UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

U. H. A.,

Petitioner,

v.

PAMELA BONDI, in their official capacity as Attorney General of the United States;
KRISTI NOEM, in her capacity as Secretary of the United States Department of Homeland Security;
TODD M. LYONS, in his official capacity as Acting Director of the United States Immigration and Customs Enforcement;
DAVID EASTERWOOD in his official capacity as Acting Director, St. Paul Field Office, U.S. Immigration and Customs Enforcement;

Respondents.

Case No. 0:26-cv-00417-JRT-DLM

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

I. INTRODUCTION

Petitioner's continued detention is unlawful and he should be released immediately. Petitioner is a refugee[1]. Petitioner has not been charged with or convicted of any crime, is not in removal proceedings of any kind, and has never been issued any type of removal order. Respondents' campaign to effectuate the mass incarceration of immigrants, and in particular, refugees, is truly unprecedented: the United States never before engaged in the mass roundup and lockup of refugees lawfully admitted to this country that is currently taking place in Minnesota as part of Operation PARRIS.[2] in addition to being historically unprecedented, Respondents' roundups are also unprecedented in the legal sense. Respondents lack legal authority both to *arrest* refugees like Petitioner, and legal authority to *detain* refugees like Petitioner. In their response to this Court's Order to Show Cause, Respondents proffer only two purported bases for Petitioner's ongoing detention. Both proffered bases are entirely legally infirm. This Court should follow the logic adopted today by Judge Frank and reject Respondents' arguments in their entirety and order Petitioner's immediate release. *See Jama A. O. v. Bondi, et.al.,* Case No. 26-420 (DWF/ECW)(ECF 10)(January 23, 2026) (holding that Jama, an admitted refugee just like Petitioner, was entitled to immediate release because 8 U.S.C. § 1159 provides no authority

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[1] In the immigration context, being a refugee is a legal status, not a mere colloquial term. *See* 8 U.S.C. § 1101(a)(42); 8 U.S.C. §1157(c) (discussing "refugee status").

[2] *See* DHS Launches Landmark USCIS Fraud Investigation in Minnesota, USCIS Newsroom (Jan. 19, 2026), https://www.uscis.gov/newsroom/news-releases/dhs-launches-landmark-uscis-fraud-investigation-in-minnesota.

for the detention of unadjusted refugees and because Jama could not be detained on any other basis either.)

Respondents' first proffered basis for Petitioner's continued detention is 8 U.S.C. § 1225(b)(2). However, this section applies only to "an alien who is an applicant for admission." Petitioner is not an "applicant for admission." To the contrary, as Respondents concede, Petitioner has already been *admitted* to the United States. (ECF 3 at 1, stating Respondents do not contest facts set forth in ECF 1 ¶ 1, including Petitioner's allegation that he was "admitted to the United States as a refugee on September 11, 2024.")

Respondents' second proffered basis for Petitioner's continued detention is 8 U.S.C. § 1159(a)(1)(c).[3] This, too, however, fails to provide any basis for Respondents to either *arrest* or *detain* Petitioner. Neither word appears in the statute. To the contrary, §1159(a)(1)(C) says that refugees who were admitted over one year ago but who have not yet obtained the status of Lawful Permanent Resident ("unadjusted refugees") "shall return or be returned to the custody for inspection and examination…" This statute merely requires presence at an interview. It does not authorize, much less mandate, arrest followed by detention. As a matter of plain meaning and as specifically used throughout the immigration statutes, "custody" is not synonymous with "detention." And *neither*

[3] Respondents also refer to INA §209(a)(1)(c). This is an alternative method of citing to the same statutory language as §1159. Both citations point to the same law within the Immigration and Nationality Act (INA), which governs the adjustment of status for refugees, with the INA numbering being the common method for referencing this code among immigration practitioners. The U.S. Code (U.S.C.) reference, however, provides the official federal legal reference.

"custody" nor "detention" is synonymous with unfettered authority to conduct warrantless arrests.

In any event, even if Respondents were entitled to detain Petitioner for purposes of conducting an interview (they are not), the facts surrounding Petitioner's ongoing detention belie the notion that Respondents have any interest whatsoever in interviewing him or that the purpose of *this* detention is to facilitate an interview. To the contrary, despite the fact that Petitioner has been in detention for six days, Respondents have made *no effort whatsoever* to interview him.[4] Nor, in their response, do Respondents express any intention whatsoever to do so in the future. Respondents' actions speak for themselves. Respondents' treatment of Petitioner does not evince a desire to conduct a routine immigration interview that typically takes place, with notice, in offices of the United States Citizenship and Immigration Services. Instead, it is a transparent effort to mete out punishment as part of a

[4] Immediately prior to this filing Counsel received word from a family member that Petitioner may have had been brought into some sort of videoconference today for what seemed like a court proceeding, but that nothing happened because Petitioner did not have counsel. Petitioner's counsel has filed a G-28 to indicate representation of Petitioner, and made Respondents aware of this status. Petitioner's Counsel has received no notice of any proposed interviews or other forms of examination or inspection, and is unable to confirm this information. The EOIR Automated Case Information System also does not indicate a removal hearing or any other upcoming proceedings. Moreover, given that Petitioner unquestionably has the right to counsel at any such "proceeding" due process demands that Petitioner receive notice of any such proceeding so he can prepare. Due Process is not satisfied by potentially life changing interviews being conducted with detained prisoners who have had no meaningful notice, no opportunity to consult with counsel in advance, no opportunity to review relevant documents or notices, and who have been held in detention for six days prior. An "interview" at this point would be intensely coercive, and not in keeping with the kind of inspection or examination Defendants are using as a pretext for their treatment of Petitioner.

political retaliatory scheme. The President has announced as much, stating publicly that ICE deployments in Minnesota are in furtherance of "reckoning and retribution."[5] Petitioner's ongoing detention is thus in violation of the Fifth Amendment. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (a punitive detention outside of criminal proceedings violates the Due Process Clause).

In short, there are at least five reasons why Respondent's claim that Petitioner's detention under §1159 is mandatory fails:

First, Respondent's interpretation is wrong as a textual matter. "Custody" does not mean "detention" and it certainly does not mean indefinite detention. Throughout the INA, the terms "custody" and "detention" are not used interchangeably. To the contrary, courts have found that in the absence of explicit authority to detain, the mere right to "custody" does *not* authorize detention. Moreover, the statute says that refugees who were admitted over one year ago but who have not yet obtained the status of Lawful Permanent Resident ("unadjusted refugees") "shall, at the end of such year period, *return or be returned* to the custody of the Department of Homeland Security for inspection and examination as an immigrant"). Refugees like Petitioner were never previously detained. Thus, interpreting

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[5] Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Jan. 13, 2026, 7:40 AM) https://truthsocial.com/@realDonaldTrump/posts/115888070937502023. Trump also expressed animus against Somalis, stating ""I don't want them [Somali immigrants] in our country… their country is no good for a reason… we're going to go the wrong way if we keep taking in garbage into our country." Max Matza, *Trump Says he does not want Somalis in US as ICE Plans Minnesota Operation*, BBC (Dec. 3, 2025), https://www.bbc.com/news/articles/c208x9v68w3o.

custody in this context as being synonymous with detention would render the "return or be returned language" superfluous. Petitioner and other refugees cannot "return or be returned" to *detention* because they were never in detention. So, here, custody refers to legal custody for the limited purpose of conducting an interview for a second admission into a different status and does not grant authority to detain.

