained him at the jail and later transferred him to the GEO ICE facility in Aurora, Colorado. *Id.*

42. On that same day (May 28, 2025), ICE reinitiated removal proceedings against Josue after issuing him a second NTA, charging him again under 8 U.S.C. § 1182 for entry without inspection. ICE later added an additional charge against Josue for entering without adequate entry documents.

43. On June 9, 2025, Josue appeared for a bond hearing pro se. Josue Decl. At this hearing, the court improperly placed the burden of proof for bond release on Josue, as opposed to requiring the government to show why Josue should be detained. Bond was denied because Josue did not provide any evidence in support of his request, which he did not understand he needed to do. Although Josue was given the opportunity to delay the hearing by a few weeks until his attorney could attend, he chose not to delay because his partner was expecting their first child around that time in Massachusetts, and he desperately wanted to get home for the birth. Josue Decl. Additionally, he strongly desired to return to his foster care program in Massachusetts and begin college in the fall. *Id.*

44. On July 22, 2025, Josue received notice from USCIS that they were terminating his period of deferred action with no explanation or reasoning, which also automatically revoked his deferred action-based employment authorization. Ex. 8, Notice of Termination.

45. Since his detention, Josue has attended several master calendar hearings before the Aurora, Colorado Immigration Court. Yet, the immigration judge ("IJ") does not have jurisdiction over his asylum case because of his Unaccompanied Child designation. USCIS *must* adjudicate the application before an IJ can assess his claim.

46. As described above, on July 16, 2025, Josue moved to terminate his removal proceedings to allow him to pursue his asylum application with USCIS and to pursue adjustment of status based on his approved SIJ status, but the government opposed termination. Ex. 9, Motion to Terminate; Ex. 10, Opposition to Motion to

Terminate. On July 28, 2025, the Aurora Immigration Court denied Josue's motion to terminate, and the court summarily denied a motion to reconsider in August of 2025. The court continues to reset the case for hearings every two weeks based on DHS's assurances that USCIS will expedite his asylum interview. Josue still has not received an asylum interview, and his case remains pending before the Aurora Immigration Court despite an IJ not having jurisdiction over his asylum claim, all while DHS continues to detain him.

47. On December 2, 2025, USCIS announced that it will be halting the adjudication of all asylum decisions regardless of nationality.[1] Based on this recent change in agency policy, it is unclear when—if ever—the agency will adjudicate Josue's asylum application that 1) has now been pending for almost five years and 2) the government has been agreeing to expedite for the 6 months he has been detained.

48. Josue has an infant daughter who is a U.S. citizen and who is currently in custody of the Massachusetts Department of Child and Family Services. Josue Decl. He has been in touch with his daughter's caseworker and explained that his goal is to return to Massachusetts to the URM program and to gain custody of his child. Josue needs to be released so that he can meet his newborn daughter and ensure that he does not lose

[1] Dep't of Homeland Security, USCIS Policy Memorandum, "Hold and Review of all Pending Asylum Applications and all USCIS Benefit Applications Filed by [Noncitizens] from High-Risk Countries," (Dec. 2, 2025), https://www.uscis.gov/sites/default/files/document/policy-alerts/PM-602-0192-PendingApplicationsHighRiskCountries-20251202.pdf.

his parental rights. He also seeks to resolve his pending charges in Wyoming so that these do not impact his eligibility for adjustment of status to permanent residency.

49. Josue's priority date for when he could qualify to apply for permanent residency is June 9, 2021. As of December 2025, youth who have priority dates prior to February 15, 2021, are eligible to apply for permanent residency, and only those with a priority date prior to September 1, 2020, can be approved for permanent residency. Josue is not yet eligible to apply, and his priority date could still be many months out while he remains indefinitely detained. Josue also needs to resolve the charges in Wyoming before he applies for permanent residency, and he has been unable to do so while in detention.

LEGAL FRAMEWORK

50. Congress authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *Zadvydas*, 533 U.S. at 690.

I. Detention Authority

51. 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard removal proceedings before an IJ. Such detention is discretionary, and individuals detained under Section 1226(a) are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). The INA also provides for mandatory detention of certain categories of noncitizens: those who have been arrested, charged with, or convicted of certain crimes (8 U.S.C. § 1226(c)); those who are subject to expedited removal for being apprehended upon arrival near the border or for being unable to show that they have been physically present in the United States for more than

two years until a determination has been made as to whether they have a credible fear of persecution (8 U.S.C. § 1225(b)(1)); and anyone alleged to be an "applicant for admission" who is "seeking admission" and whom an "examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted." *See* 8 U.S.C. § 1225(b)(2)(A).

52. Last, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

53. Here, Josue has been detained under 8 U.S.C. § 1226(a), which provides in relevant part:

> Arrest, Detention, and Release:
>
> On a warrant issued by the Attorney General, [a noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—
>
> (1) may continue to detain the arrested [noncitizen]; and
>
> (2) may release the [noncitizen] on—
>
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
>
> (B) conditional parole

54. Under Section 1226(a), IJs have jurisdiction and can issue discretionary bond if they find that the person does not pose a risk to the community, a flight risk, or threat to national security. *Matter of Guerra*, 24 I. & N. Dec. 37 (B.I.A. 2006).

55. Respondents previously granted Josue a bond hearing based on his detention falling under Section 1226(a), which entitles Josue to a constitutionally adequate bond hearing. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). However, following Josue's detention in May 2025, on July 8, 2025, ICE, announced a new policy "in

coordination with" DOJ. This new policy rejected the well-established understanding of the statutory framework and reversed decades of practice.

56. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," asserts that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225(a)(1) and therefore subject to mandatory detention provision under Section 1225(b)(2)(A). The policy purports to apply regardless of when or where a person was apprehended, and it extends to individuals who have resided in the United States for months, years, and even decades.

57. On September 5, 2025, the Board of Immigration Appeals (BIA) issued an opinion adopting this interpretation of the detention statutes. *Matter Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (B.I.A. 2025). This BIA decision holds that noncitizens "who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Id.* Thus, under this new interpretation, if Josue tried to get a redetermination of his bond, he would be denied.

58. ICE's power to re-arrest a noncitizen who is at liberty is constrained, not only by regulation and statute, but also by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("[T]he government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). In this case, due process prohibits Respondents from taking away Petitioner's weighty interest in his freedom in the peremptory manner that occurred.

II. SIJ Status Provides a Pathway to Permanent Status for Certain Vulnerable Young People

59. In 1990, Congress created SIJ status to protect vulnerable immigrant children and provide them a pathway to lawful permanent residence. Immigration Act of 1990, Pub. L. No. 101-649, § 153, 104 Stat. 4978 (1990) (amending various sections of the INA); Special Immigrant Status, 58 Fed. Reg. 42843, 43844 (Aug. 12, 1993) ("This rule alleviates hardships experienced by some dependents of United States juvenile courts by providing qualified [noncitizens] with the opportunity to apply for special immigrant classification and lawful permanent resident status, with [the] possibility of becoming citizens of the United States in the future."). Since 1990, Congress has amended the INA multiple times to expand the protection of SIJ status, most recently in 2008, through the TVPRA, Pub. L. 110-457, § 235(d), 122 Stat. 5044 (2008).

60. To be granted SIJ status, youths must first "satisfy[] a set of rigorous, congressionally defined eligibility criteria." *Osorio-Martinez v. U.S. Att'y Gen.*, 893 F.3d 153, 163 (3d Cir. 2018). Specifically, the INA provides that those eligible for SIJ designation, as relevant here, are noncitizen youth who are present in the United States; who have been declared dependent on a state juvenile court; who cannot be reunified with one or more parents because of abuse, neglect, or abandonment; and for whom it has been determined that it is not in their best interest to return to their country of origin. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

61. Crucially, a noncitizen youth may only maintain SIJ status if he or she is "*present* in the United States." 8 U.S.C. § 1101(a)(27)(J) (emphasis added). This requirement makes perfect sense in light of the purpose of the SIJ statute. SIJ status is

predicated on a state court finding that the youth cannot be safely reunited with one or more parent(s), nor safely sent back to their country of origin. The design of this program, then, "show[s] a congressional intent to assist a limited group of abused children to remain safely in the country with a means to apply for LPR status." *Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011) (abrogated on other grounds).

62. SIJ status may be revoked only for what the Secretary of Homeland Security deems "good and sufficient cause." 8 U.S.C. § 1155; 8 C.F.R. § 205.2. According to USCIS regulations, such revocation must be made upon notice to the youth, who must be permitted the opportunity to submit evidence in opposition. *See* 8 C.F.R. § 205.2. If status is ultimately revoked, the youth is entitled to notice and the opportunity to appeal the decision. *See id.* § 205.2(c) & (d). Revocation of an SIJ petition may only be performed by a USCIS officer authorized to approve such a petition in the first instance. *See id.* § 205.2(a).

63. The main benefit of SIJ status—and indeed, its core purpose—is that it provides vulnerable young people, like Josue, the right to seek lawful permanent resident ("LPR") status. *See* 8 U.S.C. § 1255(h). Accordingly, youth with SIJ status must be "provide[d] . . . an opportunity to pursue adjustment of status." *Del Cid, et al., v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150, at *6 (W.D. Pa. Oct. 23, 2025). Congress expressly designed SIJ status to allow children like Josue to remain in the United Status to pursue LPR status. *See* 8 U.S.C. 1255(h) (deeming SIJ youth "paroled" for adjustment).

64. To facilitate this process, Congress removed numerous barriers to adjustment of status for SIJ status beneficiaries through amendments to the SIJ provisions in 1991 and again in 2008. For example, SIJ youth are "deemed . . . to have been paroled into the United States" for the purposes of adjustment of status. 8 U.S.C. § 1255(h)(1). Further, Congress exempted SIJ youth from many common grounds of inadmissibility and created a generous waiver of many of the non-exempted inadmissibility grounds. 8 U.S.C. § 1255(h)(2).

65. Here, DHS has asserted Josue is removable based on conduct that predates Josue's SIJ approval on July 21, 2021. Congress, however, explicitly provided that specified grounds for removal "shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title [the SIJ statute]" when they are "based upon circumstances that existed before the date the [noncitizen] was provided such special immigrant status." 8 U.S.C. § 1227(c). Accordingly, those pre-SIJ allegations cannot support removal; any remaining admissibility concerns are inapplicable or waivable under Section 1255(h)(2).

66. Although SIJ renders youth eligible to apply for adjustment, they can only do so when a visa is immediately available to them. 8 U.S.C. § 1255(h). However, there is an annual limit on visas available to SIJ beneficiaries. 8 U.S.C. § 1153(b)(4). And since 2016, the number of SIJ beneficiaries has surpassed the supply of available visas, leaving what has been estimated to be more than 100,000 young people in a backlog, waiting to apply for a green card.

67. Despite the immediate unavailability of visas, waitlisted SIJ beneficiaries are the same vulnerable young people that the SIJ statute was designed to protect. The fact that no visa is currently available because a numerical limit has been reached changes nothing about their eligibility determination by USCIS, or Congress's intent that they be afforded a pathway to LPR status and, eventually, citizenship. These are the same individuals who state courts have determined cannot safely be reunited with their parent(s) or returned to their home country.

68. Taken together, the structure of the SIJ program—including the requirement that recipients remain in the United States to pursue relief, the grant of parole for the purpose of adjustment, and the waiver of grounds of inadmissibility and removability—evinces Congress' intent that SIJ status recipients remain safely in the United States until they can adjust to become LPRs. Because SIJ is an adjustment-of-status pathway pursued from within the United States, removing a SIJ beneficiary before a visa becomes available would effectively nullify the protection Congress created. *See* 8 U.S.C. §§ 1101(a)(27)(J), 1255(h)(1)–(2), 1227(c).

69. In March 2022, to address the SIJ visa backlog, USCIS announced that all young people granted SIJ status would also be considered for a discretionary grant of deferred action, meaning that they would be protected from deportation while waiting for a visa to become available ("SIJ Deferred Action Policy"). In enacting this policy, USCIS acknowledged that "Congress likely did not envision that SIJ petitioners would have to

wait years before a visa became available."[2] Persons granted deferred action are shielded from deportation and are eligible to apply for employment authorization under 8 C.F.R. § 274a.12(c)(14).

70. Under the SIJ Deferred Action Policy, USCIS was required to automatically evaluate whether an approved SIJ recipient "warrant[ed] a favorable exercise of discretion" through a grant of deferred action.[3]

71. That automatic review applied to all approved SIJ beneficiaries who were unable to apply for adjustment of status solely because, due to the backlog, an immigrant visa number was not available. Such determinations were made on a case-by-case basis, and USCIS granted deferred action to SIJ beneficiaries for renewable four-year periods.[4]

72. Under this Policy, noncitizens whom the government had approved for SIJ status were neither required nor permitted to submit separate requests for deferred action;[5] their Form I-360 Petition for SIJ status was sufficient for consideration for deferred

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[2] USCIS, Policy Alert PA-2022-10, at 1 (Mar. 7, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf ("2022 Policy Alert"); *see* also USCIS, Training regarding SIJ Deferred Action Background, at 11–12, https://www.ilrc.org/sites/default/files/2025-09/FOIA%20Results%20on%20SIJS%20Deferred%20Action%20Policy.pdf.

[3] *Id.*

[4] *Id.*

[5] *Id.*

action. USCIS concurrently updated its Policy Manual to reflect the SIJ Deferred Action Policy.[6]

73. Importantly, "USCIS has the sole authority to grant and terminate deferred action for noncitizens with SIJ classification."[7] And, generally, USCIS may only terminate deferred action "if the SIJ-classified individual was not eligible at the time of the initial grant of deferred action, the SIJ Form I-360 is revoked, or if they are no longer eligible based on new information."[8]

III. The APA Sets Minimum Standards for Final Agency Action

74. The APA authorizes judicial review of final agency action. 5 U.S.C. § 704.

75. Final agency actions are those (1) that "mark the 'consummation' of the agency's decisionmaking process" and (2) "by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997).

76. ICE's detention, revocation of deferred action, and reinstatement of removal proceedings are final agency actions subject to this Court's review as they represent the consummation of the decisionmaking process regarding Josue's detention and carry significant legal consequences. *See Nava v. Dep't of Homeland Sec.*, 435 F. Supp. 3d 880, 903 (N.D. Ill. 2020). Here, the agency actions result in (among other things) de facto

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[6] *See* USCIS POL'Y MANUAL vol. 6, pt. J, ch. 4.G. (archived Apr. 18, 2025), https://web.archive.org/web/20250418205752/https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4.

[7] USCIS MEMO RE: SPECIAL IMMIGRANT JUVENILE (SIJ) DEFERRED ACTION (June 26, 2023), at 130, https://www.ilrc.org/sites/default/files/2025-09/FOIA%20Results%20on%20SIJS%20Deferred%20Action%20Policy.pdf.

[8] *Id.*

revocation of Josue's SIJ status, in violation of statute and regulation. The Supreme Court has recognized that a federal agency's failure to comply with its own regulations generally renders the associated agency action unlawful. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

77. The detention, revocation of deferred action, and reinstatement of removal proceedings were also actions by which rights or obligations have been determined or from which legal consequences flowed because it led ICE to detain Josue in violation of his rights under the Constitution, statute, and regulations.

LEGAL ANALYSIS

I. De Facto Revocation of Josue's SIJ Status and Attempted Forced Removal by Respondents Violates the APA.

A. Forcibly Removing Josue would Render him Ineligible for SIJ Status, Directly Contradicting the Procedural Safeguards Provided by SIJ.

78. "SIJ status, once granted, may not be revoked except 'on notice,' 8 C.F.R. § 205.2, and upon the Government's compliance with a series of procedural safeguards: The Secretary of Homeland Security must find 'good and sufficient cause' for revocation; the agency must provide notice of intent to revoke; and the SIJ designee must be given the opportunity to present evidence opposing revocation." *Osorio-Martinez*, 893 F.3d at 163–64 (citing 8 U.S.C. § 1155; 8 C.F.R. § 205.2; 7 USCIS Policy Manual, pt. F, ch. 7 (Mar. 21, 2018)). Further, SIJ designees have appeal rights for any adverse ruling. *Id.* at 164. Josue is entitled to these statutory protections before his SIJ status may be revoked. And because the INA requires that an individual be present in the United States to have SIJ status, forced removal from the United States would render him ineligible, constituting a de facto revocation of his SIJ status. *See* 8 U.S.C. § 1101(a)(27)(J).

Although Josue does not have a current final removal order, ICE reinitiated removal proceedings and is seeking a final order of removal before the Aurora Immigration Court. Because of his continued detention, Josue is unable to adequately respond to ICE's attempted de facto revocation of his SIJ status or to assert the rights that SIJ provides. Therefore, the ongoing removal proceedings against Josue, by Respondents, are in direct conflict with the procedural duties Respondents owe Josue under 8 C.F.R. § 205.2, including adequate notice, the right to present evidence, and the right to appeal.

B. Forced Removal is Arbitrary and Capricious and Contrary to Law Because it would Contravene the Very Purpose of the SIJ Framework.