Second, the broader context of §1159 and the INA clearly indicates that it was not intended to allow for the mass indefinite *detention* of refugees as part of the routine process of adjusting refugees' status to that of Lawful Permanent Residents. None of the regulations interpreting §1159, which all deal with the adjustment process, include any language that contemplates detention. Indeed, an interpretation of "custody" as allowing for detention conflicts with the Department of Homeland Security's own guidance, which says unadjusted refugees cannot be detained based on the fact that their status has not yet been adjusted. *See Vue v. Kane*, No. CIV-09-1939-PHX-PGR, 2010 WL 5535387, at *6 (D. Ariz. Nov. 19, 2010), *report and recommendation adopted*, 2011 WL 43465 (D. Ariz. Jan. 6, 2011) (quoting the 2010 Guidance).

Third, Respondents' interpretation is inconsistent with historical practice. Respondents' position is that the law not only allows but *requires* unadjusted refugees to be detained. This is belied by historical practice, as the United States has never before engaged in the mass incarceration of all unadjusted refugees at or after the one-year mark. Indeed, doing so is Kafka-esque. Refugee status is intended to serve as a precursor to status as a lawful permanent resident, not to serve as a temporary reprieve from punitive

incarceration. No refugee would come to this country knowing that they would enjoy freedom for one year, but on the 366th day would become subject to arrest at any time by masked men, followed by indefinite incarceration. Refugees come to this country to *escape* totalitarian regimes of punishment and incarceration, not to *re-experience* them.

Fourth, Respondents' interpretation is inconsistent with the legislative history of the INA and the Refugee Act. One of the primary purposes of enactment was to bring the United States into conformance with international law. Respondents' interpretation would do the opposite.

Fifth, especially as it relates to the Petitioner—the *statutory* basis for detention the government claims as a hypothetical basis for the detention of refugees bears no relationship to the *realities of Petitioner's actual detention*. Respondents have not interviewed Petitioner or taken any actions that one would expect Respondents to take if an interview, as opposed to punishment, was their purpose. Indeed, in their response, Respondents *do not even mention the prospect* of a future interview. Respondents' proffered statutory basis for detention is pretextual. The actual purpose of Petitioner's detention was punitive retribution, rendering it unconstitutional.

Sixth, Respondents interpretation would violate the Constitution and should be rejected for that reason.

Finally, even if some period of physical detention were allowed for the purpose of "inspection and examination" under § 1159 (it is not), even on Respondents' own reading, the physical detention must be only as great as is necessary to effect Respondents'

purported statutory purpose, namely the effectuation of the "inspection and examination" that is part of adjusting refugees' status to that of Lawful Permanent Resident. All aspects of custody, then, must be governed by this sole purpose, and cannot be dictated by an ancillary desire for, as the President described it, "retribution." There is no need to *arrest* anyone on the street for purpose of conducting an interview. Nor is there any need to yank them out of their vehicles and cause their vehicles to be abandoned on the side of the road. There is no need to handcuff them, shackle them, ship them to Texas, or place them in tent-camps in the desert. In the United States of America, in the year 2026, the United States Citizenship and Immigration Service is more than capable of conducting adjustment interviews in office buildings, in Minnesota, while refugees are not in handcuffs or leg shackles. And, at the conclusion of the interview, the refugees can be released.

As demonstrated in the attached declaration of Susan Raufer, adjustment interviews have been taking place for decades. They can be scheduled in advance (the statute contemplates this, allowing refugees to "return" voluntarily to custody instead of mandating only that they "be returned") and they only require a few hours to conduct. The entirety of Respondents' conduct here is inconsistent with what is necessary to facilitate compliance with the statute. Even on Respondents' own reading, all that compliance would require is notice of an interview and then conducting the interview. Anything beyond that—terrifying arrests by masked men in the street, handcuffs, shackles, shipping people to Texas, etc. is wholly unnecessary to effectuate this limited inquiry, and is thus

unauthorized and illegal, particularly because it impinges on constitutionally protected liberties, including the right to the assistance of counsel during the interview itself.

II. BACKGROUND ON REFUGEE STATUS AND THE ADJUSTMENT PROCESS

A. The United States Refugee Adjustment Program

The United States Refugee Admissions Program ("USRAP") is a federal program established pursuant to the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified as amended at 8 U.S.C. § 1157), and is administered jointly by the Department of State, the Department of Homeland Security through U.S. Citizenship and Immigration Services ("USCIS"), and the Department of Health and Human Services. Under 8 U.S.C. § 1101(a)(42), a "refugee" is defined as any person who is outside their country of nationality and is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. A refugee's spouse and minor children are entitled to join them in the United States as derivative refugees without needing to independently meet the refugee definition. 8 U.S.C. § 1157(c)(1)(A). The President, in consultation with Congress, determines the maximum number of refugees who may be admitted to the United States each fiscal year. 8 U.S.C. § 1157(a).

To be considered for refugee resettlement to the United States, an individual must first be referred to USRAP by the United Nations High Commissioner for Refugees ("UNHCR"), a U.S. Embassy, a designated non-governmental organization, or a group of private citizens through a program known as Welcome Corps. The overwhelming majority

of refugee applicants are referred by UNHCR based on its determination that they meet the international definition of refugee and require resettlement as a durable solution. Of the more than 30 million refugees worldwide, UNHCR refers fewer than 1% for resettlement to any country in any given year.[6]

After receiving a referral, refugee applicants undergo the most extensive security vetting of any category of travelers to the United States. The security screening process typically takes 18 to 24 months or longer and involves multiple federal agencies, including the National Counterterrorism Center, the FBI's Terrorist Screening Center, the Department of Defense, and multiple DHS components. Applicants' biographic information is screened against numerous databases, including the Consular Lookout and Support System, the Treasury Enforcement Communications System, the National Crime Information Center, and classified databases.[7]

Following initial security screening, refugee applicants are interviewed under oath by a specially trained USCIS Refugee Officer who assesses the applicant's eligibility for refugee status and evaluates the credibility of the applicant's claim. The Refugee Officer has the authority to approve or deny the refugee application based on whether the applicant meets the statutory definition of refugee and does not fall within any of the bars to refugee status under 8 U.S.C. § 1157(c), including those who have participated in persecution,

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[6] https://news.un.org/en/story/2019/02/1033061?st_source=ai_mode#/

[7] *See generally* https://www.uscis.gov/humanitarian/refugees-and-asylum/refugees/refugee-processing-and-security-screening#/ (site last visited January 22, 2026)

those who pose a danger to U.S. security, and those who have provided material support to terrorist organizations.[8]

Applicants who are conditionally approved by USCIS must undergo a medical examination by physicians designated by the Department of State and complete a cultural orientation program. Prior to travel, all applicants undergo additional recurrent security checks to ensure no new derogatory information has emerged.[9]

Refugees are typically matched with a local resettlement agency in the United States that will provide initial reception and placement services. Upon arrival, refugees are inspected by U.S. Customs and Border Protection officers at the port of entry and are allowed an admission into the United States. Refugees who are admitted into the United States have effectuated an "admission" under 8 U.S.C. § 1101(a)(13); 8 U.S.C. §1157.

Upon admission to the United States, refugees are authorized to work immediately and are eligible for certain federal benefits and services to assist with initial resettlement, including employment training, English language education, and cash and medical assistance through programs administered by HHS's Office of Refugee Resettlement.[10]

B. Refugee Adjustment

Refugees apply to adjust their status to that of lawful permanent residents (LPRs) pursuant to 8 U.S.C. § 1159, titled "Adjustment of Status of Refugees." They are eligible

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[8] *Id.*
[9] *Id.*
[10] https://acf.gov/orr/fact-sheet/refugee-benefits#/ (site last visited January 22, 2026)

for adjustment of status only once they have "been physically present in the United States for at least one year." 8 U.S.C. § 1159(a).