79. The core purpose of SIJ protection is to provide beneficiaries like Josue with a means to become an LPR from within the United States even when their presence would otherwise be unlawful. *See* 8 U.S.C. § 1255(h)(2). Because physical presence in the United States is required to adjust status pursuant to SIJ, Josue must remain present in the United States to avail himself of that process. *See* 8 U.S.C. § 1101(a)(27)(J). Allowing Josue to be removed from the United States after he has already been granted SIJ status would thus eviscerate Congress' goal in creating the status in the first place and ignore the special protections afforded SIJ status like Josue.

80. To ensure that any removal of SIJ beneficiaries does not violate the SIJ statutory scheme, courts have held that "the Government must provide [individuals with SIJ status] an opportunity to pursue adjustment of status, and the way in which the Government seeks to remove them must adequately take stock of their SIJ Status." *Del Cid, et al.*, 2025 WL 2985150, at *4. This is because "Congress granted SIJ designees a clear set of rights, including eligibility to apply for adjustment to LPR status," and

removing a SIJ beneficiary from the United States before they are eligible to apply for adjutment would "summarily strip[]" this right from them. *Osorio-Martinez v. Atty. Gen. U.S. of Am.*, 893 F.3d 153, 178–79 (3d Cir. 2018). Therefore, removing Josue now, before he has had an opportunity to pursue adjustment of status, does not "adequately take stock of [Josue's] SIJ Status" and is therefore contrary to law. *Del Cid, et al.*, 2025 WL 2985150, at *4.

C. It is Arbitrary and Capricious for ICE, a Subcomponent of DHS, to Seek to Remove Josue while USCIS, another Subcomponent of DHS, has Granted Josue Relief Pursuant to the SIJ Statutory Scheme.

81. These are contradictory, opposing positions from within the same agency, which the agency has failed to explain and reconcile. In *Joshua M. v. Barr*, 439 F. Supp. 3d 632 (E.D. Va. 2020), the district court considered this exact issue and held that (1) the petitioner was likely to succeed on the merits of his APA claim "based on potentially arbitrary and capricious actions" and (2) the petitioner, a SIJ beneficiary, was entitled to a temporary stay of removal. *Id.* at 679–80, 682. Specifically, the court found it "peculiar that the DHS grants [the petitioner] relief pursuant to the SIJ statutes while another agency within DHS, Immigration and Customs Enforcement, simultaneously pursues removal." *Id.* at 680. "These seemingly opposing positions within the Executive Branch raise questions about the arbitrary and capricious nature of such actions." *Id.*; *see also Lee Lumber and Bldg. Material Corp. v. N.L.R.B.*, 117 F.3d 1454, 1460 (D.C. Cir. 1997) (noting that an agency's failure to explain "inconsistency is arbitrary"); *Gen. Chem. Corp. v. U.S.*, 817 F.2d 844, 846 (D.C. Cir. 1987) ("internally inconsistent and inadequately explained" agency action is arbitrary and capricious). Accordingly, ICE's re-detention and

attempt to remove Josue while he was granted SIJ status by USCIS is arbitrary and capricious. *Id.*

II. De Facto Revocation of Josue's SIJ Status, Constitutionally Inadequate Re-detention, and Prolonged Detention Violate the Procedural Due Process Clause of the Fifth Amendment of the U.S. Constitution

82. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail.

83. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in [removal] proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. This fundamental protection applies to all persons present in the United States, including both removable and inadmissible noncitizens. *See Clark v. Martinez*, 543 U.S. 371 (2005) (applying *Zadvydas* to inadmissible noncitizens). Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the [incarcerated] individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal citation omitted).

A. Revocation of Josue's SIJ Status by Seeking Forcible Removal without Notice and Opportunity to be Heard Violates his Due Process Rights under *Mathews.*

1. Josue has a Substantial, Legally Protectable Property and Liberty Interest in his SIJ status.

84. SIJ status 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.*, 439 F. Supp. 3d at 678 (quoting *Osorio-Martinez*, 893 F.3d at 170). Congress afforded SIJ beneficiaries robust process by statute, *see id; supra* ¶¶ 59–74; 8 C.F.R. § 205.2, and granted them "access to federally-funded education and preferential status for employment-based green cards." *J.L. v. Cissna*, 374 F. Supp. 3d 855, 869 (N.D. Cal. 2019). For such reasons, courts have found that "SIJ status may constitute a protected liberty or property interest." *Joshua M.*, 439 F. Supp. 3d at 679; *see J.L.*, 374 F. Supp. 3d at 869.

2. The Risk of Erroneously Depriving Josue of his Interest in his SIJ status is Severe.

85. By detaining Josue and seeking to remove him from the United States, Respondents will effectively revoke his SIJ status as well as his ability to adjust to LPR status, *see* 8 U.S.C. § 1101(a)(27)(J), without following the substantive and procedural requirements for such revocation. Because the INA requires that an individual be present in the United States to maintain SIJ status, forced removal from the United States would render him ineligible. *See* 8 U.S.C. § 1101(a)(27)(J). Moreover, by continuing to detain Josue, Respondents are preventing him from addressing the pending charge in Wyoming which could impact his eligibility for adjustment of status to permanent residency pursuant to his SIJ status. Josue Decl.

86. Such a revocation would be erroneous. Moreover, these serious stakes make the value of additional process extremely high, and Josue should be given notice and an opportunity to be heard, in line with the SIJ statute and regulations' due process mandates, *see* 8 C.F.R. § 205.2, before any revocation of his SIJ status.

3. The Government's Interest in Revoking Josue's SIJ Status without Additional Process is Nonexistent.

87. In making its release decision, the Office of Refugee Resettlement ("ORR") was required to—and did—determine that Josue was not a flight risk or a danger to the community. Indeed, in requiring an unaccompanied child to be placed "in the least restrictive setting that is in the best interest of the child," the statute directs the government to "consider danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232(c)(2)(A). The implementing regulations confirm that the decision to release a child from federal custody, as was done in Josue's case back in 2021, requires a determination about danger and flight risk:

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

45 C.F.R. § 410.1201. Thus, the government has already made a determination about flight risk and risk of danger in Josue's case and found that there was no risk. Ex. 4. The government has little to no interest in detaining him. Just recently, a court in this district ordered immediate release of a petitioner from detention where that petitioner previously

had been released on bond. *Cruz Valera v. Baltazar*, No. 1:25-CV-03744-CNS, 2025 WL 3496174, at *1, *3 (D. Colo. Dec. 5, 2025).

88. The SIJ statutory framework and regulations themselves require notice and an opportunity to be heard before SIJ status may be revoked for cause. 8 U.S.C. § 1155; 8 C.F.R. § 205.2. The government cannot have an interest in undermining the laws of the United States.

89. The Due Process Clause entitles Josue to meaningful process assessing whether his detention is justified and whether revocation of his SIJ status is proper. Josue's re-arrest, detention, and ongoing removal proceedings without an opportunity to contest his detention or the revocation of his SIJ status in front of a neutral adjudicator, after he had been living and going to school in the United States for years, provide insufficient process and violate the Due Process Clause of the Fifth Amendment of the Constitution.

B. Re-Detention of Josue in the Absence of a Bond Hearing with Proper Burden Shifting Violates Procedural Due Process.

90. From September 26, 2019, until September 13, 2021, Josue was previously detained as a minor by ORR for nearly two years because there was no suitable guardian for him to be placed with in the United States. Josue Decl. After he was released to an unaccompanied refugee minor program in Massachusetts, he persevered beyond the challenges of his youth to develop independent living skills, graduate high school, and gain admission into a higher education program at MassBay Community College. *Id.* Josue's sudden re-detention by ICE has halted his progress by pulling him out of his community without adequate due process.

91. Federal courts have repeatedly granted temporary restraining orders requiring a pre-deprivation hearing before a noncitizen released from custody, like Josue, is re-detained. *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1026, 1033 (N.D. Cal. 2025) (noting that the court could not "identify any other context in which government agents could permissibly take someone who had been released by a judge, lock up that person, and have no hearing either beforehand or promptly thereafter."); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) ("[T]he liberty [of a person released from government custody] is valuable and must be seen as within the protection of the [Due Process Clause]."") (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)); *Domingo v. Kaiser*, No. 25-CV-05893 (RFL), 2025 WL 1940179, at *1–4 (N.D. Cal. July 14, 2025) (granting preliminary injunction where non-citizen was convicted of a crime following his release on bond, holding that mandatory detention would violate his due process rights unless he was afforded adequate process, including a hearing before a neutral decision maker to determine whether his detention was warranted).