USCIS regulations provide that "[u]pon admission to the United States, every refugee entrant will be notified of the requirement to submit an application for permanent residence one year after entry." 8 C.F.R. § 209.1(b). Under 8 U.S.C. § 1159(a), one year after entry, a refugee "shall return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant." The purpose of this provision is to allow USCIS to determine whether the refugee will be adjusted to LPR status, and it contains no mention of detention.

Once the adjustment application is filed, the refugee "shall be" admitted as an LPR so long as their refugee status has not been terminated, they meet the one-year physical presence requirement, and they are not inadmissible under section 212 of the INA, 8 U.S.C. § 1182. *See* 8 U.S.C. § 1159(a). 8 U.S.C. § 1159(c) exempts refugees from inadmissibility grounds found under 8 U.S.C. § 1182(a)(4) (public charge), (5) (labor certification), and (7)(A) (certain documentation requirements) and provides a humanitarian waiver for other inadmissibility grounds.

III. PETITIONER'S EXPERIENCE

Petitioner has described his experience over the last six days in the attached declaration ("UHA Decl."). While a summary cannot do justice to Petitioner's lived experience, the following are the most salient facts for purposes of this Motion:

Petitioner is a refugee from Ethiopia who entered the United States as a refugee in September 2024. (UHM Decl. ¶¶ 1-4). Petitioner lives with five other individuals in his family, all of whom are Ethiopian refugees. (*Id.* ¶¶ 3-5). Petitioner works two jobs, one during the week and another on the weekends. (*Id.* ¶ 5). He works at an assisted living facility and as a quality assurance produce inspector. (*Id.*) Petitioner was arrested early in the morning on Sunday January 18, 2026 by masked ICE agents while driving to work, after they stalked him and followed him in his car from his home. (*Id.* ¶¶ 7-10.) Petitioner was handcuffed, threatened, shackled and shuttled to the Whipple federal building, and then to the airport where he was flown to Texas. (*Id.* ¶¶ 3-5.) Petitioner was terrified he was being immediately deported out of the country. (*Id.* ¶¶ 10-17.)

Petitioner arrived in Texas, where he spent the night in a cramped room filled with other detainees, all of whom shared an open toilet and a sink. (*Id.* ¶¶ 18-23) Petitioner was given no bedding, so attempted to sleep on the floor, using his shoes as a place to rest his head. (*Id.*) The next morning, again handcuffed and shackled, Petitioner was transferred to a tent camp in the Texas desert. (*Id.* ¶¶ 24-27.) Petitioner was subsequently transferred back to the Sherburne County jail and met with Counsel for the first time since his detention on Wednesday January 21, 2026. (*Id.* ¶¶ 29-33.) At no point during the six days Petitioner has been detained have Respondents attempted to interview Petitioner about his refugee status. (*Id.* ¶ 34).

IV. ARGUMENT

A. Petitioner is not subject to detention under 8 U.S.C. § 1225(b)(2) because Petitioner is not an "arriving" non-citizen. Petitioner has already been "admitted" to the United States.

Respondents concede that Petitioner is an admitted refugee on the very first page of their brief, indicating they "do not contest" Petitioner's assertion that he was "*admitted* to the United States as a refugee on September 11, 2024." This admission is impossible to square with Respondents' claim that Petitioner is subject to detention pursuant to is 8 U.S.C. § 1225(b)(2). By its own terms, this section applies only to "an alien who is an *applicant for admission*." (emphasis added). Petitioner is not an "applicant" for admission. To the contrary, like all admitted refugees, he underwent an extensive screening process prior to his admission, involving background check and even biometric screening, and subsequent inspection and admission by CBP upon arrival in the United States. Put simply, §1225(b) is inapplicable.

In similar circumstances, where Respondents have proffered § 1225(b) as a basis for detention of a refugee, other courts in this district have ordered release. *See Mikhail G. v. Bondi*, Case No. 26-CV-0375 (PJS/SGE) (D. Minn. January 20, 2026) (ordering release of Petitioner admitted as a refugee, finding that "petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)." There can be no reasonable question that noncitizens present in the country who have been afforded refugee status, like Petitioner, have already been "admitted" for purposes of determining whether §1225(b) applies. Indeed, 8 U.S.C. § 1157(c)(4), refers to the time of a noncitizen refugee's "admission." *See also In re D-K*, 25 I. & N. Dec. 761, 769 (BIA 2012) (holding that admission to the United States as a refugee under section 207 qualifies a person as "admitted" pursuant to the INA's

definition at 8 U.S.C. § 1101(a)(13)(A)). For all these reasons, Respondents' efforts to recast Petitioner, who arrived in the United States in 2024 and has lived here continuously since then, as an "arriving" non-citizen, fails. Judge Menendez recently rejected this same argument in another case involving an unadjusted refugee. *See Aleksander B. v Trump, et.al.,* Case No. 26-CV-170 (KMM/DJF)[11], Dkt. 18 at 12 (D. Minn. Jan. 22, 2026) (holding that mandatory detention provisions of §1225 do not apply to an unadjusted refugee, because §1225's mandatory detention provisions only apply to "arriving" non-citizens, and unadjusted refugees are not "arriving" because they have already been admitted.); *Jama A. O. v. Bondi, et.al.,* Case No. 26-420 (DWF/ECW)(ECF 10 at 8)(January 23, 2026) (holding §1225 did not apply to a refugee because the refugee had already been admitted).

In other relevant contexts, courts have repeatedly held that seeking adjustment of status, or lawful permanent residency from within the United States, does not render a previously admitted refugee an "applicant for admission" subject, for example, to grounds of inadmissibility related to documents required for entry to the United States when first applying for admission from at a port of entry. *See* Torres v. Barr, 976 F.3d 918, 926 (9th Cir. 2020) ("'application for admission' should be read as referring to the moment an immigrant applies to physically enter the country" and not to an individual already admitted applying for lawful permanent residency); *Marques v. Lynch*, 834 F.3d 549, 560 (5th Cir.

[11] In *Aleksander B.*, Judge Menendez acknowledged that the Petitioner in that case raised "an additional and important argument in his Reply that 8 U.S.C. § 1159 does not authorize detention at all." However, because Judge Menendez granted relief on other grounds, the Court declined to address that argument in its Order. *Alexsander* at 15, n. 6.

2016) " 'admission' is the lawful *entry* of an alien after inspection, something quite different, obviously, from post-entry adjustment of status"); *Ortiz-Bouchet v. U.S. Atty. Gen.*, 714 F.3d 1353, 1356 (11th Cir. 2013)("We have previously held that the definition of "admission" in 8 U.S.C. § 1182(h) is unambiguous and "does not encompass a post-entry adjustment of status.").

B. Petitioner is not subject to detention under 8 U.S.C. §1159(a)(1)(c).

To resettle in the United States, secure permanent legal immigration status, and rebuild their life here, a refugee must first meet rigid legal requirements and undergo multiple levels of stringent vetting procedures. Because refugees are already subjected to an exhaustive vetting process, and because those who have already arrived in the United States are deeply involved in rebuilding their lives and recovering from persecution and displacement, it is both unnecessary and extraordinarily cruel to arrest and detain them to conduct additional screenings. It is also contrary to the law.