92. Although Josue attended a bond hearing pro se on June 9, 2025, that hearing was constitutionally inadequate. Josue Decl. First, it did not occur *prior* to his re-detention. Second, because the burden was improperly placed on Josue, not the state, Respondents did not meet their burden of proof for continued detention, leaving the risk of erroneous deprivation of liberty not just high, but almost certain. Requiring Respondents to give notice and an opportunity to respond prior to re-detention is of great value because it reduces the probability of needless detention of a person, like Josue, who is neither dangerous nor a flight risk.

C. The Constitution Entitles Josue a Bond Hearing at Which DHS Must Demonstrate the Necessity of Continued Incarceration by Clear and Convincing Evidence and with Other Constitutionally Necessary Safeguards.

93. Civil immigration detention is constitutional only in "certain special and 'narrow' nonpunitive 'circumstances.'" *Zadvydas*, 522 U.S. at 690 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Those limited circumstances include risk of flight and danger to the community. *Id.* at 690–91.

D. The Constitution Requires DHS to Carry a Clear and Convincing Evidence Burden at a Bond Hearing under *Mathews*

94. The circuit courts that have meaningfully considered the constitutionality of placing the burden on the noncitizen in Section 1226(a) bond hearings have applied *Mathews*, 424 U.S. 319 (1976). *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d. Cir. 2020).

95. The Supreme Court "has consistently held the Government to a standard of proof higher than a preponderance of the evidence where liberty is at stake and has reaffirmed the clear and convincing standard for various types of civil detention." *Velasco Lopez*, 978 F.3d at 856. The Court has repeatedly recognized the need to limit civil detention, holding that the jailer must bear a high burden of proof to justify the government's interest. *See, e.g.*, *Kansas v. Hendricks*, 521 U.S. 346, 364, 368 (1997) (upholding involuntary civil commitment of individuals convicted of sex offenses where the statute provided "strict procedural safeguards;" including proof beyond a reasonable doubt); *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss

of money.") (citation and quotation marks omitted); *see also Foucha*, 504 U.S. at 80–83 (1992); *Addington v. Texas*, 441 U.S. 418, 423 (1979); *U.S. v. Salerno*, 481 U.S. 739, 750–52 (1987). It is immaterial that these precedents are unrelated to immigration detention because "the 'constitutionally protected liberty interest' in avoiding physical confinement, even for [noncitizens] already ordered removed, [is not] conceptually different from the liberty interests of citizens considered in *Jackson*, *Salerno*, *Foucha*, and *Hendricks*." *Velasco Lopez*, 978 F.3d at 856 (internal quotation omitted).

E. Josue's Freedom from Bodily Restraint, the Private Interest at Stake, is at the Core of Liberty Interests Protected by Due Process.

96. Incarceration in the United States is meant to be "the carefully limited exception," *Salerno*, 481 U.S. at 755, and it "constitutes a significant deprivation of liberty that requires due process protection" no matter its purpose. *Jones v. United State*s, 463 U.S. 354, 361 (1983).

97. Here, DHS has stripped Josue of his liberty and jailed him for over six months and counting at the Aurora facility. Josue Decl. Notably, courts in the District of Colorado have repeatedly found civil detention at the Aurora facility to be akin to punitive imprisonment. *See, e.g.*, *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 940 (D. Colo. 2025); *Martinez v. Ceja*, 760 F. Supp. 3d 1188, 1195 (D. Colo. 2024) (noting the government did not contest allegations that incarceration in the Aurora detention center resembled "penal confinement"); *Daley v. Choate*, 2023 WL 2336052, at *4 (D. Colo. Jan. 6, 2023). Even an individual released by ICE where additional conditions for release, such as a GPS ankle monitor, are imposed by ICE is still "in custody" for purposes of Section 2241. *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 69 (D. Mass. June 11, 2025)

(finding the indefinite imposition of a GPS monitor by ICE to violate due process rights under the Fifth Amendment).[9]

98. Detention's deleterious effect on an incarcerated person's mental health further impacts the individual's private interest. Studies indicate that "detention plays an independent role in contributing to poor mental health outcomes amongst asylum seekers" and suggest that "psychological functioning deteriorates with prolonged detention." M. von Werthern, *et al.*, *The impact of immigration detention on mental health: a systematic review*, 18 BMC Psychiatry 382, 14, 11 (2018), *available at*: https://doi.org/10.1186/s12888-018-1945-y. The individual interest at stake is profound.

F. Placing the Burden of Proof on Josue During his Bond Hearing Created an Overwhelming Risk of Erroneous Deprivation.

99. The risk of erroneously depriving Josue of this interest is severe. He has been suddenly separated from his community, prevented from pursuing his occupation and college education, and separated from his newborn daughter, who is now left in the care of the state. Josue Decl. Despite his best efforts to follow the demands of the federal immigration system, he has been thrown into sudden instability.

100. The current bond procedures directly cause significant and repeated deprivation of noncitizens' rights. Bond hearings pursuant to Section 1226(a) require noncitizens to prove two negatives, even though "[a]s a practical matter it is never easy to prove a negative." *Elkins v. United States*, 364 U.S. 206, 218 (1960). "[P]roving a

[9] Thus, Josue not only must be released from the detention facility, but he must not face unlawful restrictions on his liberty following release from detention. *Orellana Juarez v. Moniz*, 788 F.Supp.3d 61, 69 (D. Mass. 2025); *N- N- v. McShane*, No. 25-cv-5494, 2025 WL 3143594 (E.D. Pa. Sept. 10, 2025).

negative (especially a lack of danger) can often be more difficult than proving a cause for concern." *Hernandez-Lara*, 10 F.4th at 31; *L.G.*, 744 F. Supp. 3d at 1183 ("Petitioner argues, and the Court agrees, proving a negative is difficult"). As a result, bond grant rates are astonishingly low. IJs deny on average 69 percent of bond requests, with some denial rates as high as 97 percent. *See* Transactional Records Access Clearinghouse (TRAC), *Detained Immigrants Seeking Release on Bond Have Widely Different Outcomes – Overall Bond Grant Rates Have Dropped* (Jul. 19, 2023) *available at:* trac.syr.edu/reports/722.

101. Moreover, noncitizens have no right to court-appointed counsel in immigration court and overwhelmingly appear pro se. Requiring noncitizens to appear pro se and to carry the burden to secure their liberty inherently increases the risk of erroneous results.

102. Detained individuals "have little ability to collect evidence." *Moncrieffe v. Holder*, 569 U.S. 184, 201 (2013); *Hernandez-Lara*, 10 F.4th at 30. Jailed noncitizens—many of whom are not fluent in English—are confronted with the often-insurmountable task of collecting evidence without an attorney while incarcerated at a detention facility. The Constitution therefore requires, *inter alia*, additional procedural safeguards to ensure Respondents do not erroneously deprive a detained noncitizen's liberty interest.

103. The risk of erroneous deprivation is reduced when the government is assigned the burden. The government has "substantial resources to deploy," including "computerized access to numerous databases and to information collected by DHS, DOJ, and the FBI, as well as information in the hands of state and local authorities." *Velasco*

Lopez, 978 F.3d at 853 (citations omitted); *see Diaz-Ceja v. McAleenan*, 2019 WL 2774211, at *11 (D. Colo. July 2, 2019). DHS is also always represented by counsel and is inherently better positioned to know the complexities of immigration law, including filing procedures and IJ preferences. *See Hernandez-Lara*, 10 F.4th at 31; *Diaz-Ceja*, 2019 WL 2774211, at *11. A bond hearing at which the government carries the burden to justify Josue's detention would reduce the significant risk of error.

G. Respondents' Interests are Not Served by Detaining Josue or by the Current Section 1226(a) Bond Framework, and Respondents would not Suffer Hardship if They Carried their Proper Burden.

104. As discussed *infra* Section 2(II)(L), the government has no interest in detaining individuals like Josue, who cannot presently be removed and present no flight risk or danger.

105. The government's interests are also not served by the current Section 1226(a) framework and putting the burden on the government would cause no undue burden. With respect to the current framework, the Supreme Court recognized that the government's interest in civil immigration detention is limited to "certain special and narrow nonpunitive circumstances." *Zadvydas*, 533 U.S. at 690 (quotation omitted). Those limited interests are mitigation of flight and danger to the community. *Id.* at 690-91. Congress sought to address these legitimate concerns by changing the law to "focus on certain criminal noncitizens." *Hernandez-Lara*, 10 F.4th at 32.

106. However, the current Section 1226(a) bond process does not address the government's purported interests. *Diaz-Ceja*, 2019 WL 2774211, at *10 ("[T]he current allocation of the burden to the noncitizen does not ensure that detention serves either

interest because detention is not premised on such findings"). Under current procedures, "the Government does not need to show at any point that a noncitizen is a danger to the community or a flight risk," and "[i]nstead, incarceration occurs when a bond is denied absent a showing by the [noncitizen] that she is not dangerous or a flight risk." *Velasco Lopez*, 978 F.3d at 849 (noting that despite holding two bond hearings, the agency never found flight risk or dangerousness). Noncitizens must therefore prove two negatives to rebut the current presumption that detention is necessary, but an IJ is never required to determine that the individual DHS jails is a risk of flight or danger to the community. *See Hernandez-Lara*, 10 F.4th at 33 (shifting the burden and finding that "limiting the use of detention to only those noncitizens who are dangerous or a flight risk" may save the government and the public more social and financial costs). Detention pursuant to Section 1226(a) under the current framework is therefore "at most, a convenience rather than a substantive interest" for Respondents. *Diaz-Ceja*, 2019 WL 2774211, at *10.

107. This third factor also "ultimately entails an assessment of the 'public interest.'" *Hernandez-Lara*, 10 F.4th at 32 (citing *Mathews*, 424 U.S. at 335, 347). "[U]nnecessary detention imposes substantial societal costs." *Id.* at 33. That is especially true for Section 1226(a) detention because it includes "individuals with no criminal record, those who have known no country other than the United States, those who are or were protected by DACA . . . , international students with visa issues and lawful permanent residents who have lived in this country for decades, among others." *Velasco Lopez*, 978 F.3d at 854; *see Diaz-Ceja*, 2019 WL 2774211, at *10. "When the Government incarcerates individuals it cannot show to be a poor bail risk . . . it separates families and

removes from the community breadwinners, caregivers, parents, siblings, and employees." *Velasco Lopez*, 978 F.3d. at 855.

108. Neither ICE nor EOIR will suffer fiscal or administrative hardship if ICE were required to show that Josue is a risk of flight or danger (he is not) to satisfy their burden. The government's resources to obtain information are vast, and "to the extent the Government did not have the necessary information at its fingertips, it [has] broad regulatory authority to obtain it." *Velasco Lopez*, 978 F.3d at 853 (citing 8 U.S.C. § 1229a(c)(3)); *see Diaz-Ceja*, 2019 WL 2774211, at *11.

109. Respondent failed to make the showing necessary to constitutionally re-detain Josue. To the contrary, Josue's initial release to an Unaccompanied Refugee Minor Program in 2021 demonstrates that he is neither a danger or flight risk. Ex. 4. As a part of this 2021 release, DHHS and ORR were required by statute and regulation to find that Josue was not a danger or flight risk. *See* 8 U.S.C. § 1232(c)(2)(A); *see also* 45 C.F.R. § 410.1201.

110. Accordingly, Josue's bond hearing fell short of what is constitutionally required. That lack of due process has now been aggravated by Josue's prolonged detention, as discussed *infra* 2(II)(I). There is no basis to keep Josue detained, and at a minimum, the Constitution requires a new bond hearing where DHS must demonstrate that Josue is a flight risk and a danger to the community by clear and convincing evidence.

H. Josue is Entitled to a Bond Hearing Where the Burden of Proof is on the Government to Justify Continued Detention by Clear and Convincing Evidence.

111. Although the Tenth Circuit has not ruled on the issue presented by this Petition, this Court should follow the decisions of the First and Second Circuits, as well as the recent decision by a jurist in this district in *L.G. v. Choate*, 744 F. Supp. 3d 1172 (D. Colo. 2024), a case legally indistinguishable from this one.

112. In *L.G.*, the court followed the First, Second, Fourth, and Ninth Circuits in applying the *Mathews* balancing test to detention under Section 1226(a). 744 F. Supp. 3d at 1180. Although the court noted that the Tenth Circuit had not decided this precise question, it also noted that "Tenth Circuit precedent demonstrates that the *Mathews* test is appropriate when determining what process is constitutionally due." *Id.* at 1181.

113. As to the first *Mathews* factor, the *L.G.* court held that "the longer the duration of detention, the greater the deprivation of a noncitizen's private interest." *Id.* at 1182. The court cited *Zadvydas*, which held that detention of a noncitizen facing removal "was only presumptively reasonable for six months." *Id.* at 1183 (quoting *Zadvydas*, 533 U.S. at 701). The L.G. court found that "prolonged detention enhances [the petitioner's] individual liberty interest, warranting additional procedural safeguards." *Id.*

114. With respect to the second *Mathews* factor, the court acknowledged "two of Petitioner's strongest arguments: the difficult task of proving a negative and the resources of the government." *Id.* Citing *Hernandez-Lara* and *Velasco Lopez*, the court found that "as the period of confinement grows, so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention." *Id.* at 1184 (internal quotations and ellipsis omitted). Accordingly, the court found that the

second *Mathews* favor weighed in the petitioner's favor and that shifting the burden to the government was appropriate. *Id.*

115. As to the third and final *Mathews* factor, the court analyzed the government interest and administrative burden, together with the "public interest," and found that the government's "arguments are not persuasive." *Id.* at 1185. Citing the government's vast resources, the court rejected the government's contention that it would face a fiscal or administrative burden if required to carry the burden at a bond hearing. *Id.*

116. Having found that all three *Mathews* factors weighed in the noncitizen's favor, the *L.G.* court found it appropriate to put the burden on the government to prove by "clear and convincing evidence" that continued detention under Section 1226(a) was justified, citing the Supreme Court decisions in *Salerno* and *Addington.* *Id.* at 1185-86.

117. Numerous courts in the District of Colorado have since followed *L.G.* and required the government to bear the burden of proof to justify continued detention. *See, e.g.*, *Barreno v. Baltasar*, No. 1:25-cv-03017-GPG-TPO, 2025 WL 3190936, at *4 (D. Colo. Nov. 14, 2025); *Cervantes Arredondo v. Baltazar*, No. 1:25-cv-03040-RBJ, at *9–10 (D. Colo. Oct. 31, 2025); *Loa Caballero v. Baltazar*, No. 1:25-cv-03120, 2025 WL 2977650, at *9 (D. Colo. Oct. 22, 2025); *Moya Pineda v. Baltasar*, No. 1:25-cv-02955-GPGTPO (D. Colo. Oct. 20, 2025); *Mendoza Gutierrez, v. Baltasar*, No. 1:25-2720, 2025 WL 2962908, at *10 (D. Colo. Oct. 17, 2025); *Garcia Cortes v. Noem*, No. 1:25-cv-02677, 2025 WL 2652880, at *11 (D. Colo. Sept. 16, 2025).

118. In *Cervantes* and *Mendoza Gutierrez*, the court followed the *L.G.* court in holding that the government must meet that burden with clear and convincing evidence.

See Cervantes Arredondo v. Baltazar, No. 1:25-cv-03040-RBJ, at 9–10; *Mendoza Gutierrez*, 2025 WL 2962908, at *10.

119. In all of the cases above, the court held that the proper statute of detention was Section 1226(a), rather than Section 1225. As discussed *supra* Section 1(I), Respondents previously granted Josue a bond hearing based on his detention falling under Section 1226(a), which entitles Josue to a constitutionally adequate bond hearing. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d).

120. Should Respondents attempt to change position from their reference to 1226(a) and now argue based on the Interim Guidance *Matter Yajure Hurtado* that Josue is properly detained under Section 1225, that is contrary not just to the decisions *supra* Paragraph 54, but to hundreds of decisions of federal courts around the country, not to mention decades of practice.