Respondents rely on an interpretation of Section 209 that contradicts at least fifteen years of case law, practice, and agency policy to justify the mass detention of unadjusted refugees in Minnesota, including Petitioner, as part of Operation PARRIS. *See, e.g.*, *Matter of D-K-*, 25 I&N Dec. 761 (BIA 2012); Memo. of James Chaparro re: Detention of Refugees Admitted Under INA § 207 Who Have Failed to Adjust to Lawful Permanent

Resident Status, IMMIGRATIONS & CUSTOMS ENF'T, POLICY NO. 11039.1 (May 10, 2010) ("2010 ICE Directive").[12]

Respondents' justification for their heretofore unheard-of practice of detaining *en masse* unadjusted refugees who do not have any criminal records or other grounds for removal is their interpretation of section 209(a)(1)(C), which states that any refugee admitted under section 207 whose status has not been adjusted and who has resided in the country for at least one year "shall, at the end of such year period, return or be returned to the custody of the Department of Homeland Security ["DHS"] for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 1225, 1229a, and 1231 of this title." 8 U.S.C. § 1159(a)(1)(C). Although the statute utilizes the word "custody," this section of the Act has never - in the 45 years since its passage - been applied to justify the sort of mass detentions being carried out now, and such actions are contrary to Respondent's express interpretations of the statute.

Respondents argue that "return or be returned to the custody" of DHS means Petitioner may be subject to mandatory detention, to be initiated at any time and in any place, at least until Respondents conduct her adjustment of status interview. This interpretation of the statute—which is at odds with binding interpretation and decades of actually-existing agency practice fails for several reasons.

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[12] Available at https://www.ice.gov/doclib/foia/policy/directive11039.1.pdf#/ (site last visited January 22, 2026).

1. The INA's allowance of "custody for inspection and examination" does not authorize detention.

The word "custody" is not synonymous with "detention." *See* Black's Law Dictionary, (12th Ed. 2024) (defining custody as "[t]he care and control of a thing or person for inspection, preservation, or security"). The Supreme Court has explicitly rejected the argument that a reference to "custody" in the INA necessarily authorizes detention. *See Clark v. Martinez*, 543 U.S. 371, 385–86 (2005). In *Clark*, as here, the Government argued that the nearly identical language "returned to the custody from which he was paroled" in 8 U.S.C. § 1182(d)(5)(A) authorized detention of individuals to whom the provision applied. The Supreme Court rejected this argument: "we find nothing in this text that affirmatively authorizes detention, much less indefinite detention. To the contrary, it provides that, when parole is revoked, 'the alien shall . . . be returned to the custody from which he was paroled.'" *Id.* The Court explained that any detention to which such a parolee would be subjected is based not on the "returned to the custody" language but rather from general detention statutes in the immigration laws—in that case, the Court pointed to 8 U.S.C. § 1231(a)(6), which governs limited detention beyond the statutory removal period. *Id.* at 386. The use of an identical or nearly identical term or phrase in a statute should be read to have the same or similar meaning. *Nat'l Postal Pol'y Council v. Postal Regul. Comm'n*, 17 F.4th 1184, 1191 (D.C. Cir. 2021) ("[a] standard principle of statutory construction provides that identical words and phrases within the same statute should normally be given the same meaning.") (citation omitted).

Courts frequently distinguish between "legal custody" and "physical custody." Child custody cases are replete with references to one party having "legal custody" and another having "physical custody." Indeed, some immigration statutes reference the distinction by, for example requiring certain children to be in both "the legal and physical custody of the citizen parent" in order to obtain citizenship themselves. *See* 8 U.S.C. § 1431.

Given that the term "custody" when it is unmodified by either "legal" or "physical" can be ambiguous, the Court must look to the remainder of the statutory language to determine what is mean by the term "custody" in the context of Section 209. Importantly, the words "detention" or "detain" (which clearly pertain to physical custody) appear *nowhere* in Section 209. When Congress intends to authorize physical confinement in the INA, it does so through explicit use of the words "detention" or "detain" within the authorizing provision. *See, e.g.*, 8 U.S.C. §§ 1225, 1226, 1231, 1536–37.[13] The fact that

[13] *See* INA § 235(b)(2)(A): "Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be ***detained*** for a proceeding under section 1229a of this title."; INA § 236: Titled "Apprehension and ***Detention*** of Aliens"; INA § 236(c): Subsection titled "***Detention*** of criminal aliens"; uses both "custody" and "***detained***": "if the alien is not otherwise ***detained*** by Federal, State, or local officials, shall effectively and expeditiously take custody of the alien."; INA § 236A: Titled "Mandatory ***detention*** of suspected terrorists"; INA § 241: Titled "***Detention*** and removal of aliens ordered removed"; repeatedly uses "***detained***": "may be ***detained*** beyond the removal period"; INA § 506 (8 U.S.C. § 1536): Titled "Custody and release pending removal hearing"; text provides: "Such an alien shall be ***detained*** pending the removal hearing"; INA § 507 (8 U.S.C. § 1537): Titled "Custody and release after removal hearing"; text provides: "the alien shall be ***detained*** pending the outcome of any appeal."

Section 209 refers to "custody" but does not use the words "detention" or "detain" matters. It tells us that Section 209 is not providing for physical custody, but is instead providing for legal custody during the inspection and examination process. The absence of "detention" or detain" from Section 209 renders that specific section distinguishable from statutory provisions that use both terms. The Supreme Court has recognized the importance of this absence. When the Supreme Court construed the only other extant INA provision that used the phrase "return or be returned to the custody," the Court found "nothing in th[e] text that affirmatively authorizes detention, much less indefinite detention." *Clark* at 371.

The statutory language of Section 209 is not an oversight—it reflects Congress's deliberate choice *not* to authorize physical detention in the refugee adjustment context. *See Bittner v. United States*, 598 U.S. 85, 94 (2023) ("When Congress includes particular language in one section of a statute but omits it from a neighbor, we normally understand that difference in language to convey a difference in meaning (*expressio unius est exclusio alterius*).").

Not only does section 209 lack any reference to detention, it contains an explicit directive that refugees "*return or* be returned to the custody of DHS" for the purpose of adjudicating adjustment (emphasis added). The evinces a clear intent that refugees present themselves rather than be forcibly arrested and held against their will. 8 U.S.C. § 1159(a)(1)(C) (emphasis added). If custody meant physical custody, there would be no meaningful sense in which a refugee could "return" themselves to that state; they would

always have to "be returned." This is another indication that §1159 does not contemplate physical detention. *Cf.* 8 U.S.C. § 1226 (explicitly referring to "detention of aliens," and authorizing the Attorney General to "*take into* custody" certain noncitizens charged with or convicted of specified crimes) (emphasis added).

Also informative here is the complete absence of any discussion of arresting refugees in the statute where Congress does explicitly discuss the powers of immigration officers and employees in 8 U.S.C. § 1357. Under 8 U.S.C. § 1357(a), officers are allowed to arrest non-citizens either for committing crimes, or if they believe they are in violation of the immigration laws or if they have committed felonies against the United States in their presence. None of these situations applies to Petitioner. There is no suspected violation of any immigration law, which is extremely important, as the apparent immigration detention statute that would apply to a person admitted into the United States is 8 U.S.C. § 1226(a). That statute allows DHS to detain a noncitizen "[o]n a warrant issued by the Attorney General . . . pending a decision on whether the alien is to be removed from the United States."[14] Petitioner has also not been placed in removal proceedings. In light of all these circumstances, there is no authority in §1357 for Respondents to have arrested Petitioner, a clear indication that §1159 does not contemplate either arrest or detention.

[14] This statute only applies to those whom DHS places into removal proceedings under 8 U.S.C. §1229a pursuant to a charge that the noncitizen has triggered a ground of removal. The regulations on warrants, administrative warrants included, do not allow for the detention of people who are not removable from the United States.

In *Jama A. O.*, Judge Frank agreed, stating "Section 1159 contemplates a refugee's return to the custody of DHS for a limited time to allow the government to inspect and examine the refugee for admission. Per the plain text of the statute, any continued detention of a refugee under § 1159(a) must be based on the provisions of sections 1225, 1229a, and 1231." (cleaned up, citing *See Abdi F.W. v. Trump*, No. 26-cv-208, at 5 (D. Minn. Jan 21, 2026).

2. Regulatory guidance undercuts Respondents' claim that the INA authorizes detention of unadjusted refugees.

There are numerous regulations interpreting §1159, which all deal with the adjustment process. Tellingly, none of these regulations include language on detention. Indeed, the Department of Homeland Security's own guidance differentiates between circumstances when detention is authorized, such as when there are grounds for removability, and the circumstance of an unadjusted refugee. *See Vue v. Kane*, No. CIV-09-1939-PHX-PGR, 2010 WL 5535387, at *6 (D. Ariz. Nov. 19, 2010), *report and recommendation adopted*, 2011 WL 43465 (D. Ariz. Jan. 6, 2011).

A directive issued in 2010 by ICE's then-director, James Chapparro, further confirms that a refugee's failure to adjust or even the failure to apply for adjustment is not grounds for removal, and therefore cannot form the basis for detention. *See Detention of Refugees Admitted Under INA § 207 Who Have Failed to Adjust to Lawful Permanent Resident Status* (May 2010) (hereinafter "2010 ICE Directive"). The 2010 ICE Directive states that an unadjusted refugee can be detained *only* if there is a basis for removal under other, separate provisions of the INA (such as for certain criminal conduct). This guidance

would be unnecessary and nonsensical if the statute mandated detention in all circumstances. *See Vue v. Kane*, No. CIV-09-1939-PHX-PGR, 2010 WL 5535387, at *6 (D. Ariz. Nov. 19, 2010), *report and recommendation adopted*, 2011 WL 43465 (D. Ariz. Jan. 6, 2011) (quoting the 2010 ICE Directive). *See also Aliens and Nationality; Refugee and Asylum Procedures*, 46 FR 45116-01 (1981) ("Section 209 contains the procedures for adjustment to lawful permanent resident alien status by refugees and asylees. Notice will be sent to all refugees after one year to report for an interview."). Judge Frank agreed with this as well, holding that mere status as an unadjusted refugee cannot justify detention:

> *Respondent argues that Petitioner's detention is appropriate because he has not yet attained LPR status under § 1159(a)(1)(C).Finally, to the extent that Jama is being detained as he awaits determination on his LPR application, "adjustment of status under [§ 1159] is not a sufficient ground to place [refugees] in removal proceedings, and therefore not a proper basis for detaining them." U.S. Immigr. & Customs Enf't, Memorandum on Detention of Refugees Admitted Under INA § 207 Who Have Failed to Adjust to Lawful Permanent Resident Status 2 (May 10, 2010), https://www.ice.gov/doclib/foia/policy/directive11039.1.pdf. In addition, "[a] refugee may not be placed in removal proceedings based on a failure to adjust status or to apply for adjustment of status because an alien's failure to adjust status or apply for adjustment under INA § 209(a) is not a ground of removability." Id.; see also Abdi F.W., No. 26- 208, at 7 (referencing DHS Guidance from 2010).*

Jama A. O. v. Bondi, et.al., Case No. 26-420 (DWF/ECW)(ECF 10 at 8)(January 23, 2026).

Internal agency materials further confirm Petitioner's understanding. Indeed, according to the USCIS Policy Manual, USCIS has the discretion to waive the interview requirement for refugee adjustment cases when the application does not present any issues of concerns regarding admissibility. (Declaration of Susan Raufer ("Raufer Decl.") ¶ 6.) This reality is inconsistent with Respondents' argument that physical custody is required.

If "custody" in the context of §1159 referred to mandatory physical custody, then the Policy Manual's statement that an in-person interview could be waived would be nonsensical. On the other hand, Petitioner's view is wholly consistent with the manual: physical custody is not required, and therefore, no in-person interview must take place.

3. Respondents' interpretation is inconsistent with historical practice.

Respondents' position is that the law not only allows but *requires* detention of unadjusted refugees. This is belied by historical practice, as the United States has never before engaged in the mass incarceration of unadjusted refugees at the one-year mark. Indeed, doing so, as noted by another judge in this District, is "illogical given that refugees are not eligible to apply for adjustment of status until they have "been physically present in the United States *for at least one year*." 8 U.S.C. § 1159(a)(1)(B) (emphasis added in original). *E.E. v. Bondi, et. al.*, Case No. 26-314 JWB/DTS, Dkt. No. 7 at 8 (D. Minn. January 17, 2026).[15] Refugee status is intended to serve as a precursor to status as a lawful permanent resident, not as a one-year prelude to indefinite incarceration. Just spelling out the realities of Respondents' position reveals its absurdity: for 365 days after arrival,

[15] Judge Blackwell subsequently vacated this order because the Petitioner had been released by the time it was issued. The reasoning of the Order, however, remains persuasive. Petitioner notes that the Order in E.E. was issued before E.E. was allowed to reply to the Respondents' arguments, ad Judge Blackwell did not have the benefit of much of the authority presented herein when he concluded that detention was authorized by §1159. Moreover, he did not have the benefit of the Raufer Declaration regarding the minimal time required to conduct an adjustment interview. Nor did Judge Blackwell have access to facts regarding the circumstances of E.E.'s detention, which would have shed light on Respondents assertion that the purpose of detention was for an interview, as opposed to carry out "retribution."

refugees are not subject to detention and are unable to adjust their status, but on the 366th day they become eligible to adjust their status and become Lawful Permanent Residents, but they are also subject to mandatory violent arrest, detention, sudden involuntary transfer out of state, and being cut off from family, community and counsel for failure to adjust their status. This is absurd, cruel, and simply not supported by the plain text or purpose of the statute

Petitioner's view is confirmed by the Declaration of Susan Raufer, who . worked for the United States Citizenship and Immigration Service for 25-years. Her responsibilities included training refugee offers. Raufer indicates that in-person interviews with unadjusted refugees have historically been scheduled in advance, and conducted in professional settings, without any detention. (Raufer Decl, ¶¶ 6-10). Indeed, Raufer notes that not only were interviews not conducted in detention, interviews have not always even been required as part of the refugee adjustment process. (Raufer Decl. ¶ 6). In many instances USCIS decided to waive the interview, and that interviews were almost never conducted in a physical custodial setting. (Raufer Decl. ¶ 14). Moreover, she indicates that, in the few instances where refugees were interviewed in custody, there was a lawful basis for detention – that is, a reasonable belief that the refugee was removable – other than the mere fact that the subject of the interview was an unadjusted refugee. (Raufer Decl. ¶¶ 11-13). Raufer's historical account is consistent with the 2010 Guidance, which states that merely being an unadjusted refugee is not basis for detention. Prior to now, Respondents had never relied on the portions of §1159 proffered by Respondents here as a basis for detention.