121. As one court recently explained, "[n]umerous courts across the country have considered the applicability of § 1225(b)(2) versus § 1226(a) for noncitizens who have continuously remained in the United States for longer than two years but have not previously sought admission," and "[t]he vast majority of courts confronting this question have rejected Respondents' interpretation, and the BIA's interpretation in *Hurtado*, as contradictory to the plain text of § 1225." *Hernandez-Luna v. Noem*, No. 2:25-CV-01818-GMN-EJY, 2025 WL 3102039, at *7 (D. Nev. Nov. 6, 2025) (internal citations omitted);

see also Hernandez v. Baltazar, No. 1:25-CV-03094-CNS, 2025 WL 2996643, at *8 (D. Colo. Oct. 24, 2025) (petitioner is entitled to a bond hearing under Section 1226(a)).[10]

122. Moreover, the Central District of California recently "join[ed] other federal district courts" in finding that noncitizens who entered without inspection and were not apprehended upon arrival are detained under 1226(a) in part "because Respondents have previously treated Petitioner as subject to § 1226(a), not § 1225(b)." *Maldonado v.*

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[10] *See also Maldonado v. Cabezas*, No. CV 25-13004, 2025 WL 2985256, at *5 (D.N.J. Oct. 23, 2025) (granting habeas relief); *Loa Caballero v. Baltazar*, No. 25-03120, 2025 WL 2977650 (D. Colo. Oct. 22, 2025) (petitioner is entitled to a bond hearing under Section 1226(a)); *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *14 (D. Colo. Oct. 17, 2025) (respondent must release petitioner immediately until he receives a bond hearing before an IJ under Section 1226(a)); *Guerrero Lepe v. Andrews*, --- F. Supp. 3d ---, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, at *1 (D.N.M. Sept. 17, 2025); *Garcia Cortes v. Noem*, No. 1:25-CV-02677-CNS, 2025 WL 2652880, at *5 (D. Colo. Sept. 16, 2025) (petitioner is entitled to a bond hearing under Section1226(a)); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (granting habeas relief); *Lopez-Campos v. Raycraft*, --- F. Supp. 3d ----, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (granting habeas relief); *Kostak v. Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025) (granting preliminary relief); *Benitez v. Noem*, No. 5:25-cv-02190, Doc. 11 (C.D. Cal. Aug. 26, 2025) (granting preliminary relief); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (granting habeas relief); *Romero v. Hyde*, --- F. Supp. 3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (granting habeas relief); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting habeas relief); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (granting habeas relief); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (granting habeas relief); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (report and recommendation to grant habeas relief), adopted, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (granting habeas relief); *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (granting individual habeas relief); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025) (granting preliminary relief); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025) (denying reconsideration of individual habeas relief); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting individual habeas relief).

Cabezas, No. 25-13004, 2025 WL 2985256, at *4 (C.D. Cal. Oct. 23, 2025). The court granted immediate release because "Petitioner's due process rights were violated when she was detained without an individualized determination under § 1226(a) and its implementing regulations." *Id.* at *5. Even more recently, the Central District of California granted nationwide class certification for noncitizens who have entered the United States without inspection and were not apprehended upon arrival, issuing a declaratory judgment that class members are entitled to a bond hearing. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

123. Thus, Petitioner respectfully requests that this Court confirm that the applicable detention statute in this matter is 8 U.S.C. § 1226(a), as Respondents acknowledged when they originally detained Petitioner, and that Petitioner is entitled to a bond hearing where the burden of proof is on the Government to justify continued detention by clear and convincing evidence.

I. Josue's Detention has become Prolonged and Continued Detention in the Absence of Additional Procedural Safeguards Violates Due Process.

124. To comply with the Due Process Clause, civil detention must "bear[] a reasonable relation to the purpose for which the individual was committed" so that it remains "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690 (cleaned up); *see also Schall v. Martin*, 467 U.S. 253, 264 (1984) (finding detention must be a proportional—not excessive—response to a legitimate state objective). Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690.

125. Respondents detained Josue more than six months ago, and the length of his continued confinement is indeterminate and could last for many more months or even years. Further, Josue was previously in ORR custody for nearly two years (September 26, 2019 until September 13, 2021). Josue Decl. Together with the current indeterminate detention that already exceeds six months, Josue has been detained for over two-and-a-half years.

126. Detention pursuant to "§ 1226(a) is frequently prolonged because it continues until all proceedings and appeals are concluded." *Velasco Lopez v. Decker*, 978 F.3d 842, 852 (2d Cir. 2020). "The longer the duration of incarceration, the greater the deprivation." *Id.* Consequently, "'as the period of . . . confinement grows,' so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention." *Id.* at 853 (citing *Zadvydas*, 533 U.S. at 701) (internal quotations omitted).

J. Josue's Private Interest in Liberty is Compelling, Particularly in Light of his Indefinitely Prolonged Detention.

127. Josue has now been detained for six months and counting. Josue entered the United States as a child and was detained as a young adult. Until Josue's detention, he had actively engaged in supportive services through the Unaccompanied Refugee Minor program. Ex. A; Ex. 5. Josue has abruptly lost access to these vital supportive and therapeutic interventions that changed his life for the better, magnifying the deteriorating effect of prolonged incarceration. Josue's detention also prevents him from reuniting with his young daughter, causing tremendous hardship. Josue Decl. Not only

that, but Josue needs to be released to resolve a pending criminal charge in Wyoming so as to not impact his eligibility for adjustment of status to permanent residency. *Id.*

K. Josue's Prolonged Detention Poses Substantial Risk of Erroneously Depriving Him of His Eligibility for Permanent Resident Status and Custody of his Child.

128. First, Josue's prolonged detention will harm his ability to address and resolve his pending charge in Wyoming. In this proceeding already, Josue's prolonged detention has caused him to miss a court appearance, and the local public defender's office has been unable to take Josue's case while Josue is detained out of state. And again, detained individuals "have little ability to collect evidence," *Moncrieffe*, 569 U.S. at 201, so Josue faces the insurmountable task of preparing for a defense while detained. If Josue's defense erroneously and unfairly suffers as he continues to be detained, there is significant risk that his eligibility for permanent status under SIJ could be affected. This risk is heightened where the charge in Wyoming relates to a controlled substance because convictions related to controlled substances are grounds for inadmissibility under 8 U.S.C. 1182(a)(2)(A)(i)(II). Second, Josue's prolonged detention is preventing him from securing custody of his newborn child, a U.S. citizen who was born while he was detained. In particular, the child's mother is in state custody, and, while detained, Josue has no ability to take the steps necessary to get custody of his child. Josue's continued prolonged detention may eventually result in Josue permanently losing custody over his child.

L. The Government Has no Interest in Detaining Josue, Who Cannot be Removed and Poses no Flight Risk, Much Less an Interest in Prolonged Detention.

129. Josue has been granted SIJ status by DHS. SIJ status indicates Congress's intent "'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.*, 439 F. Supp. 3d at 678 (quoting *Osorio-Martinez*, 893 F.3d at 170). Josue has dutifully followed the SIJ process by applying for and receiving a state court order and SIJ status approval, properly awaiting work authorization, and now waiting for his opportunity to receive LPR status adjustment. His path is an actualization of Congress's intent for SIJ recipients. *See id.* Additionally, he is firmly settled in Massachusetts, where he is enrolled in college, maintains employment, and has a newborn daughter. And, the government previously released Josue, demonstrating that Respondents determined Josue was not a flight risk or a danger to the community.

Singh Factors

130. Although the District of Colorado has not considered the constitutionality of prolonged detention of noncitizens pursuant to Section 1226(a), it has adopted a six-factor test to consider whether detention is unconstitutionally prolonged under a related detention statute, Section 1226(c). Those factors include:

a. the total length of detention to date;

b. the likely duration of future detention;

c. the conditions of detention;

d. delays in removal proceedings caused by the person in immigration custody;

e. delays in removal proceedings caused by the government; and

f. the likelihood that removal proceedings will result in a final order of removal.

See, e.g., *de Zarate v. Choate*, 2023 WL 2574370, at *3 (D. Colo. March 20, 2023). Each of these factors weighs in Josue's favor.

Length of Detention

131. The Supreme Court has suggested that detention becomes unreasonably prolonged when it exceeds six months. *See Zadvydas*, 533 U.S. at 701.

132. As of this filing, Josue has already been detained in ICE custody for six months. That lengthy detention weighs in his favor. *See, e.g.*, *Galan-Reyes v. Acoff*, 460 F. Supp. 3d 719, 721 (S.D. Ill. 2020) (finding eight months' detention unconstitutionally prolonged); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (finding seven months' detention unconstitutionally prolonged); *see also Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1217–18 (11th Cir. 2016) (vacated as moot on other grounds by *Sopo v. U.S. Att'y Gen.*, 890 F.3d 952 (11th Cir. 2018) ("The need for a bond inquiry is likely to arise in the six-month to one-year window")). In the aggregate, he has been held in immigration custody (ICE and ORR) for over two-and-a-half years. This factor favors Josue.

Likely Duration of Future Detention

133. Over six months have lapsed since Josue's detention, and no meaningful movement has been made in his pending removal proceedings because the immigration court lacks jurisdiction over his asylum application.

134. DHS previously argued in its Opposition to Motion to Terminate in Josue's removal proceedings on July 23, 2025 that the "Asylum Office has agreed to expedite

adjudication of [Josue]'s I-589 [asylum application]" resulting in "the respondent getting a decision on his application more quickly." Ex. 10. Instead, after almost six months of detention, Josue has still not even received his asylum interview, demonstrating that his detention has *not* expedited his asylum application. Moreover, as of December 2, 2025, DHS issued a policy memorandum indicating that USCIS will no longer adjudicate asylum applications for an undetermined period of time. Additionally, Josue's priority date to apply for permanent residency based on SIJ is many months out. As a result, after having already been detained for six months, Josue's case is lost in limbo, and there is no mechanism for ICE to pursue his removal or for Josue to obtain asylum or adjustment of status in the short term.