4. Respondents' interpretation is inconsistent with the legislative history of the INA and the Refugee Act.

The United States acceded to the 1967 Protocol in 1968, *see* Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223; 606 U.N.T.S. 267 ("1967 Protocol"), thereby binding itself to Articles 2 through 34 of the 1951 Refugee Convention. *See* 1967 Protocol art. 1, ¶¶ 1–2; Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150 ("1951 Refugee Convention"). Congress enacted the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102, to bring United States refugee law into conformance with the 1967 Protocol. *See INS v. Cardoza- Fonseca*, 480 U.S. 421, 436–37 (1987) ("If one thing is clear from the legislative history of [the Refugee Act of 1980], it is that one of Congress's primary purposes was to bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees.").

Under international law, once someone has been recognized as a refugee, as Petitioner has, limits on their freedom of movement may not be imposed beyond those limits which apply "to aliens generally in the same circumstances." 1951 Refugee Convention at Arts. 26, 31(2). Respondents' interpretation, however, would do violence to this clear legislative purpose and directive. Further, in interpreting a statute, the Court must assume Congress intended to follow international law and should avoid any interpretation that would violate any international law or treaty. *See F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 164 (2004) (citing *Murray v. Schooner Charming Betsy*, 2 Cranch 64, 118, 2 L.Ed. 208 (1804)); *see also Cardoza-Fonseca*, 480 U.S. at 436–37 (a primary purpose of the Refugee Act "was to bring United States refugee law into

conformance with the 1967 United Nations Protocol Relating to the Status of Refugees," to which the United States is a party). Respondents' interpretation of section 209, however, would violate the 1951 Refugee Convention, which protects the freedom of movement for refugees. *See* 1951 Refugee Convention Art. 26. Respondents' interpretation is also contrary to the International Covenant on Civil and Political Rights ("ICCPR"), which protects against unreasonable detention for individuals recognized as refugees. International Convention on Civil and Political Rights Art. 9, Mar. 23, 1973, 999 U.N.T.S. 171.

As stated above, once someone has been recognized as a refugee, as Petitioner has, limits on their freedom of movement may not be imposed beyond those limits which apply "to aliens generally in the same circumstances." 1951 Refugee Convention at Arts. 26, 31(2). The 1951 Convention speaks to the need for countries to facilitate naturalization of refugees, and offers continuing protection against any threat of refoulement. *Id.* at Art 33–34.

The ICCPR, which the United States ratified in 1992, likewise protects the right of refugees not to be arbitrarily detained. The United Nations Human Rights Committee has affirmed that this principle applies to all migrants, refugees and asylum-seekers, and that detention by immigration authorities must be reasonable, necessary and proportionate in the light of the circumstances. *See* U.N. Human Rights Committee, General Comment No. 35 ¶18, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).

In short, the 1951 Convention, the "ultimate source of the language Congress placed in the [Refugee] Act," *Cardoza-Fonseca*, 480 U.S. at 462 n. 4 (1987) (Powell, J. dissenting), prohibits the present detention of Petitioner, given that she was admitted under INA § 207(c)(2). The ICCPR and its interpretation by the United Nations Human Rights Committee furthers this point. Given its legislative history in the United States, Section 209 must be read in a manner consistent with these international law obligations, and the Respondent's interpretation should be rejected on that basis. *Schooner Charming Betsy*, 2 Cranch 64, 118, 2 L.Ed. 208.

As further evidence that Congress did not intend section 209 to authorize detentions of refugees, it is noteworthy that Congress has *never* appropriated funds for section 209 detentions. Every appropriation made by Congress for immigration detentions explicitly ties those funds to removal, deportation, and/or enforcement against removable aliens. For example, the DHS budget for Fiscal Year 2026 describes detention as serving a single purpose, to facilitate removal. It specifically links the funding for 50,000 detention beds to "1,000,000 *removals* per year" and funds transportation specifically for "international *removals* for aliens with *final orders of removal*." U.S. Immigration and Customs Enforcement Budget Overview, Dep't Homeland Sec. at 7 (June 2025) https://www.dhs.gov/sites/default/files/2025-06/25_0613_ice_fy26-congressional-

budget-justificatin.pdf (emphasis added). Petitioner, as noted, is not in removal proceedings.[16]

5. The circumstances of Petitioner's detention make it clear he is not being detained for the purpose of inspection and examination.

Respondents have not interviewed Respondent or taken any actions that one would expect Respondents to take if an interview, as opposed to punishment, was their purpose. In their response, Respondents do not even *mention the prospect* of a future interview. Even if Respondents had indicated some intention to conduct an interview, which they have not, "Respondents cannot justify Petitioner's continued detention through an open-ended assurance that they will get around to conducting the inspection and examination required by § 1159(a), which presents their only identified basis for continued detention." *Aleksander B. v Trump, et.al.,* Case No. 26-CV-170 (KMM/DJF), Dkt. 18 at 14 (D. Minn. Jan. 22, 2026). In sharp contrast to the complete lack of evidence indicating any intent to conduct an inspection and examination, the factual record shows the following, all of which are consistent with a punitive purpose, as opposed to a permissible one:

i. Respondents went to Petitioner's home and followed him in his vehicle as he drove to work;

ii. Respondents handcuffed and shackled Respondent in the cold;

iii. Respondents abandoned Petitioner's vehicle in the road;

[16] If Congress understood section 209 to mandate detention for refugees, it would have had to allocate hundreds of millions of dollars annually to provide for the detention of the approximately 60,000–80,000 refugees admitted per year under section 207. That Congress has *never* appropriated such funds is a strong indication that it did not intend for such detentions to occur.

iv. Respondents handcuffed and shackled Petitioner and flew him to Texas shortly after his detention;

v. Respondents forced Petitioner to spend the night in Texas in a single room with 42 other people all sharing an open toilet, while providing no bedding or other reasonable nighttime accommodations;

vi. Respondents then transferred Petitioner to a tent camp in the desert, again in shackles and handcuffs;

vii. Respondents then shackled and handcuffed Petitioner and returned him to Minnesota (pursuant to this Court's order) and incarcerated him at the Sherburne County Jail; and

viii. At no point have Respondents attempted to interview Petitioner.

This series of facts clearly demonstrates that Respondents' proffered basis for detention is pretextual. Its actual purpose is precisely as announced: "retribution." But, this retributive purpose renders it unconstitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (a punitive detention outside of criminal proceedings violates the Due Process Clause). Its additional apparent purpose is to deprive Petitioner of the assistance of counsel during any interview, by holding Petitioner in circumstances where he cannot reasonably consult with counsel of his choosing. Importantly, Petitioner does have a right to counsel at an interview for adjustment or any other immigration benefit. The Administrative Procedure Act (APA) grants a right to counsel for individuals who are compelled to appear before an agency or agency representative. 5 U.S.C. § 555(b).

Regulations governing DHS also provide a right to counsel. For instance, 8 C.F.R. § 292.5(b) states that "[w]henever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative . . . ." 8 C.F.R. § 292.5(b); see also 8 C.F.R. § 103.2(a)(3) (any applicant or petitioner submitting a form to DHS prescribed by Chapter One of C.F.R. Title 8 may be represented by an attorney); 8 C.F.R. § 208.9 (an asylum applicant interviewed by an asylum officer may have counsel or a representative present); 8 C.F.R. § 244.8 (an applicant for Temporary Protected Status may have a representative who may "consult with and provide advice to the applicant"). Indeed, this Court has already recognized the interference with the right to counsel that results from Respondents' current practices. *See* ECF 3, requiring Petitioner to be returned to Minnesota in order to facilitate his consultation with counsel.

6. Respondents' interpretation would likely render § 209 unconstitutional

Respondents' preferred reading of section 209 is not only contrary to the text and purpose of the Refugee Act as well as the agency's own guidance, it runs afoul of the Constitution itself. "It is a cardinal principle of statutory interpretation" that when an interpretation of a statute raises a "serious doubt as to its constitutionality," the Court must construe the statute so as to avoid the constitutional question. *Zadvydas*, 533 U.S. at 689.

a. Respondents' interpretation violates the Fifth Amendment.

The Fifth Amendment forbids the Government from depriving any person, regardless of their citizenship status, of liberty without due process of law. *Id.* at 690. In a civil context, the Fifth Amendment's Due Process Clause forbids any detention except "in

certain special and narrow nonpunitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (internal citations omitted); *see also Clark v. Martinez*, 543 U.S. 371, 378–79 (2005). "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 v. Davis*, 533 U.S. 678, 690 (2001).

To be clear, as a constitutional matter, the government cannot detain people who have not committed crimes for convenience or on any basis other than the avoidance of significant harm. *Nothing* in Section 209 or Respondents' interpretation of it limits detention of refugees to the kind of "special and narrow" circumstances that are constitutionally required as a precursor to civil detention. As this case aptly demonstrates, there is no reason at all, let alone a "special justification" to *detain* all unadjusted refugees.[17] Respondents cite no special circumstances here, not even a failure to appear for a noticed interview, as a reason to detain Petitioner. Instead, they rely entirely on §1159. But a statute cannot supersede the constitution. Unlike the detention provisions elsewhere

[17] Notably, UCIS has currently paused adjudication of all immigration benefits (including adjustment of status), for citizens of certain countries subject to travel bans, including Ethiopia. See https://www.uscis.gov/sites/default/files/document/policy-alerts/PM-602-0192-PendingApplicationsHighRiskCountries-20251202.pdf. In addition, a leaked memorandum authored by the Director of United States Citizenship and Immigration Services places an "adjudicative hold" on all refugee adjustment of status (or "I-485") applications. *See* https://www.aila.org/library/practice-alert-uscis-to-review-approvals-and-immediately-pause-lpr-applications-for-refugees-admitted-1-21-21-2-20-25
To arbitrarily stop processing adjustments of status, and then detain refugees for failing to adjust their status would be a cruel Catch-22.

in the INA, which pertain to concerns about flight risk or criminal convictions for removable persons, Section 209 has no relation to removal or criminal conduct, and Respondents have not even alleged that Petitioner could be removable. In light of this reality, Respondents interpretation of § 209.

In addition to violating the Fifth Amendment's prohibitions on restricting physical liberty, Respondents' interpretation of section 209 also runs afoul of the requirements of procedural due process. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). To determine whether a process is sufficient, courts consider (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) "the Government's interest . . . that the additional or substitute procedural requirement would entail." Respondents admit there is *no process* here—their argument rests on a reading of section 209 that requires every unadjusted refugee to be detained indefinitely Thus, even if Respondents could demonstrate some special justification for detention here, they do not provide *any* process, neither before depriving refugees of their liberty nor after, whereby Petitioner would have an opportunity to demonstrate that the justification does not apply to him or that he should otherwise not be detained.

Petitioner has been in this country for since 2024, lawfully and law-abidingly. The "serious constitutional problem" arising out of Respondents' interpretation of section 209 "is obvious." *Zadvydas*, 533 U.S. at 692. The Court should thus avoid any construction of

section 209 that would permit the detention of refugees who have resided in the country for more than one year. Like the petitioner in *Jama A. O.*, Petitioner is entitled to release. "It is clear that Respondents' detention of Petitioner violates the Due Process Clause because they do not have authority to detain him." *Jama A. O. v. Bondi, et.al.,* Case No. 26-420 (DWF/ECW)(ECF 10 at 5) (January 23, 2026)

b. Respondents' Interpretation of § 209 Violates the Fourth Amendment.

Petitioner's arrest also violates the Fourth Amendment's prohibition on unreasonable searches and seizures. This prohibition limits the actions of immigration authorities. *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal context to "limit" scope of immigration agents' seizure authority). The Fourth Amendment's prohibition on unreasonable seizure applies to noncitizens inside the United States in the same way "as it does to citizens." *Martinez Carcamo v. Holder*, 713 F.3d 916, 921 (8th Cir. 2013). *See also INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but that the Fourth Amendment still applies to the "seizure" of the person).

This Court specifically directed Respondents to address whether Petitioner's warrantless arrest violated the Constitution (ECF 3). Respondents failed to do so. Their silence speaks volumes. As a general matter, the Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). The warrantless seizure underlying this Petition violated the Fourth Amendment's prohibition on unreasonable searches and seizures. *See Terry v. Ohio*, 392

U.S. 1, 16 (1968) (any physical confinement and restrain on liberty constitutes a "seizure" for purposes of the Fourth Amendment); *Graham v. Connor*, 490 U.S. 386, 395 (1989) (whether in the civil or criminal context, all seizures must be reasonable). Courts have a strong preference that immigration arrests be based on warrants, *Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012).

In *Graham v. Barnette*, 5 F4th 872, 885 (8th Cir. 2021), the Eighth Circuit explained that all detentions must be governed by the Fourth Amendment's reasonableness balancing test, meaning the greater the intrusions or restraint on liberty, "the greater the justification required for that intrusion to be reasonable." This required balancing test is fatal to Respondents' position. Respondents have offered *no* reasoned or individualized explanation for why any intrusion on Petitioner's liberty is reasonable here. Indeed, Respondents have offered no reasoned explanation for why the nature or circumstances of Petitioner's detentions are in accordance with the U.S. Constitution at all. Respondents' decision to detain Petitioner should accordingly be set aside as "arbitrary, capricious, and not otherwise in accordance with law." 5 U.S.C. § 706(2)(A).

Section 1357(a) of the INA governs the powers of officers to arrest, limiting warrantless arrests to circumstances where the officer has a reasonable belief that the individual to be in violation of law *and* is "likely to escape before a warrant can be obtained….." 8 U.S.C. §1357 (a)(2). Defendants' own regulations clarify that § 1357 does not authorize a warrantless arrest absent "reason to believe that the person to be arrested has committed an offense against the United States or is a [noncitizen] illegally in the

United States." 8 C.F.R. § 287.8(c)(2)(i). As described above, Plaintiffs are not unlawfully in the United States and Defendants have made no individualized assessment on which to base reasonable suspicion they have. "Agency actions beyond delegated authority are 'ultra vires,' and courts must invalidate them." *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998); *see also Romero v. INS*, 39 F.3d 977, 980 (9th Cir. 1994) (holding that an immigration regulation that is inconsistent with the statutory scheme is invalid). This is because agencies "literally ha[ve] no power to act . . . unless and until Congress confers power" to do so. *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). Arrests by an agency acting outside its statutory authority are per se unreasonable seizures under the Fourth Amendment.

7. Respondents' actions violated the APA and the *Accardi* doctrine.

a. The 2010 ICE Directive Prohibits Detention Based Solely on Failure to Adjust

The 2010 ICE Directive, titled "Detention of Refugees Admitted Under INA § 207 Who Have Failed to Adjust to Lawful Permanent Resident Status" (Policy Number 11039.1), directly addresses the circumstances under which ICE may detain unadjusted refugees. Its language is unequivocal: "Failure by such individuals to apply for adjustment of status under INA § 209(a) is not a sufficient ground to place them in removal proceedings, and therefore not a proper basis for detaining them." The Directive continues: "A refugee may not be placed in removal proceedings based on a failure to adjust status or to apply for adjustment of status because an alien's failure to adjust status or apply for adjustment under INA § 209(a) is not a ground of removability." 2010 ICE Directive at 2.