135. Under these circumstances, Josue's continued detention is untethered to any legal basis. *Zadvydas*, 533 U.S. at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)) ("where detention's goal is no longer practically attainable, detention no longer 'bear[s] [a] reasonable relation to the purpose for which the individual [was] committed.'"). At this stage, DHS's refusal to release Josue is "the exercise of power without any reasonable justification" and a violation of due process principles. *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). There is no way of knowing when his detention will end. Moreover, because the priority date for his LPR status is uncertain, detention risks being even more prolonged and could go on for many more months, tipping this factor further in Josue's favor.

Conditions of Detention

136. The conditions of Josue's confinement indicate that his prolonged detention is unconstitutional. The purpose of immigration detention is civil, not punitive. However, merely calling detention "civil" does not make it so when the conditions are not "meaningfully different[]" from criminal custody. *See German Santos v. Warden Pike Cty. Corr. Facility*, 956 F.3d 203, 211 (3d Cir. 2020) (quoting *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 478 (3d Cir. 2015)). Indeed, "whether [Josue] is detained in a luxurious hotel or a detention facility, or some other building, he is being deprived of [his] liberty—thus, this factor seems somewhat beside the point." *Singh v. Choate*, 2019 WL 3943960, at *6 (D. Colo. Aug. 21, 2019). When conditions of detention resemble a penal institution, this factor weighs in favor of finding that detention is unreasonable. *Id.*

137. Courts have found that conditions in civil immigration detention are not meaningfully different from criminal detention. *See Singh*, 2019 WL 3943960, at *6; *see also Velasco Lopez*, 978 F.3d. at 851. Further, because the conditions of confinement determine whether detention is merely "civil" in name only, courts assign greater weight to the conditions of confinement as the length of an individual's detention grows. *German Santos*, 965 F.3d at 211.

138. Josue's original detention began when he was a minor at 16 years old. Today, he is being detained as a young adult at just 22 years old. Josue is currently detained at the Aurora facility where conditions are indistinguishable from criminal incarceration. Furthermore, for nearly the last decade, immigrants detained at the Aurora facility have raised the alarm about oppressive and unsafe conditions, including substandard medical and mental health care, medical neglect, failures to comply with

agency standards, reports of excessive use of force, retaliation against First Amendment protected speech, and claims related to wage violations and forced labor.[11] In this context, three people detained at Aurora have died since 2012.[12] Tellingly, this Court already held that the location of Josue's incarceration weighs in a noncitizen's favor because it is akin to a penal institution. *See, e.g.*, *Sheikh v. Choate*, 2022 WL 17075894, at *4 (D. Colo. Nov. 18, 2022).

139. Although Josue did not previously struggle with his mental health while living in Massachusetts and in the URM program, since his detention he has had trouble sleeping and suffers from anxiety and depression. Josue Decl. He often lies awake at night worrying about his newborn daughter and when he will be able to see her. *Id.* Josue has been prescribed medication to help him sleep and to address the anxiety that has started since his detention. *Id.* This factor weighs strongly in Josue's favor because his ongoing civil detention is in a setting that is as punitive as criminal custody and is causing tangible harm to Josue's wellbeing.

Reasons for Delay

140. Any delay caused by an individual's good-faith challenges to removal cannot be held against them. *See de Zarate*, 2023 WL 2574370, at *4 ("[T]he Court will not hold her efforts to seek relief through the available legal channels against [a

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[11] *See* ACLU Colorado, *Cashing in on Cruelty: Stories of death, abuse, neglect at the GEO immigration detention facility in Aurora* (2019), https://www.aclu-co.org/sites/default/files/ACLU_CO_Cashing_In_On_Cruelty_09-17-19.pdf.

[12] *See* Matt Bloom, *Aurora ICE death autopsy released, raises questions about medical care in federal detention centers*, CPR News (Feb. 15, 2023), https://www.cpr.org/2023/02/15/aurora-ice-inmate-deaths/.

noncitizen]."); *see also Villaescusa-Rios v. Choate*, 2021 WL 269766, at *4 (D. Colo. Jan. 27, 2021); *Singh*, 2019 WL 3943960, at *6; *Ly v. Hansen*, 351 F.3d 263, 272 (6th Cir. 2003) (abrogated on other grounds by *Jennings v. Rodriguez*, 583 U.S. 281 (2018)); *Chairez-Castrejon v. Bible*, 188 F. Supp. 3d 1221, 1229 (D. Utah 2016); *German Santos*, 965 F.3d at 211. Under this factor, courts ask whether the reasons for delays are due to "careless or bad-faith errors in the proceedings." *German Santos*, 965 F.3d at 211 (internal quotations omitted); *Sheikh*, 2022 WL 17075894, at *4; *Villaescusa-Rios*, 2021 WL 269766, at *4.

141. Further, while a noncitizen is only penalized for delays caused by dilatory tactics, Respondents are responsible for delays regardless of whether they were caused by a lack of diligence. *See Viruel Arias v. Choate*, No. 1:22-CV-02238-CNS, 2022 WL 4467245, at *3 (D. Colo. Sept. 26, 2022) (reviewing whether delays in proceedings were caused by a noncitizen's "dilatory tactics" while considering whether the government "engaged in conduct that caused a delay"); *see also de Zarate*, 2023 WL 2574370, at *4 ("[T]he Court will not hold [] efforts to seek relief through the available legal channels against [a noncitizen]."); *Villaescusa-Rios*, 2021 WL 269766, at *4. Indeed, while "courts must be sensitive to the possibility that dilatory tactics by the removable [noncitizen] may serve" to extend their detention, *Ly*, 351 F.3d at 272, courts need only consider whether "immigration officials have caused delay . . . ." *Sajous v. Decker*, 2018 WL 2357266, at *10 (S.D.N.Y. May 23, 2018). "Continued detention will also appear more unreasonable when the delay in proceedings was caused by the immigration court or other non-ICE government officials." *Id.* at *11.

142. Josue pursued his rights diligently in his immigration case. *Chairez-Castrejon*, 188 F. Supp. 3d at 1229 (noting courts have distinguished between dilatory litigation tactics and a noncitizen's exercise of his or her rights to pursue available legal remedies); *Daley*, 2023 WL 2336052, at *4; *Singh*, 2019 WL 3943960, at *6; *Ly*, 351 F.3d at 272 ("[A]ppeals and petitions for relief are to be expected as a natural part of the process.").

143. Most delays in Josue's removal proceedings are attributable to Respondents. "[T]he operative question should be whether the [noncitizen] has been the cause of the delayed immigration proceeding and, where the fault is attributable to some entity other than the [noncitizen], the factor will weigh in favor of concluding that continued detention without a bond hearing is unreasonable." *Sajous*, 2018 WL 2357266, at *11.

144. In its July 23, 2025, opposition to Josue's Motion to Terminate, DHS claimed that the Asylum Office had agreed to expedite adjudication of Josue's asylum application. Ex. 10. Yet, at each master calendar hearing in Josue's removal proceedings, the IJ has granted another two-week continuance as Josue waits for his asylum interview. The interview has yet to take place, demonstrating that continued detention has failed to expedite Josue's interview and has instead funneled him in a cycle of two-week continuances with no end in sight, especially given the policy pausing all asylum applications.

145. The delay in Josue's continued detention is attributable to Respondents. And continuing indefinite detention without a viable removal claim could be seen as acting in bad faith. *See, e.g.*, *German Santos*, 965 F.3d at 211 (noting that even without bad

faith by the government, "detention … can still grow unreasonable even if the Government handles the removal proceedings reasonably.").

Likelihood that Proceedings Will Result in Removal

146. Finally, Josue's proceedings are unlikely to result in removal, at least not properly. First, Josue's SIJ status means that he is not currently removable. Ex. 3. Second, Josue has a pending affirmative application for asylum over which the immigration court lacks jurisdiction. His pending asylum proceedings also protect against removal. As a result, there is a long and circuitous path for Respondents to obtain a legal, final order of removal.

147. In view of Josue's SIJ status and pending asylum claim, there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," *Zadvydas*, 533 U.S. at 701. Moreover, he has two viable avenues to seek lasting immigration status in the United States: his future ability to adjust status based on SIJ status and his bona fide asylum claim.

III. Respondents Have no Legitimate, Non-punitive Objective in Re-detaining Josue in Violation of his Fifth Amendment Substantive Due Process Rights.