The Directive goes on to establishes that ICE may only detain an unadjusted refugee if: (1) The refugee is charged with removability on grounds **unrelated** to failure to adjust (such as fraud or criminal convictions forming the basis for charges under INA §§ 212 or 237); *and* (2) The determination to place the refugee in removal proceedings must be made within 48 hours of arrest. The Directive further provides that "if it becomes apparent that no removability ground applies, the individual must be released promptly."

b. Respondents Have Not Complied With the 2010 ICE Directive

Respondents have not alleged that Petitioner is subject to any ground of removability. No Notice to Appear has been filed. Respondents have not identified any charge under INA § 237 (deportability) or § 212 (inadmissibility) that applies to Petitioner. Under the ICE Directive, this means Petitioner must be released. The Directive does not permit indefinite detention for "inspection" purposes absent removal charges. Respondents' detention of Petitioner violates their own binding policy.

c. The *Accardi* Doctrine Requires Release

i. The Accardi Doctrine Binds Agencies to Their Own Policies

Under the *Accardi* doctrine, "regulations validly prescribed by a government agency are binding upon it." *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954). The government "may not deviate from its own rules and regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). The doctrine exists to prevent arbitrary administrative action and ensure that agencies adhere to the standards they have publicly

announced. When an agency promulgates a policy or practice, it cannot selectively ignore that policy when enforcement proves inconvenient.[18]

ii. Respondents Have Violated the 2010 ICE Directive

Respondents have violated the 2010 ICE Directive in multiple respects: *First*, they detained Petitioner based solely on failure to adjust status, which the Directive expressly prohibits: "Failure by such individuals to apply for adjustment of status under INA § 209(a) is not a sufficient ground to place them in removal proceedings, and therefore **not a proper basis for detaining them.**" (Emphasis added.) *Second*, they have not placed Petitioner in removal proceedings or charged him with any ground of removability. The Directive permits detention only when a refugee is charged with removability on grounds *unrelated* to failure to adjust. *Third*, the Directive requires that "if it becomes apparent that no

[18] Under *Alcaraz*, these following factors establish that the 2010 Directive creates a binding policy that constrains ICE's discretion. The 2010 ICE Directive bears all the hallmarks of binding agency policy: 1) **Mandatory Language:** The Directive uses mandatory terms throughout: refugees "*must* be released promptly" if no removability ground exists; failure to adjust "is *not* a sufficient ground" for detention. This is the language of binding obligation, not mere guidance; 2) **Specific Procedural Requirements:** The Directive establishes concrete procedures: 48-hour determinations, coordination with USCIS, provision of forms to detained refugees. These are operational mandates that structure agency action; 3) **Agency-Wide Scope:** The Directive was issued as official ICE policy with a policy number (11039.1) and distributed to all ICE field offices. It governs agency-wide conduct, not individual officer discretion.; 4) **Substantive Legal Determinations:** The Directive makes definitive legal conclusions: failure to adjust is not a ground of removability; such refugees may not be placed in removal proceedings on that basis alone. These are binding legal interpretations that constrain field officer discretion; 5) **Reliance Interests:** The Directive was publicly issued and available. Refugees, attorneys, and advocacy organizations have relied on it for over a decade in understanding ICE's policies regarding refugee detention.

removability ground applies, the individual must be released promptly." It has been nearly week, and Respondents have identified no removability ground. Under the Directive, Petitioner must be released. Respondents' detention of Petitioner violates the clear mandates of their own binding policy.

A. Even assuming, *arguendo*, that §1159 allows detention, Respondents must be constrained to only those actions necessary to conduct an "examination and inspection."

Even if some period of custody (not detention) were allowed under § 1159 (it is not), even on Respondents' own reading, that detention must be for the sole purpose of conducting an "inspection and examination" as part of the process of adjusting refugees' status to that of Lawful Permanent Resident. All aspects of custody, then, must be governed by this sole purpose, and cannot be dictated by an ancillary desire for, as the President described it, "retribution." There is no need to *arrest* anyone on the street for purpose of conducting an interview. Nor is there any need to handcuff them, shackle them, ship them to Texas in the night, house them in a giant room with an open toilet and scores of other detainees, or place them in tent-camps in the desert.

Adjustment interviews have been taking place for decades. They can be scheduled in advance (the statute contemplates this, allowing refugees to "return" voluntarily to custody instead of mandating that they "be returned") and they only require a few hours to conduct. Raufer Decl. ¶¶ 6-10. The entirety of Respondents' conduct here is inconsistent with the few actions necessary to facilitate compliance with the statute. Even on Respondents' own reading, all that compliance would require is for them to provide notice of an interview, and to then conduct the interview. Anything beyond that—arrests by

masked men in the street, handcuffs, shackles, shipping people to Texas, etc. is wholly unnecessary to effectuate this limited inquiry, and is thus unauthorized and illegal, particularly because it impinges on constitutionally protected liberties.

Thus, if this Court were to hold that the government is entitled to take unadjusted refugees into custody for inspection and examination, the court should hold that the "for inspection and examination" provides a strong limitation on the scope of custody. The statute does not provide that the Government can simply arrest a refugee—who has been extensively vetted and is in this country legally—and place them in detention without notice for an undetermined amount of time, potentially transporting them across the country in the process, just because the government asserts that, at some indefinite point in the future, it will be conducting the inspection and examination process. The Court can and should ensure that such inspection and examination occurs locally, at a predetermined time, without the lawfully-present refugee being snatched off the street by armed agents and shipped against their will across the country.

The Court could, for example, order that the inspection and examination process happen in Minnesota after a refugee receives advance notice, so they have an opportunity to prepare and, if needed, obtain counsel. A refugee might then be technically 'in custody' during their interview. But at the conclusion of the interview, they should be released from custody absent some other lawful basis for detention.

V. CONCLUSION

Absent assistance from this Court, Petitioner, who has already undergone an agonizing series of events, from arrest to his current incarceration, faces the prospect of indefinite detention. According to Respondents, his detention is required by both §1225 and §1159, yet neither provides any lawful foundation for Petitioner's current incarceration. For all the reasons set forth herein, this Court should order that Petitioner be immediately released.

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Respectfully submitted,

/s/ *E. Michelle Drake*
E. Michelle Drake, Bar No. 0387366
John G. Albanese, Bar No. 0395882
Joseph C. Hashmall, Bar No. 0392610
Hans Lodge, Bar No. 0397012
Marika K. O'Connor Grant, Bar No. 0506179
Ariana Kiener, Bar No. 0402365
Bryan Plaster Bar No. 0402792
Katherine Raths, Bar No. 0403443
Jordan Hughes, Bar No. 0403614
Soledad Slowing-Romero, Bar No. 0506668
BERGER MONTAGUE PC
1229 Tyler Street NE, Suite 205
Minneapolis, MN 55413
T. 612.594.5999
F.612.584.4470
emdrake@bergermontague.com
jalbanese@bergermontague.com
hlodge@bergermontague.com
jhashmall@bergermontague.com
moconnorgrant@bergermontague.com
akiener@bergermontague.com
bplaster@bergermontague.com
kraths@bergermontague.com
jhughes@bergermontague.com
sslowingromero@bergermontague.com

Attorneys for Petitioner