148. Substantive due process requires that the government have sufficient justification before it deprives an individual of the rights and entitlements owed to them. Josue's grant of SIJ status represents Congress's intention that Josue be able to stay in the United States to pursue lawful permanent residency. *See* 8 U.S.C. § 1255(h)(2). Respondents' detention of Josue circumvents Congress's intention. Absent release, Josue will be deprived of his entitlement to SIJ status to remain in the country and pursue LPR.

A. Ongoing Removal Proceedings Against Josue by Respondents Aim to Deprive Josue of His SIJ status by Removing Him From the United States.

149. SIJ status requires that recipients remain in the United States. *See* 8 U.S.C. § 1101(a)(27)(J). Moreover, the government's action for removal is based on Josue's initial arrival in the United States without documentation, which occurred before Josue was granted SIJ status. Josue's receipt of SIJ status and subsequent grant of deferred action and employment authorization gave him documentation and a lawful purpose to be in the United States. Therefore, the government cannot justify their current removal proceedings by relying on events that pre-dated Josue's grant of SIJ status. If removal proceedings are allowed to continue through the re-detention of Josue, he will likely lose his entitlement to SIJ status without proper substantive due process.

B. Josue is Unable to Resolve Pending Charges because He is Re-detained, Further Risking Deprivation of his SIJ Status.

150. Josue's detention has left him unable to resolve pending charges in Wyoming. Josue must be able to resolve these charges in order to pursue SIJ's goal of a path to lawful permanent resident status. While the priority date for Josue's lawful permanent residency application is still potentially many months away, to have a fair shot at successfully applying, he must be given the opportunity to resolve the pending charges against him. If Josue is not released, he will likely be unable to respond to these charges which will consequentially strip him of his right to do what Congress intended for SIJ recipients—achieving LPR status. Because Josue's detention contradicts Congress's intent for SIJ status, and the government has previously found Josue not to be a flight risk or danger to the community, Respondents cannot provide a sufficient justification for

depriving Josue of his entitlement to SIJ status. *See supra* Paragraph 86; *Cruz Valera v. Baltazar*, 2025 WL 3496174, at *3 (D. Colo. Dec. 5, 2025) (immediately releasing petitioner from detention where petitioner had previously been released on bond).

C. Josue's Pending Asylum Application Must be Adjudicated Before any Lawful Removal Could Occur, but His Detention Prevents Adjudication Because the Aurora Immigration Court Lacks Jurisdiction over Josue's Pending Asylum Application.

151. Because Josue was designated as a UC, he has specific legal protections as a part of that status. One such protection requires that his asylum application be adjudicated by USCIS prior to removal.[13] Josue's continued detention despite the USCIS having initial jurisdiction over the sole application pending before the immigration court is further evidence that his detention is not linked to a legitimate governmental purpose. Thus, re-detention violates Josue's right to substantive due process.

CLAIMS FOR RELIEF

COUNT I

Violation of the Administrative Procedure Act (Revocation of SIJ Status)

152. Petitioner realleges and incorporates by reference the paragraphs above.

153. Under the APA, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)–(C).

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13 INA 208(b)(3)(c). *See also* USCIS Memorandum, *Revised Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children and Implementation of the J.O.P. Settlement Agreement,* HQRAIO 120/12a (October 30, 2025).

154. Forced removal from the United States would render Petitioner ineligible for SIJ status, constituting a *de facto* revocation of his SIJ status and leading to a result contrary to the law.

155. Removing Petitioner is arbitrary and capricious because it would contravene the very purpose of the SIJ statutory framework.

156. Re-detention and attempted removal of Petitioner by ICE is arbitrary and capricious because it contradicts DHS's prior USCIS decision granting Petitioner SIJ status and permitting him to remain.

157. Respondents' detention and attempt to remove Josue from the United States is arbitrary and capricious, not in accordance with the law, and contrary to constitutional right.

COUNT II

Violation of Fifth Amendment Procedural Due Process (revocation of SIJ Status, Re-Detention, and Prolonged Detention)

158. Petitioner realleges and incorporates by reference the paragraphs above.

159. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." 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 that the clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

160. Petitioner has a fundamental interest in liberty and being free from official restraint.

161. The government's attempt to forcibly remove Petitioner from the United States violates his procedural due process rights because it de facto revokes his SIJ status without affording him notice and an opportunity to be heard.

162. The government's re-detention of Petitioner erroneously placed the evidentiary burden on him, violating his procedural due process rights by depriving him of a constitutionally adequate pre-detention hearing.

163. The government's continued detention of Petitioner, now six months and counting, has become unconstitutionally prolonged, violating his due process rights. That violation is compounded by the fact that Josue was previously in the custody of ORR for nearly two years.

164. For these reasons, Petitioner's continued detention violates his Fifth Amendment due process rights.

COUNT III

Violation of Fifth Amendment Substantive Due Process

165. Petitioner realleges and incorporates by reference the paragraphs above.

166. Petitioner's re-detention violates his substantive due process rights under the Fifth Amendment by risking deprivation of his SIJ status.

167. The prolonged nature of Petitioner's detention violates his substantive due process rights by depriving him of his strong liberty interest.

168. Accordingly, Petitioner's continued detention violates his Fifth Amendment right to substantive due process.

PRAYER FOR RELIEF

WHEREFORE, Josue respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Enjoin Respondents from transferring Josue outside of the jurisdiction of the District of Colorado pending resolution of this case;

3. Pursuant to 28 U.S.C. § 2243, issue an Order to Show Cause or Order to Answer ordering Respondents to show cause within three days why the writ should not be granted;

4. Grant a writ of habeas corpus directing Respondents to immediately release Josue on his own recognizance or, in the alternative, order his immediate release and afford him a subsequent individualized bond hearing before this Court where: (1) Respondents bear the burden of establishing by clear and convincing evidence that continued detention is justified; (2) alternatives to imprisonment such as community-based alternatives to detention including conditional release, parole, as well as ability to pay a bond must be considered; (3) undue weight cannot be given to allegations underlying dismissed criminal charges; and (4) undue weight is not placed on unauthenticated or antiquated documents regarding alleged criminal legal contacts;

5. Enjoin Respondents from further detaining Josue absent a constitutionally adequate pre-deprivation hearing in which Respondents bear the burden of establishing before an impartial adjudicator that Josue's re-detention is justified by changed circumstances, by clear and convincing evidence, with ability to pay and alternatives to detention considered;

6. Declare that Respondents' continued detention of Josue violates Josue's substantive and procedural due process rights under the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

7. Enjoin Respondents from imposing additional indefinite conditions of release, such as a GPS monitor in violation of Josue's rights under the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

8. Declare that Respondents' detention violates the Administrative Procedure Act;

9. Declare that the applicable statute of detention is 8 U.S.C. § 1226(a);

10. Enjoin Respondents from conducting any asylum interview of Josue before USCIS without sufficient notice of at least three days;

11. Award Josue his costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

12. Grant any further relief as this Court deems just and proper.

Dated: December 15, 2025
Denver, CO

Respectfully Submitted,

/s/ Laura Sturges

Christine Ranney
CRanney@gibsondunn.com

Laura Sturges
LSturges@gibsondunn.com

David Reck
DReck@gibsondunn.com

Alana Horwitz
AHorwitz@gibsondunn.com

Gibson, Dunn & Crutcher LLP
1900 Lawrence Street, Suite 3000
Denver, CO 80202

/s/ Laura Lunn

Laura Lunn

Rocky Mountain Immigrant Advocacy Network
7301 Federal Blvd., Suite 300
Westminster, CO 80030
Telephone: (720) 370-9100
Email: llunn@rmian.org

Pro Bono Attorneys for Petitioner

28 U.S.C. § 2242 VERIFICATION STATEMENT

I, Laura Sturges, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petitioner's Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 15, 2025
Denver, CO

Respectfully Submitted,

/s/ Laura Sturges

Laura Sturges
Gibson, Dunn & Crutcher LLP
1900 Lawrence Street, Suite 3000
Denver, CO 80202
Email: LSturges@gibsondunn.com

CERTIFICATE OF SERVICE

I, Laura Sturges, hereby certify that on December 15, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Laura Sturges, hereby certify that I have mailed a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail on December 15, 2025.

Kevin Traskos
Chief, Civil Division
U.S. Attorney's Office
District of Colorado
1801 California Street, Ste. 1600
Denver, CO 80202

Pamela Bondi
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

And to: Krisi Noem and Todd Lyons, DHS/ICE, c/o:
Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW Mail Stop 0485
Washington, DC 20528-0485

And to: Juan Baltazar
GEO Group, Inc.
3130 N. Oakland Street
Aurora, CO 80010

And to: Robert Hagan
Denver ICE Field Office
12445 E. Caley Ave.
Centennial, CO 80111

/s/ Laura Sturges
Laura Sturges